



EUROPEAN PARLIAMENT
COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS
- PUBLIC CONSULTATION -

**Questionnaire for the public consultation on
enhancing the coherence of EU financial services legislation**

The European Parliament's Economic and Monetary Affairs Committee is launching a public consultation on ways to further enhance the coherence of EU financial services legislation. Given the transition to a single rule book in financial services across the EU and the EU legislator's willingness to have "all financial markets, products and actors covered by regulation" it is increasingly important to ensure that legislation fits together seamlessly. The consultation will feed into a programme of reflection to determine future priorities for the remainder of this mandate and to inform the priorities for the incoming Parliament in 2014. All interested stakeholders, including academics and informed individuals, are invited to complete the Committee's questionnaire by 12 noon CET on **Friday 14 June** and send it by e-mail to: econ-secretariat@europarl.europa.eu. All responses to the questionnaire will be published, so please do not send any confidential material with your response. Please make sure you indicate the identity of the contributor. Anonymous contributions will not be taken into account.

IDENTITY OF THE CONTRIBUTOR

Name of organisation: European Payment Institutions Federation (EPIF) aisbl

Name of contact point for response: Sarah Sheehan (American Express), EPIF Chair; Nickolas Reinhardt, Secretariat, EPIF.

Contact details: sarah.j.sheehan@aexp.com; nickolas.reinhardt@foreconsulting.eu.

Main activity of organisation: EPIF, founded in 2011, represents the interests of the non-bank payment institutions ("PI") sector at the European level. It currently represents over 250 PIs offering payment services in every part of Europe. The diverse membership includes the broad range of business models covered by the Payment Services Directive (Directive 2007/64/EC). EPIF seeks to represent the voice of the PI industry with EU institutions, policymakers and stakeholders.

QUESTIONS

- 1. Are there specific areas of EU financial services legislation which contain overlapping requirements? If so, please provide references to the relevant legislation and explain the nature of the overlap, who is affected and the impact.*

EPIF welcomes the European Commission's proposal for greater harmonisation of the EU data protection regime within the internal market with regard to the processing of EU personal data.

A number of provisions, however, lead in their current form to legal uncertainty as they seem to be in conflict with the requirements under applicable Anti-Money Laundering and Counter-Terrorism Financing rules (AML/CFT). Under European AML/CFT rules, i.e. the 3rd AML Directive (Directive

2005/60/EC) and the proposed 4th AMLD (COM[2013]45; 2013/0025[COD]), customer due diligence measures (CDD) need to be taken in order to effectively fight money laundering, terrorism financing, fraudulent activities as well as other forms of crime.

These CDD requirements foresee the creation of customer profiles as part of the required risk assessment and risk measures. The financial industry is required to keep respective customer data for at least 5 years after the business relationship comes to an end, in some cases Member States request a longer period of time.

Thus, it needs to be clarified beyond the existing recitals that data protection rules, for instance on 'profiling' or 'the right to be forgotten', do not compromise applicable AML/CFT rules in order to allow the obliged entities to conduct their business in a lawful and compliant manner.

A risk-based approach with regard to the type of data and/or processing purpose (e.g. personal profiling) is strongly recommended. The best approach would be to keep current rules that allow data processing according to 'legitimate interests', including for AML, fraud and risk management purposes. For that reason, we recommend to clarify this explicitly in the text of the Regulation.

AML/Payment Services Directive (PSD - Directive 2007/64/EC):

EPIF notes with disappointment that the new regime under the proposed 4th AML Directive will not be based on the maximum harmonisation principle. In EPIF's view, by not adopting the maximum harmonisation legislative method, the Commission is missing out on a key opportunity to push strongly towards the PSD's aspirations for a Single Market for payments and a level playing field for market participants.

AML rules should be more harmonized at the EU level. Currently, the Single Market for payments includes 27 different AML regimes, soon to be 28 regimes. Many technically difficult matters have been subject to maximum harmonisation (e.g. the PSD) while AML/CFT rules remain harmonised at a minimum level. The need for PIs to adapt to local AML legislation means that the maximum harmonisation sought by the PSD is far from being achieved as payment products and services cannot be offered cross-border in a cost efficient manner. This is not in the best interests of consumers or market competition in the EU because the increase in resources needed for the application of different AML rules in each country drives up the costs of services

2. *Are there specific areas of EU financial services legislation in which activities/products/services which have an equivalent use or effect but a different form are regulated differently or not regulated at all? If so, please provide references to the relevant legislation and explain the nature of the difference, who is affected and the impact.*

Not applicable

3. *Do you consider that the way EU financial services legislation has been transposed or implemented has given rise to overlaps or incoherence? If so, please explain the issue and where it has arisen, giving specific examples of EU financial services legislation where applicable.*

Not applicable

4. *How has the sequence in which EU financial services legislation has been developed impacted your organisation? Please identify the relevant legislation and, where applicable, specific*

provisions and explain the nature of the impact.

