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ECON Report on PSD II

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on the above cited ECON Report and would like to submit the following position and amendments:

A. Introduction: 2 major concerns

1. Third party payment service providers-related aspects

The treatment of ‘third party payment service providers’ (hereinafter ‘TPPs’) represents by far the most important structural change in the PSD2 proposal.

We fully share the statement in Recital 18 “as TPPs are currently not subject to Directive 2007/64/EC, they are not necessarily supervised by a competent authority and do not follow the requirements of Directive 2007/64/EC. This raises a series of legal issues, such as consumer protection, security and liability as well as competition and data protection issues. The new rules should therefore respond to those issues.”

However, not all aspects concerning TPPs have been fully considered and resolved in the PSD2. The final outcome is an unclear picture of the overall legal framework, and the allocation of rights and responsibilities between the account servicing payment services provider (hereinafter ‘AS PSP’) and the TPP.

There is still a significant lack of precision about the responsibilities of TPPs in terms of security and infrastructure. More specifically, the terms and conditions governing the relationship between the TPP/AS PSP/PSUser as well as the minimum security standards required for TPPs’ access to account information need to be spelled out better. Likewise, issues relating to the defective execution of a payment and disputes need to be clarified in detail. More specifically,

the liability of the TPP in the event of non-execution or defective execution cannot rest only on the mechanism currently envisaged in the PSD2, i.e. the AS PSP being obliged to refund the payer and then to revert to the TPP.

We believe that in order to ensure a proper and fair balance of responsibilities between AS PSPs and TPPs, the actual security of the user, and, therefore, the complete confidence in the electronic means of payment, the PSD2 should mandate a proper and explicit contractual framework, which encompasses both legs of the tripartite relationship: TPP/ AS PSP/ PSU and which would in more detail address their mutual responsibilities and liabilities.

In this context a number of articles are very relevant as well as their interplay, namely: the entire Title III, arts. 57, 58-68, 80, 82, 85-87.

All these provisions require amendments and have to be reconsidered in such a way that at all times:

- TPPs are prohibited from using personal security credentials of the PSU (Articles 58 & 61);
- There is full transparency (ex ante) for both the PSU and the account servicing PSP about the involvement of a TPP and about the explicit consent from the PSU for each transaction;
- TPPs are subject to the same safekeeping, security, privacy and transparency rules as AS PSPs;
- TPPs are directly liable to users, without AS PSPs being obliged to refund users in the first place and then to carry the burden of recovery and recourse vis-à-vis TPPs;
- The scope of 'account information services' must be narrowly defined.

2. Refund Rights (Article 67 (1))

There seems to be general consensus that Article 67 (1) PSD2 is unclear, impractical and could jeopardise the future of Direct Debits as a payment instrument. Therefore, suggestions are being presented below of how it could be rephrased.

B. Specific Amendments

ECON Amendment 9

Recital 18 (COM Proposal): The following sentence should be deleted: "Those services facilitate the e-commerce payments by establishing a software bridge [1]between the website of the merchant and the online banking platform of the consumer in order to initiate internet payments on the basis of credit transfers or direct debits".

Justification: The text is misleading. The wording establishing a software bridge is indeed not an appropriate description for the practice of third-party payment initiation.

Furthermore EU legislation should be "technologically neutral" and Recital 18 mentions only one possible technology means amongst many possible others.

Recital 68: Delete the following part of sentence: "The payer's payment service provider should assume liability for correct payment execution, including in particular the full amount of the payment transaction and execution time, and full responsibility for any failure by other parties in the payment chain up to the account of the payee.

Justification: It is not acceptable that AS PSPs (assuming that this is meant to apply to AS PSPs although the term AS PSP is not used here) should be liable for any decisions or activities by TPPs - such as payment initiation services - that they cannot and are not allowed to control. Reference is made to the comments below in the context of Articles 65 and 80.

The provisions of this Recital can only apply when there is no TPP involved or when the payer's PSP chooses to transact with the other parties in the payment chain and strikes an agreement with them on the conditions applicable to the payment transactions.

