



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

HORIZONTAL POLICIES
Retail Financial Services

EGBPI/02/2024

46th Commission Expert Group on Banking, Payments and Insurance (EGBPI) *(Payments formation)*

17 October 2024 via hybrid meeting

Draft Minutes – for publication

1. Approval of the agenda and the minutes of the 45th EGBPI meeting

The Chairman explained that the initial agenda item on the articulation between PSD2 and MiCAR was removed as intended conclusions could not yet be drawn, despite significant progress.

The agenda and minutes of 14 March 2024 were approved without comments.

2. Regulation (EU) 2021/1230 on cross-border payments in the Union

The Commission services (CS) referred to the review clause of the Cross-Border Payments Regulation (CBPR2), which requires the Commission to report on its application and impact. The review is anticipated to be comprehensive, focusing on the principle of equality of charges and transparency provisions regarding currency conversion charges.

The review had been delayed due to the fact that provisions are only fully applicable as of 19 April 2021 and the flexible enforcement granted to NCAs due to the Covid crisis and other pressing matters, such as PSD3 and PSR. The objective is now to prepare the public consultation and defining tasks for an external contractor which is still to be confirmed. MS are invited to share their relevant experience based on the questions raised in the meeting document.

The review does not automatically imply legislative amendments. Technical requirements, including three cost-benefit analyses, must be prepared as part of the review. The six questions in the meeting document cover all provisions of CBPR2, including the principle of equality of charges and its interaction with ATM withdrawals.

The CS are interested in MS' experiences with ATM withdrawals and their views on the scope of the CBPR2, including the possibility of extending the principle of equality of charges to non-euro currencies. The review also addresses the transparency of currency conversion charges, with a particular focus on the ECB reference rate and margins, which is also being discussed during PSR negotiations.

The *tour de table* provided an opportunity for the CS to gauge the positions of MS. It was noted that most MS intended to submit their input in writing. Several MS requested the CS to consider revising its interpretative note on the principle of equal charges for ATM withdrawals.

While no strong intent to revise CBPR2 was identified, several MS raised the importance of the notion of ‘corresponding national payments’, which may require revision. The CS noted that the notion of a corresponding national payments may remain vague even though an interpretative note was published. The question is whether a binding legislation is required or not in this respect. The CS invited MS to issue guidelines to identify corresponding national payments as outlined in Article 3(3) CBPR2. The CS acknowledged that most of the challenges are likely to stem from the interpretation of this notion which may differ from MS to MS.

One MS requested clarification on the service provider for cash withdrawals, specifically whether it is the account servicing payment service provider (ASPSP) or the ATM deployer. They also requested explanation of the term "network of ATMs" as used in the Payment Services Regulation (PSR). Further clarification is needed on message notifications to PSUs when cards are used abroad and on the estimate amount of funds received by the payee in their currency in case the PSP lacks information about the currency of the account of the payee.

Another MS requested additional clarification regarding the application of the principle of equality of charges for cross-border ATM cash withdrawals, specifically in relation to cases for the entitlement of a Payment Service User (PSU) to a refund.

One MS has faced complaints about double charging for ATM withdrawals. When a card is used in a MS, the cardholder is charged by the bank of that MS for access, and their issuing bank in another EU country may also charge. A MS study found varying practices across the EU, highlighting the need for clear guidelines on whether double charging is allowed or not.

Another MS suggested waiting for the result of the efforts of the G20 to avoid the need to intervene again in EU legislation. The CS noted that there are indeed two options: either to wait for the FSB/G20 or to go ahead.

One MS noted that CBPR2 has harmonized domestic and cross-border payment costs, with exchange rates still varying if an account is not held in the currency in which the transfer is made. Cross-border transfer costs also vary by the account package chosen by the PSU.

Another MS noted that it was not clear how to understand the legal connection between card issuers, credit institutions and operators of independent ATM network if they are connected and regulated under the same card scheme. The CS were requested to address the issue if joining a card scheme is equivalent to an agreement between a card issuer and an ATM operator, considering that most cards in the EU are operated under either VISA or Mastercard schemes. Regarding the G20 commitments, there is no need for legislative changes.

One MS informed that its NCA had issued guidelines related to ATM withdrawals in which a “comparable national payment” is defined. In addition to serving the objectives of transparency and clarity, they also serve as an anchor point for all domestic cash withdrawals,

setting the maximum price for cash withdrawals at domestic level, irrespective of the network where one is withdrawing the amount.

One MS noted that due to the implementation of IPR requirements for non-euro Member States by 2027, complementary legislation is not required.

Some MS were in favour of continuing to use ECBRR for conversion. One Member, however, opposed to it.

The CS invited MS to provide written input by 1 November.

