

EPSM Position Paper

On the

- Review of the Payment Service Directive
("PSD 2")
- Regulation on Multilateral Interchange Fees
("MIF Regulation")

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About the EPSM

The "European Association of Payment Service Providers for Merchants (EPSM) e.V." is an interest representation and information platform of currently 65 European payment network operators, acquirers and other payment service providers for merchants. Among the non-voting members are terminal manufacturers, processing providers and payment schemes. It is based in Munich, Germany.

The 65 EPSM members have their headquarters in 14 European countries (A, B, CH, CZ, D, DK, F, GR, IRL, L, LV, NL, S, U.K.).

Voting members are:

13 network operators, 10 acquirers, 9 internet payment providers, 7 payment solution providers.

Non-voting members:

3 acquiring processors, 1 network provider, 2 payment processors, 7 payment schemes, 1 pci auditor, 7 service providers, 5 terminal manufacturers.

A list of the EPSM Members can be found in the Annex.

General Remarks / Summary

The EPSM recognises the goal to foster harmonisation of the payments landscape in the European Single Market. Therefore, EPSM fully supports the objective of the legislator to achieve accessible, secure, transparent, competitive and innovative payment services.

The EPSM would like to draw attention to some of the topics drafted in the payments legislative package, which need further consideration.

These topics are further explained in the following chapters, and can be summarised as follows:

1. Art 8 MIF Regulation – The choice of brand/application should not be with the consumer, as this would increase costs of card payments. Instead, the choice should be left to the merchant who bears the costs associated with the chosen application.
2. Art 17 MIF Regulation – There is no transposition time frame included for the implementation of the required changes detailed in the MIF Review. The entry into force will be 20 days after the publication in the EU Official Journal. This period is not sufficient to implement the required changes.
3. Art 3 and 4 MIF Regulation – There should be no difference in the applicability of the capped MIFs. Having different time frames for national and cross-border transactions hinders the harmonisation of the Single Market, and harms small and medium sized merchants and payment service providers.
4. Art 9 MIF Regulation – The drafted rules regarding transparency and unblending lead to a situation in which acquirers and payment service providers need to reveal confidential business information.
5. Art 7 MIF Regulation – It should be explained more clearly what the new requirements of ‘processing entities’ are, and exactly which kind of entities are covered. Instead of the processing entities, the schemes should be addressed.
6. Art 2 MIF Regulation – The definitions of ‘debit card’ and ‘credit card’ should be revisited as the differentiation proposed is not feasible without resulting in major costs to the whole industry.
7. Art 67 PSD 2 – There should be no ‘Right of Refund’ for the consumer as it will be impossible for all involved payments service providers to evaluate whether services or goods are received or consumed.
8. Art 85 – 87 PSD 2 – The rules proposed in regard to Operational, Security and Authentication will lead to a disadvantage for small retailers and innovative start-ups in the payment industry.

1. Application Selection

Article 8 stipulates that *'Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale'*.

EPSM believes that this proposal has two major disadvantages and should therefore be reconsidered. Firstly, effort and resources will be spent by schemes to convince consumers to be the first choice, which contradicts the objective to reduce the costs of payments.

Secondly, EPSM expects that in the case where the choice is with the consumer, complexity at the point of sale would increase. This would require educating employees at the point of sale and lengthen the checkout process. This would result in increased costs to the merchants, who potentially would then prefer to accept payment methods other than cards, which contradicts the objective of SEPA.

Consequently, EPSM suggests reviewing this proposal.

The choice of brand/application should be with the merchant, as the merchant has to pay for the costs associated with the chosen application. Any ruling against the merchant might have unintended consequences, like a decreased acceptance of "international schemes" and increased "domestic scheme only terminals" especially in countries with significant "domestic" debit card schemes, like France and Germany!

EPSM suggests the following wording:

'Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the merchant at the point of sale'

2. MIF Regulation - Implementation Time Frame

Article 17 MIF Regulation stipulates that *'this Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. This Regulation shall be binding in its entirety and directly applicable in all Member States'*.

EPSM believes that the entry into force will not be feasible without the entire payments industry being in breach with the MIF Regulation. The present draft does not include any time frames for implementing the required changes.

The topics 'application selection', 'honour-all-cards rule' as well as 'separation of scheme and processing' and 'unblending' are examples illustrating that time frames are needed for the technical implementation, as well as the adjustment of contracts and other business relationships.

Consequently, EPSM suggests either prolonging the entry into force period of the regulation by at least eight months after publication - or aligning this date with the later entry into force of the PSD 2.

3. MIF Regulation - National/Cross-Border MIFs

Article 3 and Article 4 MIF Regulation stipulate that *'with effect from two months after the entry into force of this Regulation, payment services providers shall not offer or request for cross-border debit card transactions a per transaction interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction.'* The equivalent regulation, but with effect from two years, is drafted for other transactions, which covers non-cross-border transactions.