Recital 68 furthermore appears contradictory with Recital 52 which rightly states: "Rights and obligations of the payment services users and payment services providers should be appropriately adjusted to take account of the TPP involvement in the transaction whenever the payment initiation service is used. Specifically, a balanced liability repartition between the payment service provider servicing the account and the TPP involved in the transaction should compel them to take responsibility for the respective parts of the transaction that are under their control and clearly point to the responsible party in case of incidents".

Article 4: Definitions

(22): "strong customer authentication": It should be clarified, that the strong customer authentication is aimed at individual transactions and not at the simple access to online-banking accounts.

(26): Payment Instrument: add the following words: "payment instrument" means any personalized device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order".

Justification: Personalized device(s) or procedures should not be shared with or handed over to third-parties (see below our comments on Article 58).

ECON AM 30

(32): Payment Initiation service: replace the proposed definition by the following:

"A payment initiation service means a payment service enabling a third party payment service provider to transmit a payment order and initiate a payment with an account servicing PSP upon request by the payer and in full agreement with the payer's account-servicing PSP."

Justification: Definition 32 is unclear and confusing and requires improvement. For example it is not clear what the following wording means: "... where the payer can be actively involved in the payment initiation or the third party payment service provider's software,..."

The PSD2 should be technologically neutral and this definition makes explicit reference to the use of TPP "software" which is only one possible technology means amongst many possible others.

(33): Account Information Service: replace the proposed definition by the following:

"account information service" means a payment service where information is provided by an account servicing payment service provider to a payment service user on one or several payment accounts held by the payment service user with that account servicing payment service provider".

Justification: The Scope of 'account information services' is far too wide.

The definition is lacking any suitable limitation of the scope of such 'account information services' which would be essential for any concept of 'account information services'.

The concept as expressed in this definition and as referred to in Article 58 (1) and in Annex I (7) is too vague and could imply rather wide ranging opportunities for TPPs to ask for access to various types of account information, the access to which cannot be intended by the legislator and which cannot be justified. Given that any account information is of an extremely delicate nature (in the context of e.g. data protection) it would appear essential that a suitable and sufficiently narrow definition for such services can be found.

The qualification "user-friendly" is a subjective judgement and should not be part of the wording in a Directive and should therefore be deleted. Given that account information is of an extremely delicate nature in the context of data protection and banking secrecy rules, it would

appear essential that a suitable definition for such services can be found. The proposed definition as it stands corresponds in reality to so-called “ aggregation services” which are not covered in the PSD2 provisions.

Article 39: Information for the payer and payee in case of a payment initiation service
ECON AM 56, 58

This article should be amended as follows:

“Information for the payer, the account servicing payment service provider and payee in case of a payment initiation service

Where a third party payment service provider, at the request of the payer, initiates a payment order, it shall provide or make available to the payer, to the account servicing payment service provider and, where applicable, the payee, immediately after initiation, the following data:

- (a) a confirmation of the successful initiation acceptance of the payment order with by the payer’s account servicing payment service provider;
- (b) a reference enabling the payer and the payee to identify the payment transaction and the payer, where appropriate, and any information transferred with the payment transaction order;
- (c) the amount of the payment transaction;
- (d) where applicable, the amount of any charges for the payment transaction and, where applicable, a breakdown thereof.
- (e) In line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the consent of the payer should be required to make these data available to the payee.”

Justification: The list of the ‘beneficiaries’ (i.e. those entitled to receive the information) should be extended to include AS PSPs as well in order to render the provision of payment initiation services transparent (ex ante) for all parties involved.

It should be clarified that data protection requirements have to be respected. The payee is a third person. Therefore the TPP may only give information about the payment to the payee upon the payer’s consent.

Article 40: Information for the payer’s account servicing payment service provider in case of a payment initiation service

This article should be amended as follows:

“Where a payment order is initiated by a third party payment service provider’s own system ,it shall in case of fraud or dispute in all cases make available to the payer and the account servicing payment service provider the reference of the transaction and the authorization information”.