The PSD has helped to foster the development of a Single Market for non-bank payment services. The success can be measured by the fact that more than 568 payment institutions (PIs) have been authorised to provide their services across borders EU wide. The PSD is one of the real success stories of the Single Market.

5. *Are there areas of EU financial services where the difference between forms of regulation (non-binding Code of Conduct or Recommendation to Member States vs legislative proposals) has affected your activities?*

The EU payment market is highly competitive and evolving fast. This evolution is to be encouraged as it will contribute to consumer choice.

EPIF believes the SEPA (Single Euro Payment Area) standards setting process should be chaired and overseen by the European institutions and should ideally be publicly funded to reflect the public policy interest in SEPA implementation. EPIF believes in an open standard setting process.

SEPA governance is currently being reviewed by the European institutions, in close cooperation with the EPC (European Payment Council). One of the main challenges for improving SEPA governance is to ensure the fair representation of all affected stakeholders (merchants, end consumers, banks, payment institutions). Payment institutions support the equal representation of EPIF in all bodies emerging from the EPC governance reform (SEPA Council, Stakeholder Group and its Working Groups).

This equal representation needs to reflect the evolution of the payment institutions industry, the evolution of its market share, its geographical breadth and the different business models of the industry. As a result, equal representation should mean an equal share of the seats for each of the constituencies involved in the SEPA process, of which the payment institutions sector is one constituency. As regards technical input, the governance reform needs to reflect the specialised expertise and competences of the payment institutions industry.

6. *How do you think the coherence of EU financial services legislation could be further improved?*

Please comment in particular on the extent to which the following would help to improve the coherence of future EU financial services legislation (please give examples to support your answer where possible):

- a) *a framework for legislative reviews or review clauses included in initial pieces of legislation which link to the reviews of other related legislation?*
- b) *a unified, legally binding code of financial services law?*
- c) *different arrangements within the EU institutions for the handling of legislative proposals (please specify)?*
- d) *other suggestions?*

The ability of Member States to impose additional national administrative requirements on payment institutions with respect to AML has acted as a barrier to the effective implementation of the European passport under the PSD.

The PSD is a maximum harmonisation Directive, which aims at establishing a single market for payments in the EU, eliminating barriers of entry and enabling firms to act on a cross-border basis. The rules on the prevention of money laundering and terrorism financing form an important part of the regulatory framework and the operating costs of PIs. Unfortunately, the 3rd (and 4th) AML Directive remains a minimum harmonisation Directive, which in practice means 27 different AML regimes.

The need for PIs to adapt to local AML legislation means that the maximum harmonisation sought by the PSD is far from being achieved as payment products and services cannot be offered cross-border in a cost efficient manner.

As both the AML directive and the PSD are under review during the same period, it is necessary that European legislators work on bringing more convergence between the two Directives (ideally by seeking to impose a maximum harmonisation through the recently proposed 4th AML Directive).

7. *What practical steps could be taken to better ensure coherence between delegated acts and technical standards and the underlying "Level 1" text?*

Not applicable

8. *Which area or specific change would you identify as the highest priority for the 2014-2019 mandate in terms of improving the coherence of EU legislation?*

See answer to question 6.

9. *Do you consider that the EU legislative process allows the active participation of all stakeholders in relation to financial services legislation? What, if any, suggestions do you have for how stakeholder participation could be enhanced?*

The European Banking Authority is responsible for the coordination of payment supervision. In line with other sectors and activities falling under the remit of the EBA and the other respective European Supervisory Authorities, the EBA should convene a Stakeholder Group representing the payment institution sector. This Group should be consulted on all aspects of the EBA's work in relation to payments, including its work carried out as part of the Joint Committee.

10. *Do you consider that EU legislators give the same degree of consideration to all business models in the EU financial sector? Please explain your answer and state any suggestions you have for ensuring appropriate consideration of different business models in the development of EU financial services legislation.*

Not applicable

Note on answering the questions

Please clarify in your answers whether your example relates to financial services legislation in force, or to proposals still under consideration. For example, if you refer to MiFID as an example, please specify whether your point relates to Directive 2004/39/EC ("MiFID 1") and accompanying implementing measures, or to the MiFID 2 negotiations based on Commission proposals COM (2011) 652 and 656.