EPSM believes that this regulation will lead to a disadvantage for small and medium sized payees and payment service providers. While large payees have the possibility to select a payment service provider located in a different member state, small payees will abstain from that additional effort and will not benefit from the capped fees for a period of 22 months.

The proposed regulation will also lead to an unsatisfactory situation for payment service providers. Large ones either have or are able to install a branch/subsidiary in a different Member State in order to be able to offer the capped fees to their customers.

EPSM does not believe that a situation in which a cross-border payment service provider is privileged over a local payment service provider is in line with the objectives of a harmonised European payments landscape. Therefore, Articles 3 and 4 should be revised and the time frames should be the same for national and cross-border transactions to set a "level playing field" in the European acquiring market from the beginning.

4. MIF Regulation - Unblending/Transparency

Article 9 MIF Regulation stipulates that *'Agreements between acquiring payment services providers and payees shall include individually specified information on the amount of the merchant services charges interchange fees and scheme fees applicable with respect to each category and brand of payment cards.'*

EPSM believes that with this regulation, confidential business information needs to be shared with the merchants. The benefit for payees is questionable and enhances the complexity for understanding the services provided by a PSP. Small and medium sized payees do not have a need to understand all the details about charges and fees, while large payees receive this information in most of the cases on demand.

In addition, as the merchant service charge is composed of scheme fees, interchange fees and the margin of the PSP, the PSP will be required to reveal confidential business information to the merchant.

Consequently, EPSM suggests reconsidering Article 9 MIF Regulation carefully and either to remove this sentence completely or to add 'On demand of the payees' at the beginning of Article 9 and state:

'On demand of payees, agreements between acquiring payment services providers and payees shall include individually specified information on the amount of the merchant services charges interchange fees and scheme fees applicable with respect to each category and brand of payment cards.'

5. MIF Regulation – Processing Entities

Article 7 MIF Regulation stipulates that *‘Processing entities within the Union shall ensure that their system is technically interoperable with other systems of processing entities within the Union through the use of standards developed by international or European standardisation bodies. In addition, processing entities shall not adopt or apply business rules that restrict interoperability with other processing entities within the Union.’*

Processing entities are not in a position to determine which data formats are handled. Processing entities only process the standards used by their clients. As the clients are using the standards set by the schemes, it should be the schemes that the regulation should address.

EPSM believes that the intention of the legislator can be reached best by addressing the schemes directly. The schemes should be obliged to adopt standards developed by international or European standardisation bodies and the schemes should request their processors to be technically interoperable with other processing entities.

To achieve this, EPSM also believes that it is necessary to further specify what these ‘international or European standards’ are.

EPSM suggests the following wording:

‘Payment card schemes within the Union shall ensure that their system is technically interoperable with other systems of payment card schemes within the Union through the use of standards developed by international or European standardisation bodies. In addition, payment card schemes shall not adopt or apply business rules that restrict interoperability with other payment card schemes within the Union.’

6. MIF Regulation – Definition of Debit Card and Credit Card

Article 2 (4) and (5) MIF Regulation states that *'debit card transaction' means an card payment transaction included with prepaid cards linked to a current or deposit access account to which a transaction is debited in less than or 48 hours after the transaction has been authorised/initiated.'* and *'credit card transaction' means an card payment transaction where the transaction is settled more than 48 hours after the transaction has been authorised/initiated;'*

These definitions do not fit for operational purposes, especially in the context of offline-acceptances, weekend-settlements and prepaid cards. Consequently, the required handling of those cards is inconsistent, e.g.:

- a) Transactions that are processed offline by POS terminals and settled only at the end of the business day (e.g. Paypass contactless transactions). A physical indicator “debit card” or “credit card” – according to the regulation – is presently not on the EMV chip, so the POS terminal can physically not determine the correct transaction type.
- b) At weekends, the settlement of debit card transactions typically takes more than 48 hrs.
- c) It is unclear how to handle “prepaid debit cards” (like a prepaid MaestroCard) and “prepaid credit cards” (Prepaid Visa Card) or “deferred debit cards” (e.g. debit cards that are settled only monthly)

EPSM strongly recommends consulting all major European payments schemes with the goal of an improvement of the definitions in order to implement the planned regulations without the need to physically exchange several hundred million European credit and debit cards and without the need for major software updates or physical exchanges for several million European POS terminals.

7. PSD 2 – Right of Refund

Article 67 PSD 2 stipulates that *'For direct debits the payer has an unconditional right for refund within the time limits set in Article 68, except 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.'*

EPSM believes that with this regulation the PSPs of the payee need to be involved in the contractual relationship between customer and merchant. It seems unrealistic to require PSPs to evaluate whether services have already been received or goods consumed. This would complicate SEPA direct debit payments and contradict the overall objective to foster a transparent and competitive payments landscape.