Justification: this article should not be limited to cases of fraud or dispute. Indeed AS- PSPs should always be able to identify the TPP initiating a payment. Furthermore the use of TPPs in each single case of payment account access must be transparent (ex ante) for all actors involved.

In practical terms we question how a TPP would know about and make a judgement about cases of fraud? In other words: how would the TPP know when and within which limitations its obligation would apply? Who would decide if there is a case of fraud or dispute? What exactly constitutes a case of dispute?

Article 57 (2): Consent and withdrawal of Consent

This paragraph should be amended as follows:

“Where the payer authorizes a third party payment service provider to initiate a payment transaction with the account servicing payment service provider, consent to execute the

payment transaction shall only be considered valid if given in the form agreed between the payer and the account servicing payment service provider”.

Justification: Article 57 (2) should be rephrased to ensure that AS PSPs are notified (in a manner that allows the record-keeping of such notifications) about the consent from the PSU to the TPP - prior to the payment order being transmitted and initiated.

Consent cannot be considered given if such consent is not known to all parties involved in a payment transaction i.e. in the case of TPPs offering payment initiation services, to both the payer and the AS PSP. In light of the legal obligations for AS PSPs to protect the funds of the PSU, it must be entirely clear on which (legal) basis AS PSPs will be expected to carry out payment orders transmitted through TPPs. Unless the PSD2 proposal clearly imposes a minimum of transparency of the (contractual) relationships and the explicit consent between PSUs, TPPs, and AS PSPs, this provision would result in an extremely unclear legal framework applying to Payment initiation services.

Article 58: Access to and use of payment account information by third party payment service provider

This article should be amended as follows:

ECON AM 72 - 77

Article 58 (1) ”Member States shall ensure that the account servicing payment service provider shall agree with the payment users the terms and conditions under which the later may use a third party payment service provider to obtain payment initiation services as defined in article 4. (32).”

Justification: AS PSPs should not be obliged to offer a specific service in a free market economy (Some AS PSPs may indeed not even offer on-line accounts and services).

Recital 72 of this draft Directive states that: “This Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union including.....the freedom to conduct business....”.

Article 58 (1) as drafted does not comply with that principle.

Article 58 (2) “Where a third party payment service provider has been authorized by the payer in agreement with the account servicing payment service provider to provide payment services under paragraph 1, he shall have the following obligations:

- (a) Be authorized by the payer to provide the service;
- (b) Agree [bilaterally or multilaterally] with the account servicing payment service provider the procedures and standards necessary for the secure authentication of the third party service provider , the functionalities and service levels of the service, the communications between the two service providers and the transmission to the account service payment service provider of the consent of the payer;
- (c) authenticate itself in an unequivocal manner towards the account servicing payment service provider of the payer, for each transaction according to the provisions of (b) above and shall therefore not use the personalised security features of the payer for the purposes of this paragraph.”

Justification: Handing over of personal secret credentials by consumers to any third party should be prohibited as a matter of basic security principle in the European payments market. From a practical point of view, it is anyway unclear how it would be possible for TPPs to fulfil their obligations under Articles 58 (2) and 87 (2) of PSD2, as drafted, to authenticate themselves in an unequivocal manner towards the AS PSP while, at the same time, using the personal security credentials of the PSU (Article 58 (2) (a) and 61 of PSD2) for the initiation of payment orders.

Articles 58 and 61 PSD2 should be rephrased to include a provision prohibiting TPPs to request consumers to provide their personal online banking credentials and consumers providing their personal online banking credentials to TPPs.

As presently drafted, Article 58 (2) seems indeed contradictory in terms with Article 62 (1): Obligations of the payment service provider in relation to payment instruments which states: “The payment service provider issuing a payment instrument shall have the following obligations (a):to make sure that the personalized security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument....”.

2. Authentication of the TPP prior to any TPP activity is a must for AS PSPs

AS PSPs need to be able to know in each case - prior to any activity of payment initiation or any account information service (ex ante):

- which TPP provides such service (identity of the licensed entity);
- that such service is being provided on the basis of explicit consent from the PSU. Such consent must be transparent and provable for the AS PSP.

