

## EPIF PAYMENTS WORKSHOP

Tuesday 28 January 2014

European Parliament

Brussels

13.00-15.00

EPIF organised a Workshop on the future regulation of the European payments sector on 28 January 2014. The event was hosted by the Rapporteur of the PSD2, Mr Diogo Feio MEP. Attending the Workshop were Members of the European Parliament, European Commission and Member State officials, representatives from consumer merchant and banking organisations, as well as EPIF's members.

The Workshop was divided in five different sections covering the main areas of revision of the PSD.



*Diogo Feio MEP,  
Sarah Sheehan, EPIF Chair*

### **Section A. The PSD2 in practice for Payment Institutions in the Single Market**

The first session of the workshop focused on the practicalities of making the PSD work for the Single Market.

Speakers representing EPIF generally welcomed the work by the European Commission to update the PSD. The Directive had played an important part in modernising the European payment market and had generally been a great success. They mentioned only a few areas for further improvement.

Importantly, they pointed out that the right to have their own bank accounts is essential for all Payment Institutions to operate. Some non-banks currently face serious problems when seeking to open a bank account. This issue needs to be differentiated from the later discussion on access by third party providers to customers' bank account data. This triggered a longer discussion as to the possible reasons for the banks' action, most notably concerns with anti-money laundering requirements and fraud prevention. Often banks had failed to provide any reason in individual cases where a Payment Institution had been refused a bank account. There was widespread suspicion that there were also some anti-competitive motivations behind the actions of the banks concerned. It was suggested that the EU and / or Member States put forward a dispute resolution mechanism to address the concerns of all parties involved.

EPIF members also expressed concern that the proposed new rules might potentially introduce duplicative fit and proper requirements for financial institutions when serving as PSD agent. More clarification was sought in Article 9 as to when the rules related to the safeguarding of client assets apply. Finally, it was suggested that some degree of flexibility should be introduced in the permissible execution time of payment transactions if both contracting parties agree to this.

There was general consensus around the table that the European passport would benefit from greater legal certainty. This could in part be achieved via revisions to the PSD itself but also through more convergence of supervisory practices. The EBA could play an important role in this regard. The rules should carefully balance consumer protection with innovation and allow for the use of consumer friendly payment applications.



## **Section B. Third Party Providers**

An EPIF member representing Trustly gave an overview of how Third Party Providers (TPPs) operate, the reasons why consumers opt for this mode of payment and the potential risks which are associated with it. He strongly advocated that TPPs should be fully in scope of the PSD2 and also comply with all other



pieces of relevant EU regulation, for example the anti-money laundering rules. He pointed out that the Third Party Providers will need to access the credentials of their customers' bank account information. Everything is done to ensure this is adhering to security principles. In this regard TPPs are no different to any other online payment provider. Moreover, the consumer has to authorise Trustly before it can proceed with the

payment. Trustly collaborates with the Swedish police to ensure the security of payments.

The need for any contractual arrangements between the TPP and the bank was questioned. The contractual arrangements are between the customer and the TPP on the one hand and the customer with his bank on the other. MEPs and other participants underlined that they are working towards ensuring that safety provisions apply equally to all market players. The competition brought about by Third Party Providers is to be welcomed. There was also agreement that this should be a consumer friendly measure. Consumers should have clarity as to when they are using a Third Party Provider. Equally, banks should be aware as to when they are dealing with a TPP. In the case of Trustly this information is provided to the consumer and the respective bank upfront. This might serve as a model.

## **Section C. Card Payments**

EPIF members once more stressed that the PSD has been a great success. Nonetheless, the surcharging requirements of the draft revisions to the PSD are a concern for EPIF members. The three party schemes in particular would fall into scope of the surcharging proposal. This will hamper their competitiveness compared to the two dominant four party card schemes. It should be remembered that Amex and Diners jointly have a market share of less than 3.5% of European card payments. This market share had been achieved even with the use of licensees in many jurisdictions. The number of such licensees nonetheless remains very small compared to the MasterCard or Visa four party scheme arrangements. Importantly, three party schemes negotiate their contractual terms bilaterally with merchants. These contractual terms incorporate the cost structure for these card payments. There is therefore no reason why merchants should additionally be permitted to surcharge. A guest representing the European consumers reinforced this view and called for a complete ban of surcharging. Merchants had a more differentiated view but also stressed that the right balance had to be found.

Some EPIF members drew attention to the proposals by some MEPs in the Internal Market and Economic and Monetary Affairs Committees of the European Parliament to introduce a threshold underneath which the draft Interchange Fee Regulation would not apply. If applied more broadly, such a threshold might provide a good way forward. EU policy makers seemed open to the threshold idea in principle but this would need to be clearly defined and enforceable so as to avoid circumvention of the EU rules.



would, at least during a transition period, lead to arbitrage between domestic and cross-border transactions.

Some EPIF members provide e-wallets. These service providers facilitate online payments with cards. As such they are users of card payments and have to pay the interchange fee. It is important to stress that they do not operate any interchange fee themselves. This is often overlooked in the EU debate.

### **Section D. Security requirements around Payments**

EPIF members support the alignment of the PSD2 with the ECB SecureRe recommendations for safe internet payments. However it is important not to duplicate the rules. The industry is currently investing heavily in systems to meet the requirements set out by the ECB. Under the PSD2 the competence for the enforcement of these rules would in future fall to the EBA. There is a need to have one clear set of security requirements.

EU policy makers took note of these concerns.

### **Section E. SEPA Governance Review**

EPIF members agreed that there should be fair representation for the non-bank payment sector in the new European Retail Payments Board (ERBP). This should strike the right balance when it comes to the development of new EU payment standards but also the management of the existing SEPA Rulebooks.

The ECB and European Commission stressed that the SEPA governance aims to ensure a balanced representation. Taking the Secure Pay recommendations as an example, these had been requested by the payments industry. The ERPB aims to achieve the best solutions for all stakeholders involved in the European payments landscape.



EPIF indicated that it would take an active role in the work of the Euro Retail Payments Board.

### **Closing Remarks**

Mr Diogo Feio thanked everybody for their contribution.

He picked up in particular on two elements of the discussion. The new rules will need to reconcile the need for security and competition when it comes to Third Party Providers. He acknowledged that there are different views on surcharging. As the Rapporteur he will have to make the right decision, while taking into consideration the amendments of the other Political Groups. With those final remarks he closed the Workshop.