EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

EACT COMMENTS ON THE COMMISSION PROPOSAL FOR PAYMENT SERVICES DIRECTIVE II

9 May 2014

1. Introduction

The EACT supports a competitive and integrated European payments market and has since many years been an active participant in the developments of SEPA payments.
We generally support many of the changes introduced by the Commission proposal for PSD II – such as the extension of scope to non-EU currencies and one-leg transactions, the inclusion of third party payments service providers and the further limiting of surcharges.
We do however have some specific concerns regarding certain aspects of the revision and would like to bring these to the attention of the legislator as well as point out some additional amendments that could be taken into consideration in the revision process.

2. Need for a clear exemption for intra-group payments and payment services

Many of our members or their member companies have raised concerns regarding the application of Article 3(n) of PSD I which exempts intra-group payments from the scope of the Directive.

The exemption for intra-group transactions was introduced in order to allow for companies to operate centralised payments operations but it has created some problems in the national transposition in some Member States. For some national authorities it is unclear whether the exemption applies also to payments executed by corporate in house banks or shared services centres (IHB/SSC) on behalf of other group companies.
In some countries, e.g. Italy, regulators in response to requests from treasury associations specifically interpreted the provision of Article 3(n) to cover payments on behalf of group companies executed in favour of external beneficiaries, provided that the payment is done on behalf of a parent company using a PSP.

The use of IHB/SSC is a well-established way for corporates to centralise financial operations for the purpose of increased cost-efficiency, risk reduction and simplified operations. These centres have as their objective to handle the internal and external payments for the group – this includes e.g. centralising payment execution for all the business units of a group (payments marked “on behalf

Head office: 3 rue d’Edimbourg – CS 40011 – F-75008 Paris – France
Phone: +33 1 42 81 53 98 – Fax: +33 1 42 81 58 55 – E-mail: secretary@eact.eu – Website: www.eact.eu
VAT number: FR 79 791 577 414 APE code: 9499Z

EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

of") and/or operating directly on the group's subsidiaries' current accounts on their behalf using a software connection with the payment service provider to initiate payments. These services are provided to entities that are part of the same group where the application of PSD would not be appropriate or relevant.

We point out that the issue comes to further relevance considering that the introduction of SEPA facilitates the creation of pan-European payment factories and finally allows the creation of collection factories, where all transactions of a corporate group can be centralised, using the "on behalf" functionalities of SEPA payment schemes. The restriction to the execution of such transactions to PSP would impede the pan-European group centralisation of collections, one of the most strongly argued benefits for corporates from SEPA (see recent PWC report Economic analysis of SEPA) and furthermore limit centralisation to the large corporate entities able to comply with obligations laid down in the PSD to payment institutions / PSPs.

Moreover, the proposed extension of the definition of a payment service (Annex I, point 7) to payment initiation services and account information services – which enables the inclusion within PSD's scope of organisations termed a "third party payment service provider" (TPPs) - introduces further uncertainty as to whether corporate IHB or SSC could eventually be regarded as TPPs as they offer to different parts of the same group services which are similar to payment initiation services and account information services. However these are payments initiated for the same entity and are not of same nature as third-party payment services provided by internet-based service providers which are mainly targeted for private consumers. Recital 18 clearly indicates that the payment initiation and account information services are targeting internet-based payment services to consumers but we feel that the scope needs to be well defined in order to differentiate similar functions performed by corporate in-house banks on behalf of subsidiaries.

Amendment proposal to Article 3(n):

Payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group; ***payment transactions in favour of third parties initiated by a parent undertaking on behalf of its subsidiaries or by a subsidiary on behalf of the parent undertaking or on behalf of other subsidiaries of the same parent undertaking, provided such payment transactions ("payments on behalf") are executed by a PSP; payment initiation services and account information services provided by a parent undertaking on behalf of its subsidiaries or by a subsidiary on behalf of the parent undertaking or on behalf of other subsidiaries of the same parent undertaking***

EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

3. Direct debit refunds

EACT Position:

We are strongly opposed to the introduction of an exception to the unconditional refund right for cases where "the payee has fulfilled its contractual obligations and the goods have been consumed by payer or services have been rendered" and where the payee would bear the burden to prove such conditions are met. Such an exception to the unconditional refund right is not in line with the SEPA core direct debit currently being implemented across Europe and which works adequately. Furthermore, the extremely subjective nature of such a clause makes the refund right unfeasible and open to disputes. In the real world of commercial transactions it is indeed very difficult, if not impossible, to clearly and unequivocally define the moment when goods have been consumed or services rendered. Implementing such an amendment would be extremely burdensome on companies which would have to bear the burden of proving that they have fulfilled their obligations. As a principle, the execution of payment transactions should not be mixed with the underlying business relationship and contractual obligations between the payer and the payee.
If the objective of this amendment is to cater for a possible future direct debit scheme for non-refundable transactions (EPC Fixed Amount Scheme), we are of the opinion that no changes are needed to the current PSD regime as there is the possibility to build a no refund scheme based on the current principles. This would have the considerable advantage of not interfering with the existing and straightforward refund right of SEPA core direct debit transactions whilst at the same time catering for the need to ensure enhanced end-user protection for non-refundable direct debits. We would also point out that the ECB's opinion on the PSD revision supports this view[1].

For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in the first subparagraph are not met.

Amendment Proposal to Article 67(1), 4th paragraph:

Current wording of Article 62 (1) 4th paragraph (new Article 67(1), 4th paragraph) should be maintained.

[1] http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2014_09_f_sign.pdf?73d64e18ec98eb3e129415ac6d3e289e , section 2.9

EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

4. Scope (Article 2)

EACT Position:

We welcome the extension of scope to one-leg transactions and non-EU currencies as it is a positive development from payment service users' (PSU) perspective that the same rules are applied, where technically possible, to all payment transactions.

However, it is our view that this extension should apply to almost the whole of Title IV and not only parts of it as this would bring considerably more value from PSU's perspective and the reason for the partial application of the extension of scope is not clear. There is no clear rationale for not applying the same rules between the PSU and his PSP for one-leg or non-EU currency transactions when technically possible. Furthermore, it is not clear if extension of Article 78 applies also to transactions in all currencies and this should be clarified.

Amendment Proposal:

The following Articles should in particular be included in the extended scope:

Art 55 (1) Prohibition for the PSP to charge the payment service user for fulfillment of its information obligations.

Art 57 Consent and withdrawal of consent

Art 58 Access and use of payment account information by third party payment service provider

Art 59 Access and use of payment account information by third party payment instrument issuers

Art. 60 Limits of the use of the payment instrument

Art. 61 Obligations of the payment service user in relation to payment instruments

Art. 62 Obligations of the payment service provider in relation to payment instruments

Art. 63 Notification of unauthorized or incorrectly executed payment transactions

Art. 64 Evidence on authentication and execution of payment transactions

Art. 65 Payment service provider's liability for unauthorized payment transactions

Art. 66 Payer's liability for unauthorized payment transactions

Art. 69 Receipt of payment orders

Art.70 Refusal of payment orders

Art. 71 Irrevocability of a payment order

EUROPEAN ASSOCIATION OF CORPORATE TREASURERS

Art. 72 Amounts transferred and amounts received (limitation to deduction of expenses from amount received)

Art. 78 Value date and availability of funds

5. Definition of microenterprises (Article 54)

The treatment of microenterprises should be harmonised as much as possible and the flexibility given to Member States should be deleted or exemptions to the treatment of microenterprises should be laid down in the Directive itself. The flexibility currently given to Member States creates heterogeneity. It could happen that the same payment instrument could be accessible to microenterprises in certain Member States but not in others; for example SEPA Business-to-Business Direct Debit is available to microenterprises in some countries and prohibited in others. In order to create a single payment area the same kind of operators should operate in the same legal environment.

6. Further minor amendments

We would like to propose some minor amendments which are not covered in the proposal for Directive. Points 1-3 seek to align the Directive with the SEPA Regulation (Regulation 260/2012).

1. **Information for the payer after receipt of the payment order (Article 41)**
   - ➔ Insert point (f) the debit value date

2. **Information for the payee after execution (Article 42)**
   - ➔ Delete 42a as from and where appropriate
   - ➔ Insert point (f) the payer's name
   - ➔ Insert point (g) any remittance information

3. **Information for the payee on individual payment transactions (Article 51)**
   - ➔ Delete wording "as from" and "where appropriate"
   - ➔ Insert point (f) the payer's name
   - ➔ Insert point (g) any remittance information

4. **Requests for refunds for payment transactions initiated by or through a payee (Article 68)**
   - ➔ Amend 8 weeks into 40 working days as the reference to weeks is ambiguous; working day is a more appropriate definition and this reduces disputes

EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

The European Association of Corporate Treasurers

Registered Office:	3, rue d'Édimbourg 75008 PARIS France
Contacts:	Massimo Battistella massimo.battistella@aiti.it Anni Mykkänen anni.mykkanen@avisa.eu
Website:	www.eact.eu