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PSD2 – Changes and calls for consideration

It is positive that formerly unregulated service providers will be covered by the proposal. The added definitions of Third Party Payment Providers are necessary. The directive, however, comes with several issues that need to be sorted out. For instance:

1. The proposal must be complemented in a way that gives current and new service providers clear guidelines on liability issues.
2. There is an inconsistency in the definitions
3. The new demands on information and accessibility and connection between parties must be discussed, regarding how they can be fulfilled in an effective way
4. Several “how-questions” must be solved in order to reach the proposal’s purpose

The purpose is stated in Article 1

Article 1:2

This Directive also lays down rules concerning transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.

Our proposed call for considerations and suggested changes are all related to the lack of delivery of this statement. Especially in terms of a) Lack of “rules concerning transparency of conditions and information requirements for payment services” and b) Lack of clarity of “the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services”

Definitions

9. ‘payment service provider’ means bodies referred to in Article 1(1) and legal and natural persons benefiting from the waiver under Article 27;

The term is used in many Articles in the directive as a general term, regardless of the specified different roles an account servicing payment service provider has compared to a third party payment service provider. This leads to an uncertainty of which role that is intended. As a result there is no unambiguous interpretation possible and a legal uncertainty will occur.

33. ‘account information service’ means a payment service *provided by a third party payment service provider*, where consolidated and user- friendly information is provided to a payment service user on one or several payment accounts held by the payment service user with one or several account servicing payment service providers;

In this definition the connection to the legal form for the payment service is lacking. E.g. a connection to Definition 11.

Suggested clarification in italic above

Article 50 - Information for the payer on individual payment transactions

1. After the amount of an individual payment transaction is debited from the payer's account or, where the payer does *not* use a payment account, after the receipt of the payment order, the payer's payment service provider shall provide the payer without undue delay in the same way as laid down in Article 44 (1) with the following information:
 - (a) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;
 - (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
 - (c) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payer;

As more than one payment service provider can be involved it must be understood that charges also could be debited from more than one payment service provider. For that reason it must be clarified that the responsibility for providing information on debited charges (or interest) to the payment service user is relevant for all participating payment service providers.

Article 57 - Consent and withdrawal of consent

1. Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and the payment service provider, after the execution of the payment transaction.

Another example of consequences of the possibility of different interpretations of a payment service provider. In this case we assume that use of a third party payment service provider can't be in scope as an account service payment service provider couldn't be responsible if not involved in the authorization of the transaction.

Suggested alteration in italic below;

Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the

payer and the **account servicing** payment service provider, after the execution of the payment transaction.

2. Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and the payment service provider. Consent may also be given directly or indirectly via the payee. Consent to execute a payment transaction shall also be considered given where the payer authorises a third party payment service provider to initiate the payment transaction with the account servicing payment service provider.

In the absence of consent, a payment transaction shall be considered to be unauthorised.

- a) Consent may also be given directly or indirectly via the payee and
- b) Consent to execute a payment transaction shall also be considered given where the payer authorises a third party payment service provider to initiate the payment transaction with the account servicing payment service provider.

Call for consideration;

In the implemented PSD there is a distinct definition of what payments that could be initiated by or through the payee. E.g. direct debit and card transactions. The rationale for that is logic as these payment instruments there are built on clear common operational and business rules or agreements, known and accepted by the payment service providers for both sides.

Introducing this possibility for third party payment service providers without having the equivalent prerequisites including an unbroken chain of responsibilities in place in PSD2, is another example of the legal uncertainty in the PSD2 regarding the introduction of third party payment service providers.

As stated earlier, we find it as necessary to make sure the wording of the articles will close any open parts.

- c) shall be considered to be unauthorised.

In addition to the comments above, there is no clarity which payment service provider who is responsible for the business risk of the unauthorized transaction. Unauthorized disputed transactions could result from a number of different reasons such as fraud from the payee, services paid but not received and more.

The payer could also have legal right to have her account credited for the disputed transaction. We do assume that the intention not is that the account servicing payment service provider who should be accountable. But without the chain of responsibility understood and developed in the directive, all the business risk would stay at the account servicing payment service provider.

Another reflection is that nothing is mentioned about the effect on payment initiation services for payment instruments with already existing rulebooks and business agreements at the payer's current account servicing payment service provider, such as cards and direct debit for example.

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

1. Member States shall ensure that a payer has the right to make use of a third party payment service provider to obtain payment services enabling access to payment accounts as referred to in point (7) of Annex I.
2. **Where a third party payment service provider has been authorized by the payer** to provide payment services under paragraph 1, he shall have the following obligations:
 - (a) to ensure that the personalized security features of the payment service user are not accessible to other parties;
 - (b) to authenticate itself in an unequivocal manner towards the account servicing payment service provider(s) of the account owner.
 - (c) not to store sensitive payment data or personalized security credentials of the payment service user.

2 a) and c) - The consequences if the third party service provider if not living up to the obligations is not regulated. That creates legal uncertainty and is a major new risk for the parts in the payment systems, including the payer. Today the payer has agreed upon conditions with their account servicing payment service provider. When the third party payment service provider is introduced in the payment value chain it must be implemented in a predictable and manageable form.

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

1. Member States shall ensure that a payer has the right to make use of a third party payment instrument issuer to obtain payment card services.

“...a third party payment instrument issuer...” there is no definition of the meaning of this concept and for that reason impossible to be sure how to understand.

Based on the definition of third party payment service providers and the two kinds of services they shall be able to provide we cannot see the rationale in the directive elsewhere for this article 59.

*“...a third party payment instrument issuer to **obtain payment card services.**”*

In continuance of the comments above, the rationale must be clarified and the text must be understandable.

Visa Sweden Association is a business association that works to promote the development of the Visa card market in Sweden. Visa Sweden works primarily with security, compatibility and quality and is not active in issues relating to competition between banks and payment institutions. Visa Sweden has chosen a market-driven approach with several payment service providers.

Visa Sweden is open to all banks and / or financial institutions that are members of Visa Europe and active on the Swedish market.

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Europay Sweden is open to all banks and / or financial institutions that are members of MasterCard and acting on the Swedish market.

Contact: Kurt Gjesten, CEO

Visa Sweden Förening/Europay Sweden Förening; Skomakeregatan 6.2, S-21134 Malmö

Tel: +46 40 25 07 78 : kg@pan-nordic.org

Jan-Olof Brunila, Swedbank; : jan-olof.brunila@swedbank.se

Gunnel Silvén, Handelsbanken; : gusi01@handelsbanken.se

Torbjörn Furubjelke, Nordea; torbjorn.furubjelke@nordea.com

Per Åström, SEB; per.astrom@seb.se