

EPIF RESPONSE TO EBA CONSULTATION ON REGULATORY TECHNICAL STANDARDS ON PASSPORTING UNDER PSD2

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 250 authorised Payment Institutions (PI) and other non-bank payment providers as our members offering services in every part of Europe. EPIF thus represents roughly one third of all authorized Payment Institutions in Europe. ^[1] Our diverse membership includes the broad range of business models including:

- 3-party Card Network Schemes
- Acquirers
- Money Transfer Operators
- FX Payment Providers
- Mobile Payments
- Payment Processing Service Providers
- Card Issuers
- Third Party Providers
- Digital Wallets

We play a constructive role in increasing payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet). It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

RESPONSES

Q1. Do you agree with the draft RTS on passport notifications under the PSD2? If not, outline why you disagree and how the RTS could be improved?

General comments:

The competent authority of each Member State should publish on their websites the list of each Payment Institution operating in their country, specifying the passporting status: branch, agent network or under the freedom to provide services.

EPIF members suggest that Host State competent authorities should provide reference to applicable main regulations and reporting requirements for Payment Institutions using their passporting rights in the Host Country.

The EBA register should receive up to date information from each EU competent authorities who should match at least the information above mentioned and also take into account the outflows when a branch is closed, an agent terminated and a service stopped. We understand that this comment could be further developed when EBA will publish its draft ITS for the EBA register.

Specific comments:

- **Period to process the passporting notification:**

Ref: Page5 – paragraph 2.1.2 and 2.1.3

Current draft is allocating the same period of time to the competent authorities to process a passport notification for a branch, an agent or services and then the subsequent notifications in case of changes.

The information required for passporting a branch, an agent or services are significantly different where the amount and the technicality of the information required for a branch is the highest.

EBA has clarified this and proposed three different formats of notification. For more efficiency and to be cost effective, EBA should also propose different timeframes to be consistent with the real timeframe which will be necessary for the competent authorities to process the information.

First time/ Initial passport notification processing requires more time than subsequent notification of certain minor changes or when the notification purpose is just adding a new agent without other changes.

We would question why it is necessary to extend the timeframe within which to register the agent of a Payment Institution when this is typically done today within 30 days. It is also worth noting that the larger Payment Institutions in Europe have registered their networks and are developing digital models so future agent registrations will not be at the volumes which we've seen in previous years.

Adding agents should not require a full review as performed during the first time notification of the applicant. We would suggest that the maximum period for registration of an agent be reduced to one month.

- **Assessment of Completeness and Accuracy of the information provided**

Ref: Page 9 & 10 – (4) / Page 12 – Section 1 – Article 3

This part is strongly connected to the above referenced three month timeframe which will start from the date on which the Home State competent authorities assess the application as being both complete and accurate as opposed to the date on which a complete application is received from the Payment Institutions.

EBA has proposed giving Home State competent authorities the discretion to start the clock on the three month period as and when they assess an application as being both complete and accurate.

This means that the three month timeframe could extend without overall limit for non-material information deemed incomplete or incorrect.

We suggest inserting the word “materially” in Article 3, Paragraph 3 so that Paragraph 3 states: “Where the information provided in the notification is assessed to be **materially** incomplete or incorrect...”. The insertion of “materially” would prevent competent authorities from circumventing any statutory timelines by prolonging passport notification processing through immaterial information requests.

- **Information exchanged between competent authorities:**

Ref: Page12-Section 1- Article 2 – paragraph 1(a) and (b) :

We suggest using English as a common language to ease the communication and controls in case of deficiencies which may lead to a procedure for settlement of disagreements.

We strongly suggest not using the post which will introduce delays and risks where electronic means are quicker and safer. If EU wants a competitive market, this kind of red tapes should be avoided. It is also worth noting that postal notifications have not been adopted since the introduction of Payment Institutions in 2009 and this doesn't seem to have been a hindrance for Host State authorities. Again, we would refer to the fact that, going forward, the volume of agent notifications

will be less than what we've seen since 2009 due to the fact that large agent networks are now in place and the industry developing non-agent channels.

