



*Brussels, 13.3.2014
C(2014) 1664 final*

Dear President,

The Commission would like to thank the Camera Deputaților for its Opinion concerning the Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC {COM(2013) 547 final} (hereinafter: PSD2).

The Commission welcomes the support of the Camera Deputaților for the proposal and the detailed remarks provided. In particular, the Commission appreciates the support of the Camera Deputaților for the Commission's underlying objectives in this proposal.

On the individual comments, the Commission would like to react as follows:

One single act for all EU payment legislation

The Camera Deputaților indicates that it would be useful if all EU payment legislation would be combined in one single legislative act for reasons of clarity and simplicity.

The Commission agrees that a further streamlining of the EU framework for payments would be beneficial from a viewpoint of creating a more transparent and clear legal framework. A possible candidate for a combination of existing legislation would be the merge of the Payment Services Directive (PSD) with the e-money directive (EMD), which is to a large extent inspired by the PSD. Unfortunately, however, the transposition of the EMD, adopted in 2009 has suffered important delays. Most Member States only notified their transposition measures in 2012, and the last countries only completed the transposition in May 2013. This has not allowed to include in the review of the PSD a review of the EMD. As the review of the PSD has confirmed that certain market developments merit quick regulatory action, a combined revision of the PSD and the EMD at this stage has therefore not been feasible.

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Third party payment service providers

The Opinion of the Camera Deputaţilor further welcomes the scoping in of third party payment service providers (TPPs) in the PSD in order to create a genuine level playing field between the existing payment service providers and these new players which have proven to bring added value to both consumers and retailers in the context of internet payments.

At the same time, it raises certain security concerns which should be addressed by allowing the account servicing payment service providers to only provide access to information on the payment account by a TPP if it can prove that it is legally and technically authorised and only after the account holder has been unequivocally identified through procedures that allow the PSP to double check.

The Commission would like to underline that the PSD2 proposal contains enhanced security requirements for TPPs. The TPP has an enhanced duty of care with regard to the payer's credentials. The TPP should not make these data accessible to other parties nor store or keep them (Article 58). Furthermore, in order to be licensed, the TPP (as any other PSP) shall put in place a security policy, a risk management mechanism and implementing security measures to ensure that the initiation and execution of the payment is safe and secure (see Articles 5, and particularly under (g) and 85-87). These measures should in principle provide sufficient safeguards that the payer's credentials cannot be accessed and abused by third parties.

Since TPPs have started operating on the market, no single case of fraud has been reported in relation to the use of TPPs. Even though the Commission could consider further technical measures to ensure secure payments through the use of TPPs, the development of such measures should not be used as a pretext to prevent TPPs in the meantime from accessing the market and providing payment services which clearly have proven to have an added value. The Commission welcomes an open debate on this.

Customer authentication

The Camera Deputaţilor suggests to reconsider the definition of "authentication", taking into account that authentication is normally used to confirm that the possessor of a certain set of credentials is indeed authenticated to access a particular system, whereas "identification" of a person establishes that a person accessing the system is in fact the person he/she claims to be. The current definition of authentication seems to mix the two concepts.

The Commission proposal has been inspired by the definition provided in the SecurePay Forum recommendations on internet payments, which refers to authentication as the verification of a person's identity.

Unconditional refund right and role of payment service providers

The Camera Deputaţilor's Opinion points out that payment service providers should not become involved or made responsible for resolving legal disputes resulting from an

underlying commercial transaction between one of its customers (the payer) and the recipient of the payment (the customer of the other bank).

It appears that the Camera Deputaților is referring here to the Commission proposal with regard to the introduction of a more inclusive refund right for consumers in case of direct debits.

On the occasion of the adoption of the Single European Payment Area (SEPA) end-date Regulation, the European Parliament has asked the Commission to assess the impact of the current refund rules in Articles 62 and 63 of the PSD, in light of the prevailing market situation and the necessity to ensure a high level of consumer protection (see Regulation (EU) No 260/2012, recital 32). The results of this analysis can be found in the evaluation report of the Commission that has been published together with the proposed PSD2. All stakeholders consulted (Member States, consumer and retail associations, PSPs and merchants) share the view that harmonised refund rules are beneficial for all parties concerned (payers, as well as the PSPs and payees). As regards the rules defined in PSD, certain stakeholders were rather positive about the impact of the PSD rules on refund, while others were rather sceptical, which seem to be dependent on the way direct debits and refund rights were used and regulated within their own country.

In view of the outcome of the stakeholders' consultation, the PSD2 proposal seeks to improve consumer protection while having regard to the position of the payee for whom after a refund it may be difficult to claim back the goods or services once consumed (e.g. music or films, lottery tickets that are no longer of value after the draw). Article 67(1) defines clearly in which cases an unconditional refund can be claimed in case of direct debits, instead – as is the case now - of leaving this entirely to the PSP and the payer.

At the last SEPA Council meeting in September 2013, the approach of a general refund right with certain restrictions was supported. It was concluded that consumer protection is key, but that the use of a fixed amount Direct Debit without refund could be envisaged for a very limited number of very well-defined niche markets (such as lotteries). A further fine-tuning of the Commission proposal could be explored along these lines.

Unconditional refund right and Article 7 SEPA Regulation

The Camera Deputaților remarks that there might be a legal conflict between Article 7 of Regulation No 260/2012 and Article 67. Article 7 of the SEPA regulation indicates that old mandates shall remain valid after 1 February 2014; such mandates may allow for an unconditional refund right, whereas under Article 67 the refund right would be subject to certain conditions.

The issue raised by the Camera Deputaților is not specific to the PSD2 proposal. Already now, Article 7 of the SEPA Regulation goes further than Article 62(1) of the Payment Service Directive, which has been the result of negotiations in the Council of this point in the Regulation. Article 67 PSD2 would come closer to the unconditional refund right in Article 7 SEPA Regulation than the current Article 62(1).

Technical standardisation and interoperability

The Commission fully shares the Opinion of the Camera Deputaţilor that standardisation and interoperability between different schemes on the basis of open standards are essential for the well-functioning of a genuine European market for payments.

Security is a field where the development of and adherence to such standards is indispensable to ensure sufficient confidence that payments are safe and secure. In the Commission proposal, the European Banking Authority has therefore been given a mandate to develop guidelines on the use of strong customer authentication by payment service providers (see Article 87). Further integration of the card payment market through standardisation has also been on the agenda of the Card Stakeholder Group. It has developed common standards for card payments, which will provide a good basis to work towards the development of SEPA cards that can be accepted within the whole of the SEPA area, be it cards for domestic use only or also for cross-border payments.

The Commission is, in principle, not in favour of establishing technical standards through legislation. The instrument of legislation is not flexible enough to allow market participants to jointly develop specific standards that serve the market as a whole and that can be easily adapted and updated in response to technological developments. One field where such open technical standards can be better developed by experts in the market is that of mobile payments. A strong commitment from all market players in the market however is a precondition to create common ownership to ensure that the standards are applied and implemented across the whole of the market.

Dissemination of information to the general public

The Commission takes note of the suggestion of the Camera Deputaţilor about the promotion of the rights granted to payment services users under PSD2 and will consider repeating the information campaign it conducted after the adoption of the original Payment Services Directive.

The Commission hopes that these clarifications address the issues raised by the Camera Deputaţilor and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*