The CS reminded MS of their duty of notification stemming from the CBPR2. Similar to the first regulation from 2009 (924/2009), the codified version from 2021 (2021/1230), specifically in Articles 8, 10, and 12, requires Member States to notify the Commission of any changes applied in this regard, particularly regarding the competent authorities responsible for ensuring compliance with this Regulation, as well as out-of-court complaint and redress procedures and penalties. Most of the notifications from MS date back to the first cross-border payment regulation. However, the changes brought by the revised cross-border regulation require checking if previously notified authorities are still in charge and if they are competent to cover the extended scope of the revised regulation. The CS drew attention specifically to Article 4 of the codified regulation (CBPR2), according to which parties providing currency conversion services related to card-based transactions at the point of sale or ATM must disclose the currency conversion charges prior to the transaction. Entities offering these services, such as independent ATM deployers and merchants, should clearly inform the payer about the fees, for example, by displaying the amount at the checkout or on the terminal screen for online purchases. Payers should also have the option to submit complaints to the relevant competent authority, rather than being limited to initiating legal action through court procedures. The entities involved, such as merchants and independent ATM deployers, are usually non-PSPs, and as such might not fall under the supervision of the previously notified NCAs. Thus, MS were requested to verify the necessity of the notification in light of what was presented and also to check back the email correspondence where the CS regarding the competencies of the NCAs under the cross-border regulation and to send follow-up responses to CS wherever necessary.

3. Regulation (EU) 2024/886 as regards instant credit transfers in euro

The Instant Payment Regulation (IPR), which came into effect in April 2024, amends the Settlement Finality Directive (SFD) and the Payment Services Directive (PSD2). The amendments enable payment institutions (PIs) and electronic money institutions (EMIs) to participate in designated payment systems, subject to certain conditions. MS must incorporate these amendments into national law and establish rules on penalties for non-compliance with requirements of IPR by April 2025.

The IPR introduces Article 35a(2) in PSD2, which requires MS to define a procedure for assessing compliance with conditions in order to apply for access to designated payment systems. This procedure may take the form of a self-assessment, a requirement for an explicit decision by the competent authority, or any other procedure that aims to ensure that the PIs and EMIs concerned comply with the conditions.

Prior to the meeting, two documents were sent to EGBPI Members: a template of correlation table for transposing and notifying the COM of the transposition of amendments to SFD and PSD2 and another document as to how to notify the COM of the national measures regarding penalties applicable to infringements of IPR.

Transposition of Directives amended by the IPR

The Enforcement Coordination Unit within DG FISMA briefly explained the national transposition and implementation process regarding IPR. MS received a template explanatory document which was developed delivering on a recent Recommendation according to which there is more need for closer cooperation between the different services and more transparency in the transposition process. The template explanatory document is not a binding document, consequently MS may freely use other formats of correlation tables as well. Since the use of the document is in a pilot phase, MS are welcome to share their feedback on it for further improvement.

MS are requested to notify the transposition of national measures and explanatory documents regarding the amendments introduced by IPR to SFD and PSD2 in the Themis/Directives database under the specific entry for the IPR.

MS are encouraged to indicate the national transposing measures as accurately as possible, not only the legislative Act and the Article. A consolidated version of national laws is very useful to indicate. If a certain provision is not transposed, an explanation is required. If there is a pre-existing national legislation that transposes a provision of a directive, the pre-existing national legislation should also be indicated in the Themis/Directives database.

Implementation of IPR

Although regulations are directly applicable, to become effective they may require MS to adopt implementation measures and notify such implementation measures to the COM.

National measures which implement provisions that require MS to introduce a penalty regime, to appoint a competent authority, the legal act and the indication of source where to find the legal act, and explanatory documents, e.g. a correlation table, must be notified to the COM. The notification process does not take place through the established database of Themis. Notifications should be sent to FISMA-REGULATIONS-NOTIFICATION@ec.europa.eu. The deadline for notification is specified in the Regulation.

A MS asked how regulations should be notified when Ms are also obliged to notify the EBA and ESMA. CS noted that they identified contact points at EBA or ESMA for a specific case and shared them with the interested MS. CS are interested if it is a common recurrent concern affecting all MS, because then CS may need to put in place a more systematic mechanism to address the issue.

A *tour de table* followed providing the status update of MS with respect to the amendments to SFD and PSD2, their approach to transposing Article 35a(2) of PSD2 and on putting in place penalties for infringements of requirements of IPR. Some MS expressed their intent to send their input in writing. Regarding the adoption of the amendments to SFD and PSD2 and penalties for infringements of requirements of IPR, quite a few MS are at an advanced stage

in their transposition work: some of the MS are in the public consultation stage or have just finished it, while other MS are in the parliamentary stage. In case of one MS, the legislation on the amendments to SFD and PSD2 has been already in force as of 17 October 2024. Some MS are currently working on their draft proposals or have just initiated the legislative procedure.