AS PSPs must be notified (in a manner that allows keeping records of such notifications) about the explicit consent from the PSU regarding the involvement of a TPP. PSD2 currently does not provide the certainty that the AS PSP will be notified - ex ante - about the consent from the payer in the case of each payment initiation or account information service. Furthermore, in light of the current text of PSD2 the question arises whether the AS PSP will carry the burden of proof that a TPP acted with explicit consent of a particular PSU. Such burden of proof to the disadvantage of the AS PSP would not appear appropriate.

Furthermore, the AS PSP would not be in a position to comply with its own obligations to safeguard the funds of the PSU if it would be impossible for the online banking environment to reliably identify TPPs in an ex ante manner.

Article 59: Access to and use of payment account information by third party payment instrument issuers

This Article should be substantially clarified by the authors or in the absence of clarification, abolished as it is neither clear nor understandable.

Justification:

The proposal does not define “third party payment instrument issuer“ or “payment card services“. Therefore, the meaning and the consequences of this section are not clear. In any case, it has to be ensured that only the AS PSP has the right to decide about the payment instruments that the PSU may use to authorise payments from his or her account as every payment instrument bears the risks of misuse.

The arguments used for the justification to proposed changes in Articles 57 and 58 above would seem to apply also to the provisions or Article 59, if and once the text of this article is clarified.

Article 63: Notification of unauthorised or incorrectly executed payment transactions

Paragraph (2) of this article should be amended as follows:

“Where a third party payment service provider is involved, the payment service user shall also obtain rectification from the account servicing payment service provider third party payment service provider pursuant to paragraph 1 of this Article, without prejudice to Articles 65 (2) and 80(1).”

Justification: It is a principle of civil or common law that each intervener in a transaction is liable for his actions. An AS PSP should not be responsible for the failures of a TPP and vice-versa.

Generally speaking, all articles dealing with liability and responsibility (and particularly 60.2, 62.1, 63.2, 65) cannot be applied correctly in case a TPP would intervene in a transaction and the above mentioned requirements would not be fulfilled.

The responsibilities, evidence and burden of proof should be considered separately for TPPs and for AS PSPs, and not be interrelated.

Article 65: Payment Service Provider's liability for unauthorised payment transactions
ECON AM 86

Suggested new article:

1. Member States shall ensure that, without prejudice to Article 63, in the case of an unauthorised payment transaction, the payer's payment service provider refunds to the payer immediately as soon as possible the amount of the unauthorised payment transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place. This shall also ensure that the credit value date for the payer's payment account shall be no later than the date the amount had been debited.

Justification:

Related to the timing of refund, experience has shown that a minimum level of checking is needed in order to discourage and indeed block unfounded/fraudulent attempts at requesting a refund. Therefore, it is suggested that the word "immediately" is changed into "as soon as possible" in order to allow for a minimum investigation which must be carried out by the PSP in order to discard unjustified or fraudulent refund claims.

2. Where a third party payment service provider is involved, the account servicing payment service provider shall refund the amount of the unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place. Financial compensation to the account servicing payment service provider by the third party payment service provider may be applicable.

3. Where a third party payment service provider is involved and in the absence of an agreement between the AS PSP, the account holder and the TPP on the consumer's use of the TPP for the provision of payment initiation services, the account holder shall not have a claim for compensation against the AS PSP relating to any failure or unauthorised payment transactions resulting from his / her use of a TPP.

Justification: It is a principle of civil or common law that each intervener in a transaction is liable for his actions. Under no circumstances should an AS PSP be held responsible for the mistakes, failures or for specific risks (including man-in-the-middle attacks) that result from a TPP's sphere of activities and vice-versa. The Responsibilities, evidence and burden of proof should be considered separately for TPPs and for AS PSPs, and not be interrelated. This paragraph must therefore be rephrased to ensure that the payer (account holder) shall not have a claim for compensation against the AS PSP relating to any failures or unauthorised payment transactions resulting from his / her use of a TPP. The only exception to this principle could be envisaged in the event of an agreement between the TPP and AS PSP concerning the terms of payment initiation and account information services by such TPP.