Consequently, EPSM suggests a further review of this proposal – keep the existing separation between the payment transaction and the underlying commercial relationship between payer and payee – and to remove the second half-sentence completely and state:

'For direct debits the payer has an unconditional right for refund within the time limits set in Article 68.'

8. PSD 2 – Security Requirements and Authentication

Article 85, 86 and 87 PSD 2 stipulates a number of requirements for payment service providers, some of them set out in the Directive on Network and Information Security. One of the additional requirements is the necessity to install 'strong customer authentication' for PSPs.

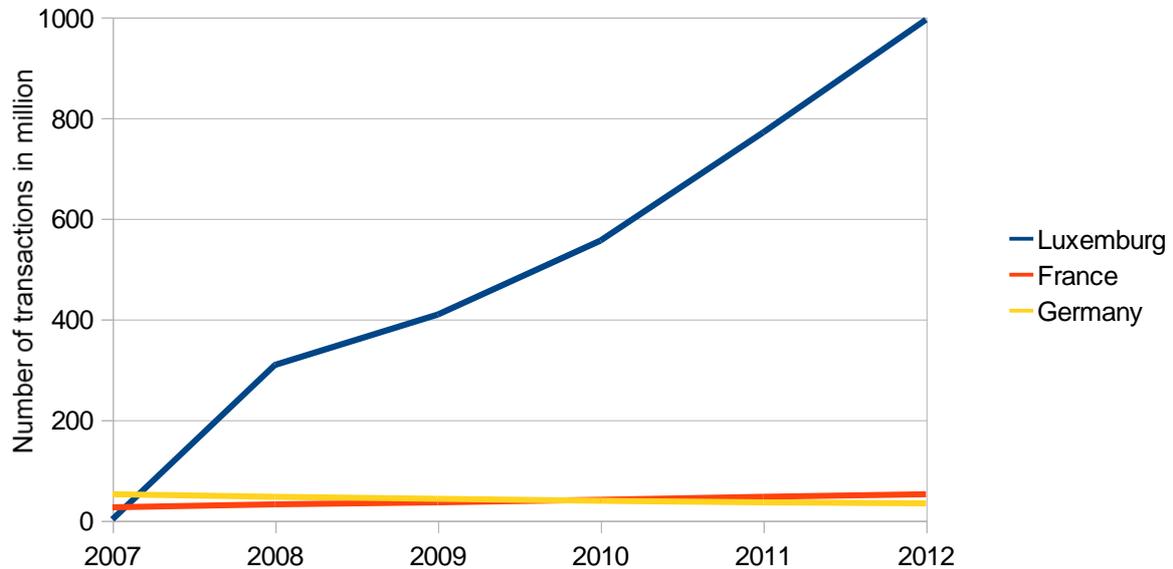
The implementation of these requirements of the European regulators and supervisors might lead to strong market distortions towards e-money schemes and to large online retailers. Therefore, thorough market impact analysis should be performed in cooperation with the national and European competition authorities before setting the legal obligation of mandating these requirements to limited addressees, especially the so called 'strong customer authentication'.

In the current wording, an unintended consequence of the regulation might be that the regulation would favour strongly some large e-money-schemes and some large online retailers at the cost of small online-retailers and some innovative payment start-ups. As illustrated in Annex 1 (page 12), a significant shift towards e-money schemes can be noticed already.

EPSM recommends performing a thorough market impact study in order to achieve a level playing field for all payment service providers including electronic money institutions.

Annex 1 – e Money Transaction Numbers Relating to Chapter 8

Recent development of national e-money purchase transactions between 2007 and 2012 in Luxemburg, France and Germany in millions, mostly due to 'regulatory arbitrage'. Please note additionally the different numbers of inhabitants. Therefore, it is assumed that most transactions of Luxemburg are cross-border.



The respective numbers are those of the European Central Bank statistics and can be found here <http://www.ecb.europa.eu/stats/payments/paym/html/index.en.html>.