- **Information on the start of the activities of the agent:**

Ref: Page17-Section 3- Article 12:The information on the start of the activities of the agent will be useful when linked to the first time passport notification. It should be clarified that the date communicated by the Payment Institution in this case reflects when the activity will be authorized to start and the Payment Institution shall not wait for further instruction from the Home nor the Host competent authorities.

For subsequent passport notification, it will be a burden to go through this information process when simply adding a new agent and it is questionable what benefit this creates for Home or Host authority. We suggest that the start of the activity in that case will match the date when the agent will appear on the register of the Home competent authority. This has generally been the model adopted since 2009 and seems to have worked well for both industry and regulators.

- **Outsourcing operational functions of payment services to other entities in the host Member State:**
Ref: Page 14 – Section 2 – Article 5.2 / Page 16 – Section 3 – Article 9.2 / Page 17 – Section 4 – Article 13.2:

Each contains a reference as follows: “where the PI has informed the home competent authorities of its intention to outsource functions of payment services to other entities in the host Member State, the competent authorities of the home Member State shall inform the competent authorities of the host Member State accordingly.”

EBA should clarify to what functions this may refer and the scope of the obligation in general.

Q4. Do you agree with the draft notification form for agent/distributor passporting set out in Annex III? If not, please outline which content you disagree with, why you disagree and how the notification form could be improved

Annex III – Agent/Distributor Passport Notification Form:

Overall, Annex III contains a lot of repeat information for each notification. EPIF members would like to propose, if possible, to review and adapt the required information, especially in the case of additional notifications, or to have a separate form for additional notifications.

Another practical possibility could be to allow such notifications be done in batch on a monthly basis for high volume notifiers.

- Item 17) - “Intended date of start of agents activities” linked to this is Annex V “start of branch activities:
The agent will only be in a position to commence activities upon approval from the competent authority, so this doesn’t add anything. The date of commencement of agent activities should be the date of entry of the agent into the Home State competent authority register (website).
- Item 20), 22), 23) – Descriptions of various aspects of agents – According to our previous comments, it is suggested to have this only once per notification (especially where we have multiple agent applications in one notification as it is normally standard i.e. the agents comply with our control mechanisms (Item20).

Specific comments on each of 20), 22), 23):

- Item 20) – Currently this is not provided each time a new/subsequent agent application is submitted, unless there is a change to the internal control mechanisms. It (electronically) utilises unnecessary capacity. The competent authority won’t review it each time unless there is a change.
- Item 22)a. The form seeks “evidence” gathered. EBA should clarify what form this should take. We suggest providing evidence on a case by case basis by the competent authority if there is some doubt over an agent’s “Fit and Proper” status.
- Item 23) – Description of outsourcing – In addition to our previous comment on this subject, EBA should clarify how is this relevant to the agent passport notification process where it is more relevant to “Branch” passport process (Annex II). Outsourcing information is provided to the home state competent authority as part of the authorisation, and Payment Institutions have an obligation to inform them of changes to such outsourced activities. It seems this is stepping beyond the scope of an agent passport application. Clarification should be made to distinguish when Article 19 and 28 of PSD2 are applying.

Q6. Do you agree with the draft notification form for the start of branch/agent/distributor passporting activities as set out in Annex V? If not, please outline which content you disagree with, why you disagree and how the notifications form could be improved.

Annex V – Start of Branch/Agent/Distributor passport activities notification form:

As previously commented, the need for this form is unclear, as the Payment Institution would only permit the commencement of an agent’s activities once it has received competent authority approval. This whole form and process adds significant additional operational process with no

understandable benefit. This seems to fulfil the requirement of Article 28(3) paragraph 3, but this could easily be fulfilled by the assumption that an agent has “commenced” activities by being registered with the Home State competent authority.