These principles are rightly supported in recital (52): "Rights and obligations of the payment service users and payment service providers should be appropriately adjusted to take account of the TPP involvement in the transaction whenever the payment initiation service is used. Specifically, a balanced liability repartition between the payment service provider servicing the account and the TPP involved in the transaction should compel them to take responsibility for the respective parts of the transaction that are under their control and clearly point to the responsible party in case of incidents."

Unfortunately, it is doubtful that the text of the relevant PSD2 Articles (Articles 65 (2), 80 (1) and 82 (1) is conducive to achieving this objective as spelled out in Recital 52.

4. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and the payment service provider or the contract concluded between the payer and the third party payment service provider if as applicable.

Article 66: Payer's liability for unauthorized payment transactions

Suggested new paragraph (1):

1."By way of derogation from Article 65 the payer may be obliged to bear the losses relating to any unauthorized payment transactions up to a maximum of EUR 50-150 resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument."

Justification: It is not justifiable that the limitation of liability is reduced to 50 EUR. On the contrary, inflation and the increase in on-line fraud call for an increase in the maximum threshold.

The current article in the PSD (Article 61 PSD) should at the least remain unchanged. The PSU has to be motivated to look after his payment instruments and his personal data. Otherwise, the rates of misuse will rise.

Article 67: Refunds for payment transactions initiated by or through a payee

A completely new text is proposed:

"For direct debits the payer has an unconditional right for refund within the time limits set in Article 68. The payment service provider of the payer and the payment service user may agree on an exclusion of the refund right provided that the absence of the refund right is clearly mentioned in a specific mandate. "

Delete: "where the payee has already fulfilled the contractual obligations and the services have already been received or the goods have already been consumed by the payer. At the payment service provider's request, the payee shall bear the burden to prove that the conditions referred to in the third subparagraph."

Justification: There seems to be general consensus that Article 67 (1) is unclear and impractical. Furthermore, it could jeopardise the future of Direct Debit as a payment instrument. Therefore, suggestions are being presented of how it could be rephrased. A PSP cannot be exposed to situations where it would have to argue with the parties in a commercial transaction - in accordance with Article 67 (1) last sentence - about whether or not the services have already been received or the goods have already been consumed by the debtor (payer). The factual details of consumption of services and / or the receipt of goods are outside of and disconnected from the customer-to- PSP relationship. It is not the role of the creditor PSP nor of any PSP to verify and argue with their clients about (factual) details of a commercial transaction which are entirely between the creditor and the debtor. The PSPs do not have first-hand knowledge about whether or not services or goods have been consumed or delivered. PSPs should not be forced (as a result of legislation) to get involved in the details of commercial transactions where they are not a party.

Article 69: Receipt of Payment Orders

Amend paragraph (1):

"Member States shall ensure that the point in time of receipt is the time when the payment order initiated directly by the payer or on his behalf by a third party payment service provider or indirectly by or through a payee is received by the payer's account servicing payment service provider..."

Justification: this addition brings the necessary clarity that in the case of intervention of a TPP, the point in time of receipt is determined by the AS PSP's receipt of the order, not the TPP's.

Article 71: Irrevocability of a payment order

Amend paragraph (1):

“Member States shall ensure that the payment service user may not revoke a payment order once it has been received by the payer’s account servicing payment service provider...”

Delete paragraph (2)

Justification: these amendments bring the necessary clarity in the case of intervention of a TPP. The payer must be able to revoke the payment order until the payment order has reached the payment account holding PSP. For the relation payer - AS PSP, declarations can only become relevant when they reach the account servicing PSP. The ASPSP has no knowledge of the exact moment when the payer gave his consent to the TPP. And what should the ASPSP do if he receives an opposition from the payer before or at the same time of the reception of the message of the TPP transmitting the payment order?

