

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 1129531

24 March 2014

### SUBCOMMITTEE II ON FREE MOVEMENT OF SERVICES AND CAPITAL

#### EEA EFTA Comment

**on the Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and repealing Directive 2007/64/EC (COM(2013) 547)**

#### 1. PREFACE

1. The EEA EFTA States, Iceland, Liechtenstein and Norway, have studied with interest the Commission's proposal on the revision of the current Payment Services Directive (COM(2013) 547 - "PSD 2"), intended to replace the current Directive (Directive 2007/64/EC - "PSD 1"). PSD 1 is part of the EEA Agreement and is incorporated in national legislation in the EEA EFTA countries. The EEA EFTA States welcome the initiative taken by the European Commission to review the current Directive and take this opportunity to comment on some aspects of the proposal.

#### 2. SPECIFIC ISSUES

2. The EEA EFTA States fully support a modernisation of the current legal framework promoting, among other things: innovation, lower prices and increased consumer protection. Providing for safe and consumer friendly payment services through a common legal framework for national regulation is of significant importance.
3. The revision of the Directive raises several important issues. The EEA EFTA States have particularly noted that Article 66 of the proposed Directive does not include the existing option in PSD 1 Article 61 (3) limiting customer liability in cases of gross negligence; this option has been applied by both Norway and Iceland. The text as proposed by the Commission implies that national legislation must require payment card users to bear all losses on unauthorised transactions incurred by gross negligence by the user. It is of great concern to the EEA EFTA States that the proposed text may result in a reduction of the level of consumer protection in Europe, at least in some countries. The EEA EFTA States would therefore encourage the inclusion of the current option as set out in Article 61 (3) in PSD 1 in the revised Directive, in order to allow maintaining the present level of consumer protection.

4. The EEA EFTA States have noticed that PSD 2 proposes new limitations in the scope of the Directive compared to PSD 1. Article 2 (3) of PSD 2 deals with the legal framework relating to providers of telecom services who provide payment transactions for its subscribers for the purchase of digital content as an ancillary service to electronic communications services. Article 3 (1) establishes that such providers are not to be subject to the scope of the Directive provided that the value of any single payment transactions does not exceed EUR 50 and the cumulative value of payment transactions does not exceed EUR 200 in any billing month. As standard practice, the EEA EFTA States are in favour of horizontal regulation, where risks and operations are equally regulated. It has been argued, which is important, that the level of consumer protection should not depend on the type of payment service chosen by the consumer. On the other hand, these services will in general be non-core operations for the telecom sector and of a limited extent. Still, accumulated revenues from such services can represent a substantial amount. The EEA EFTA States encourage an analysis of the pros and cons of the proposed exemption for these services.
  5. The EEA EFTA States note that Article 55 (4) of the proposed Directive prohibits the payee from requesting a charge from the payer for the use of payment instruments for which interchange fees are regulated under the proposed regulation on interchange fees for card-based payment transactions (COM(2013) 550) (surcharging). The EEA EFTA States have noted the ongoing work in the EU relating to the surcharging regulation and would like to point out that it might serve the effectiveness in the payment service area the best, also in relation to consumer interests, if surcharging was not put under absolute prohibition. The EEA EFTA States therefore support the possibility for surcharging.
  6. Article 4 (11) of the proposed Directive, cf. point 7 of Annex 1, sets out a proposal for regulation of third party payment service providers (“TPPs”). The EEA EFTA States consider it as a positive development that such payment service participants are put under regulation. Regulation of TPPs is considered an important part of consumer protection relating to payment services and is also essential in keeping payment systems secure and maintaining consumer trust in these systems. The EEA EFTA States would like to emphasize the importance of adequate regulation, especially regarding the requirements that must be met to obtain a license as a TPP and also sufficient regulation and control of TPP activities.
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