Annex 2 – Members of EPSM

Ordinary Members

	<u>Main Activity</u>	<u>Country</u>	<u>City</u>	<u>Website</u>
AGES	Network Operator	D	Langenfeld	www.ages.de
Anderson Zaks	Multi Channel Payment Provider	UK	Bracknell	www.andersonzaks.com
Atos Worldline (Banksys)	Acquirer	B	Brussels	www.banksys.com
B+S	Acquirer	D	Frankfurt/Main	www.bs-card-service.com
card complete	Acquirer	A	Wien	www.cardcomplete.com
CardProcess	Network Operator	D	Frankfurt/Main	www.cardprocess.de
cardtech	Network Operator	D	Köln	www.cardtech.de
CCV Allcash ecm	POS Payment Provider	D	Moers	www.ccv.eu
ConCardis	Acquirer	D	Eschborn	www.concardis.com
Deutsche Card Services	Acquirer	D	Köln	www.deutsche-card-services.de
DIBS	Internet Payment Provider	S	Stockholm	www.dibs.se
easycash	Network Operator + Acquirer	D	Ratingen	www.easycash.de
EDPS	Payment Service Provider	GR	Voula	www.edps.gr
Elavon	Acquirer	D	Frankfurt	www.elavon.com
EOS	Internet Payment Provider	D	Hamburg	www.eos-payment.com
EVO Payments International	Acquirer	D	Köln	www.evopayments.com
Global Collect	Internet Payment Provider	NL	Hoofddorp	www.globalcollect.com
Hobex	Network Operator	A	Salzburg	www.hobex.at
ICP	Network Operator	D	Schwalbach	www.icp-companies.com
InterCard	Network Operator	D	Taufkirchen	www.intercard.de
LAVEGO	Network Operator	D	München	www.lavego.de
Lufthansa AirPlus	Acquirer	D	Neu-Isenburg	www.acceptance.de
montrada	Network Operator	D	Bad Vilbel	www.montrada.de
NETS	Network Operator	DK	Ballerup	www.nets.eu
Ogone	Internet Payment Provider	B	Brussels	www.ogone.com
PayLife	Acquirer	A	Wien	www.paylife.at
Paysafecard	Internet Payment Provider	A	Wien	www.paysafecard.com
Payvision	Payment Solution Provider	NL	Amsterdam	www.payvision.com
POSPartner	Payment Solution Provider	D	Königswinter	www.pospartner.de
Postbank P.O.S. Transact	Acquirer	D	Eschborn	www.postransact.de
SIX Payment Services	Acquiring, Processing Services – international Business EU wide	CH	Zürich	www.six-payment-services.com
SOFORT AG	Internet Payment Provider	D	Gauting	www.sofort.com
TeleCash	Payment Solution Provider	D	Bad Vilbel	www.telecash.de
Transact	Network Operator	D	Martinsried/Planegg	www.transact-gmbh.de
VÖB-ZVD Processing	Network Operator	D	Köln	www.voeb-zvd.de
WEAT	Network Operator	D	Düsseldorf	www.weat.de
Wirecard CEE	Internet Payment Provider	A	Klagenfurt	www.wirecard.at
Worldpay	Internet Payment Provider	NL	Bunnik	www.worldpay.com

Yapital	Payment Provider	D	Hamburg	www.yapital.com
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Extraordinary Members

Acertigo	PCI Auditor	D	Stuttgart	www.acertigo.com
American Express	Payment Scheme	UK	Brighton	www.americanexpress.com
Cartes Bancaires "CB"	Payment Scheme	F	Paris	www.cartes-bancaires.com
CCV Deutschland	Terminal Manufacturer	D	Au i.d. Hallertau	www.ccv-deutschland.de
Clear2Pay	Service Provider	B	Zaventem	www.clear2pay.com
CUP	Payment Scheme	F	Paris	www.chinaunionpay.com
DAFÜR	Service Provider	D	Ober-Ramstadt	www.dafuer.com
Deutsche Telekom	Service Provider	D	Osnabrück	www.telekom.de
EQUENS	Payment Processor	NL	Utrecht	www.equens.com
EURO Kartensysteme	Service Provider	D	Frankfurt/Main	www.eurokartensysteme.de
FEXCO Merchant Services	Service Provider	IE	Kerry	www.fexcoms.com
Global Payments Europe	Payment Provider	CZ	Prague	www.globalpaymentsinc.com
HUTH Elektronik	Terminal Manufacturer	D	Troisdorf-Spich	www.huth-elektronik.de
Ingenico	Terminal Manufacturer	D	Berlin	www.ingenico.de
JCB	Payment Scheme	UK	London	www.jcbcard.com
Lyra	Network Provider	F	Labège, Cedex	www.lyra-network.com
MasterCard Europe	Payment Scheme	B	Waterloo	www.mastercard.com
OmniPay	Acquiring Processor	IE	Dublin	www.omnipaygroup.com
payfair	Payment Scheme	CH	Zug	www.payfair.com
Scheidt & Bachmann	Terminal Manufacturer	D	Moenchengladbach	www.scheidt-bachmann.de
TNS	Service Provider	D	Neu-Isenburg	www.tnsi.com
Trustwave	Security Solutions	UK	London	www.trustwave.com
TSYS	Acquiring Processor	D	Frankfurt	www.tsys.com
VeriFone	Terminal Manufacturer	D	Bad Hersfeld	www.verifone.com
VISA EU	Payment Scheme	UK	London	www.visa.com
Worldline	Acquiring Processor	D	Aachen	www.worldline.com