Article 80: Non-execution, defective or late execution

Amend Article 80(1), 2nd paragraph : “ unless it can prove to the payer and, where relevant, to the payer’s account servicing payment service provider that the payment initiation was received by the payer’s account servicing payment service provider in accordance with Article 69 was not executed, defective or executed late due to the failure of the payer’s account servicing payment service provider after receipt of the payment order in accordance with Article 69. In that case, the payer’s account servicing payment service provider shall be liable to the payee payer for the correct execution of the payment transaction”.

Justification:

The text as presented by the Commission is not compatible with the legal principle that any actor, including a payment service user - at least in normal circumstances - must be responsible for his own actions and choices. Please refer to the comment related to Article 65 (2) in this context.

The burden of proof in case of non-execution, defective or late execution needs to be more precisely and equitably defined. The provision must be rephrased to make clear that the AS PSP can under no circumstances be held liable for non-executed or defective payment transactions which fall into the responsibility of the TPP.

Then it is not plausible that the payer’s AS PSP is liable to the payee for the correct execution of the transaction. It would be more coherent (in accordance with the principles of the PSD) if the payer’s PSP remains liable to his contractual counter-party i.e. the payer himself - instead of being liable to the payee.

ECON AM 92

Amend Article 80 (1), 3rd paragraph, end : “and, where applicable, if the payer’s account servicing payment service provider is liable, it shall restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. The credit.....debited.”

Justification: This provision is not clear when it refers to “the relevant PSP shall ... refund to the payer ...:” It could be read to mean that the AS PSP carries the (ultimate) risk of liabilities for correct execution - also in the case of TPP involvement, which is not acceptable from a legal point of view. This risk allocation would be inappropriate: The decision to use a TPP lies always with the PSU. Equally the choice of the TPP to be used lies with the PSU. Therefore, it should not be for the AS PSP to have to recover from the TPP in case of incorrect or defective execution of transactions and having to carry the insolvency risk for a TPP which was chosen by the PSU.

Article 82: Right of Recourse

Delete paragraph (1) and replace by the following text:

“If the payer’s account servicing payment service provider has agreed with the account holder and the TPP mandated by the account holder on the consumer’s use of the TPP for the provision of the services, it is the responsibility of payer’s account servicing payment service provider to claim any compensation from the TPP for any failures or unauthorized payment transactions resulting from its services.

In the absence of such an agreement as provided for above, the account holder shall not have a claim for compensation against the AS PSP relating to any failures or unauthorised payment transactions resulting from his / her use of a TPP, and the account holder shall have a claim for compensation against the TPP relating to any failure or unauthorised payment transactions resulting from its services.”

Justification: There is no justification for AS PSPs having to carry the risk, burden and cost of recovery from TPPs as a result of the decision and the choice of the PSU. If the AS PSP does not choose the TPP, it cannot be responsible for the actions of the latter.

See Recital 52 for a correct attribution of liabilities and responsibilities between the various interveners.

Article 84: Data Protection

Add a word: “Any processing or exchange of personal data.....”

Justification: see recital 71 where specific reference to “exchange of data” is mentioned.

Article 87 : Authentication

Paragraph (1): last sentence: “The account servicing payment service provider shall may allow the third party.....”

Justification: AS PSPs should not be obliged to offer a specific service in a free market economy. Recital 72 of this draft Directive states that: “This Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union including.....the freedom to conduct business....”.

Article 87 (1) as drafted does not comply with that principle.

TPPs should not be allowed to use the account holding PSPs authentication instruments unless there is an agreement on this (including costs and liability) between the two PSPs.

Paragraph (2): amend as follows:

“Where a payment service provider provides services referred to in point 7 of Annex 1, it shall authenticate itself towards the account servicing payment service provider of the account owner before initiating a transaction on behalf of the account owner, and using strong authentication”

Justification: The use of a TPP in each single case of payment account access must be transparent ex ante for all actors involved. Strong authentication must be used in all cases, also by TPPs.