Regarding the MS' approach to transposing Article 35a(2) of PSD2, the picture is varied. A number of MS have opted for a hybrid option involving self-assessment combined with an approval from an authority or a payment system operator. Quite a few MS have chosen the explicit decision by the CA, while self-assessment was selected by fewer MS.

One MS explained that its intended approach is based on applicant PIs and EMIs having to present the documents on fulfilling the conditions under Article 35a of PSD2 to the operator of the payment system. The sanctioning power lies with the CA in case of a breach of the conditions. The CB is the only payment system operator and at the same time the supervisory authority as well. The CB as a payment system operator is permitted to use the information obtained by it as the supervisory authority to assess the compliance of a PI or EMI with Article 35a of PSD2.

Another MS noted that regarding the amendments to the SFD, the onboarding of non-banks will be aligned with the ECB policy published in July.

Regarding the conditions for accessing the payment system by PIs and EMIs, one MS aims at fulfilling three objectives by defining this procedure: to ensure compliance with the requirements set out in Article 35a; to have a simple procedure in place for all stakeholders (PIs, EMIs, supervisors, payment system operators) and to provide sufficient safeguards to preserve financial stability by preventing access to a payment system if the conditions are not met. This MS is considering of putting in place a two-stage model: self-assessment of the applicant PIs and EMIs and the intervention of an authority. The modalities of such an intervention are still being considered.

Another MS is in support of a coordinated approach as a temporary regime is being built that will eventually be replaced by PSD3. CS is requested to confirm that if a MS has e.g. a self-assessment in place, the rules of the home jurisdiction will apply to an PI or EMI from that MS requesting access to a designated payment system in another MS, even if the explicit decision of the CB is required in that other MS.

A MS noted that regarding Article 35a(2), assessment by NCA was chosen. All the information received by NCA will be transmitted to the CB. The final decision will be taken by the payment system operator, based on the assessment of the NCA.

A MS noted that their work on the draft proposals is facilitated by the fact that instant payment has been a practice since March 2020 (less than 5 seconds).

Another MS highlighted that it was crucial to align the approaches in the regulations because the provisions for the access to a designated payment system as set out in the COM proposal of PSR differ from the amendment to PSD2 that was included in the IPR.

To reply to the question as to which country's approach applies if non-bank PSP applies for participation in a designated payment system in a MS that is different from MS of its establishment, CS confirmed that in this case the approach implemented by the home member state applies.

To reply to the question as to how it was possible that the discussions for the PSR proposal did not include the two choices for the assessment procedures, CS clarified that the new Article 35a is intended as a temporary regime by the co-legislators, i.e., that it will be in place until PSR and PSD3 enter into force. Consequently, Article 35a is not included in the PSR and PSD3.

The CS observed that a number of MS are advanced in their transposition work. Regarding implementation of Article 35a(2) of PSD2, CS noted that both approaches (self-assessment and decision by a CA) seem to be selected by different MS.

4. EPC update (for information)

The EPC provided an update on its main ongoing workstreams. Georgio Andreoli presented the evolution of EPC's instant payment scheme and other payment schemes, provided a description of the new VOP (verification of pay scheme) and the EDS (e-directory service) which is a key enabler for the scheme. He briefly talked about the widening of the SEPA geographical scope as well. The EPC Secretariat and the EPC members being part of various working groups have been working hard to update the 5 payment scheme rulebooks.

5. Anti-spoofing measures at national level

Some MS have recently introduced national legislation allowing electronic communication service providers to implement technical measures aimed at preventing the routing of calls/SMS from potentially spoofed caller ID/SMS sender numbers. Such measures are an important element in the fight against social engineering fraud.

a) Austrian Anti-Phishing Platform Presentation by Thomas Von der Gathen (PSA) and Bernhard Schafrath (Criminal Intelligence Service Austria)

Organized Crime Groups (OCG) create fraudulent messages which are sent to a high number of recipients using different service providers. Telco providers are obliged to send such messages regardless of whether it could be fraud. The potential victims may open the SMS, read the text and click on the link or the victims may trust the content and transmit data. OCGs may also contact the victim and tell them a story which the victim believes and sends money. If the victim recognizes the fraud, they may contact their bank and report it to the police and the Consumer Protection Authority. However, the amount has already been transferred by the bank using SCA, the recovery of which is possible only in a few cases. Consequently, the OCG has been financed. Police starts investigations, identifies the suspect and determines the money flow.

Every organisation does its work, and, in many cases, there are legal disputes between victims, police and the bank. The organisations do not have a "big picture" about the modus operandi of the phishing attack. In most cases, no money is recovered, and no suspect is arrested.