Article 90: Internal Dispute Resolution

Amend Paragraph (2): “.....within 15 business days 30 calendar days “

Justification: We suggest to extend the total period for dealing with complaints from 15 business days to 30 calendar days. This extended period is necessary for an appropriate review and assessment of all relevant facts.

Furthermore the following amendments proposed by ECON should be objected:

Amendment 3

Amendment 3 of ECON should be deleted.

Amendment 11

Objected. The infrastructure is owned by the Account Servicing Provider and provided to their payment services users. What is important in the payments chain is the consent of the cardholder, not the way how the TPP gets the information to process the payment.

Amendment 12

Such a working group chaired by EBA depends on a clear definition of its terms of reference. The bank's infrastructure used by the PSU is essential part of the card-contract between the card holder and the issuing bank. We see no room for a TPP in such a contract, and a use of payment-authorisation instruments can only be agreed between the issuing/account holding PSP and his PSU as card-holder.

Amendment 17

The ECON amendment's last sentence is to be strictly objected, as it forbids the need of an contract between the bank providing the necessary infrastructure and its client prohibiting his/her authorisation to breach the bank secrecy.

Amendment 19

We agree that a payer should be compensated within short time, but it is not appropriate that the account servicing bank has to pay damages before it can check the reason why the authorisation failed (by TPP). Should be amended analogous to the EBF proposal to Article 65) In case the account servicing bank is not to be at fault, it shall have the right to refer the customer to the respective TPP.

Amendment 21

This requirement is not a fair solution for consumers. It is in the financial interest of a supplier to get his money the way he likes. Therefore he should not have the right to get an extra money from the payer. In Austria it was forbidden to get money for the providing a payment slip. Only if the payer wants a certain instrument the payee may generate a surcharge to the invoiced amount on a fair cost bases basis. According to § 27/6 ZaDiG (which implemented the PSD) a payee may offer a reduction for the use of a certain payment instrument but is not allowed to surcharge.

Amendment 23

Objected. The proposed one-leg principle is not a proper way. The limitation in the draft report (72, 74(1)) is more cosmetic but a meaningful provision.

Amendment 25

Objected. The proposed amendment is too general and needs more detailed specifications. As it stands it could pave the way for more fragmentation.

Amendment 27

Art 4(21) is not accurate. Authentication is a very important part of a payment initiation and needs a clear specification, how such a proper authentication should be done.

Amendment 29

The extension to the "Eurosystem's payment system Target2" is not necessary and therefore obsolete. The draft proposal and the draft report as well need a more accurate definition of the payment service provider, as the payment service provider of the payer may be a TPP but not the account servicing PSP. This has an influence in case of revocation.

Amendment 31

We strongly request a precise wording as financial information on an aggregated basis means the access to very sensitive data and constitutes a strong intrusion in the account relationship between account owner and account servicing bank. A special agreement and a written authorisation to provide information of the payment account(s) to an TPP seems to be a pre-condition especially in the business connection with consumers.

Amendment 32

From a point of definition it is acceptable but is there really a need for? Does a third party payment instrument issuer have a new and further role? If not, than this extension is obsolete (as well as the extension in Amendment 71). It is not clear why reference is made to "third party payment instrument issuer". Point 5 of the Annex more general refers to "Issuing of payment instruments and/or acquiring of payment transactions".

Amendment 35

If we understand this amendment in a correct manner this should mean, that a certain PSP may offer the payee to acquire his/her incoming payments. This may have negative aspects for the account servicing payment service provider of the payee in case of assignment of receivables. Therefore we strictly oppose this amendment.

Amendment 37

The provided definition is unclear. Why is made reference to "a series of payment transactions from a payer's account"?

Amendment 39

Unclear definition. See also AM 40.

Amendment 40

A definition of a credit card transaction should not only differ in duration from a debit card transaction.

Amendment 41

No need. We suggest deletion ("commercial cards" do not appear further in the text of the draft directive).

Amendment 45: We welcome the reintroduction of a member state option. However the provision with no member state option would be preferred.

Amendment 46:

We would prefer not to limit the requirements under paragraph 1 to funds of payment service users whose funds individually exceed a threshold of EUR 600. The threshold is from our point of view not understandable.

Amendment 49

If this proposal refers only to PI and not FI as PSP this is acceptable and shall be evaluated by PI.

Amendment 54

It is unclear, why the TPP should make available to the account servicing provider the information concerning conditions (38c). This is only useful for pre-contract information in the relationship between PSU and "its" TPP.

This proposed amendment should be re-worded to give a clear picture of what is the objective.

Amendment 64

As in Austria pursuant to the jurisdiction of the High Court fees cannot be adapted any longer based on a reference rate (e.g. consumer price index) as "Fees" are not mentioned in Article 47 (2) and so can only be adopted pursuant to Art 47(1) with the approval of the customer Art 47(2) should be amended as follows: "Changes in fees, the interest or exchange rates...".

In our opinion it is an appropriate measure to agree between the customer and the PSP in advance to amend fees according the changes of a certain index which is agreed between customer and PSP and which is independent of any influence by the PSP.

Amendment 65

We strictly refuse the need that card issuing banks make their own infrastructure (chip) electronically readable for "to whom it may concern".

Amendment 68

Strictly objected (refer to AM 21)

Amendment 70 (cat 3)

We think that ECON tries to copy the SDD debtor driven mandate flow in a credit transfer scheme. This is overloading a mass payments environment and the systems processing SCTs are not prepared to check such "mandates" as this is not a normal chain in processing credit transfers. We suggest to differentiate between transfers initiated by the payer (then unchanged) or by the payee (than we are talking about a consent = mandate).

"Consent shall only be considered valid, if given in the form agreed between the payer and the account PSP" is acceptable.

Amendment 71 refer to Amendment 32

Amendment 78

From an aspect of active consumer protection this point has to be strictly refused. A consumer is normally not able to understand what a payment instrument issuer differs from PSP and cannot evaluate the consequences of his doing.

Amendment 80

Ad (1) This is a further indication that ECON copies the SDD process (white/blacklist) to the credit transfer scheme. Normally the account servicing PSP is not authorized to give information to third parties without explicit authorisation by the account owner. So this proposal cannot be operated in practice and has to be changed in the manner, that each use of account information (especially information about booked items and balances) shall be based on an explicit contract as consent of the account owner to his account servicing PSP.

Ad (2) This is not possible by credit transfer systems, and not useful for the TPP (eg. request of EUR 100 with positive response, but an amount cap is set to 10). Proposal: deletion

Amendment 82

Objected. In the case a PSU initiated a payment by using a service of a TPP, it shall first notify the selected TPP. To inform both may cause additional problems. Should the TPP be of the opinion that the PSP has caused a problem it should refer directly the Account Servicing PSP.

Amendment 83

Strictly to be opposed. As it is the own decision of the account owner to use a service of TPP, there is no need to keep the account servicing PSP informed. Therefore there is no need (and would cause only extremely high costs for the account servicing bank to do that) to collect, to evaluate such information and to report to anyone. The Account Servicing PSP is not the oversight of TPP. The user of a TPP shall report such problems direct to the competent authority.

Amendment 97

Objected. Additionally the extension to Article 65 is not necessary, as the rules in case of failed authentication are set in Art 65.

Amendment 115

In our opinion Art 94(b) [new] 1 is to create a technical way for a direct access to the database of the account servicing bank without transmitting the credentials. This means, that the account servicing bank and the account owner have no certainty, that the account is to be protected from non-authorized data exhausting.

Amendment 116

There is no clear need to publish a register of PSPs. A register of Third Parties Payment Providers could be helpful for potential TPP-service users, but may not have any further implication for account servicing PSPs for processing.

Therefore the whole Article 94a(new) as well as 94(b) and 94(c) and 94(d) Amendments 114-117) should be objected. With regards to Amendment 116 (and 73) it should be at least clearly defined how the registration should take place. Moreover 94(d) is more a wish list than a clear objective.

Please take our remarks into due consideration.

Yours faithfully,

Dr. Franz Rudorfer
Managing Director
Division Bank and Insurance