A Platform against Phishing was established with the involvement of the Ministry of Interior and major banks in November 2023 where three main goals were determined: to take joint preventive measures with the involvement of not only banks and law enforcement bodies but other sectors as well; to find technical solutions to limit the delivery of phishing text messages; and to provide advice to decision-makers. They reached out to the public through various channels and informed it of the modus operandi of phishing. Because communication operators are obliged to send the text messages, they try to catch the criminals for the infringement of copyright laws (sending a message in the name of the bank) rather than for fraud reasons (Al Capone approach).

**b) Anti-spoofing measures in Finland - regulatory actions and experiences
Presentation by Klaus Nieminen (Finnish Transport and Communications
Agency)**

There is no general spoofing problem from Finland, however, a huge number of spoofed calls are received from abroad. To stop that, FI limited the usage of Finnish numbers abroad and implemented technical measures to identify the legitimate calls and messages (roaming traffic and identified customers).

Regarding mobile number validation, both roaming and malicious traffic use generic international interconnections. Malicious traffic can be blocked by checking whether the subscriber is abroad. To achieve it, a secure proxy service was specified that was implemented by the national number portability company which is a not-for-profit organisation. The only information passed forward to the telecom operator is whether a call can be passed or not.

Measures to protect SMS from fraud include blocking all SMS from public international interfaces with Finnish MSISDN, changing SMS numbers from public international interfaces to “Unknown” and block all messages with the “Unknown” SMS Sender ID, offering protected SMS Sender IDs as a service and content filtering. Regarding content filtering, new rules will enter into force on 1st December 2024, pursuant to which operators must be able to filter malicious traffic in SMS and MMS, either filter or tag the message with malicious content. These measures will apply to both incoming and outgoing traffic. It is currently being discussed, either, whether domain name system-based filtering should be applied.

The measures have proven to be effective. Blocking of Finnish fixed numbers stopped technical support scam calls, as a result, detected fraud dropped to 600 euro by end of 2022. For mobile numbers it took 1.5 years to implement the proxy service which has worked well. However, permanent measures are needed as fraud continues. Recommendations were also issued for the telco part of the value chain.

The CS asked if there were legal obstacles that needed to be overcome regarding content filtering. Klaus Nieminen explained that basically the same legal basis applied to SMS as to email and no challenges were faced under the current legal framework.

One MS asked for the good practices regarding SMS Sender IDs. Klaus Nieminen said that they had set up a working group that consisted of operators as well as financial sector stakeholders and this working group helped devise an effective mechanism which is based

upon the fact that business names registered in the business registry are protected. Government organisations are not registered in the business registry. In their case the activity carried out by them is protected. Business name is the unique identifier and for a fee, businesses can be published in another registry for SMS Sender ID protection. Operators are obliged to block to avoid smishing.

Two MS shared their experience as well. One of them said that a new mechanism has entered into force recently. In 2020 new obligations were imposed on the telco sector. They must check if the calling numbers are authenticated and must automatically interrupt calls from numbers that are not authenticated. A phone number authentication mechanism was developed by the telco sector which had required significant investment and the development of new technical standards. A unique number was promoted by the telco operators for the purpose of reporting phishing attacks by the users. This reporting mechanism enables telco operators to decide if the number must be blocked or if the accounts must be closed.

One MS explained what legal developments have taken place to curb fraud. A new law against online crime entered into force on 1st of August 2024 to better handle online mass crimes and enhance cooperation between authorities. AML measures were extended to cover online fraud enabling FSPs to trace and block the stolen funds if necessary. In addition, reporting and blocking procedures were introduced to recover fraud-related funds. The Ministry of Justice joined the so-called “cyber-shield program” which aims at boosting cybersecurity awareness and defence; strengthening defences against threats; fostering collaboration between public and private entities and improving digital literacy to reduce vulnerabilities. The focus in 2024 is on voice calls.

Another MS shared that their national legislation to combat fraud from the electronic communication provider's perspective is being updated. Measures include blocking traffic using the numbers not assigned from international calls and prohibiting the use of mobile phone numbers for customer service calls or prospective commercial calls. Specific prefixes will be reserved for this purpose.

One MS mentioned that new anti-spoofing rules were decided on by the Post and Telecom Authority which are like what has been presented involving the identification of the place of the caller (abroad or within the country). In addition, meetings are held regularly with the leading telco operators to identify fraudulent text messages.

The Chair concluded that fraud is also being discussed in the Council WP meetings related to PSD3 and PSR and the European Parliament in its report proposed liability for telco organisations and for electronic communication service providers which is to be discussed in the trialogue.

6. Conclusions and next steps

MS are invited to provide written input on Agenda items 2 and 3 and suggest ideas for the next meeting, the tentative date of which is scheduled for the 13th of March 2025.