

EFA- ETPPA JOINT POSITION PAPER ON THE AMLR

** This document presents the European Fintech Association (EFA) and European Third-Party Providers Association (ETPPA) comments regarding the inclusion of PISPs on the AMLR scope.*

The EFA and the ETPPA associations recommend the exclusion of PISPs from the scope of the AMLR.

Rationale

- **PISPs are “technical service providers” providing software tools** by which payment orders are transmitted by the Payment Service User (PSU) to his or her bank.
- **PISPs are not carrying out (executing) payments**, which is done exclusively by the banks and are not touching any funds.
- PISPs are essentially just software providers filling in a credit transfer form (rather than requesting the payer to do it manually online).
- Therefore, they **cannot be considered “financial institutions” as they do not hold or handle funds and do not conduct any “financial activity”** - it is the Bank that carries out the transaction.
- PISPs **cannot provide any additional information** to the data already controlled by the credit institutions they work with. Therefore, **including TPPs as “obliged entities” would not be risk-proportionate and would duplicate banks’ AML efforts.**
- It should be noted that PISPs, as an unnecessary witness, are not adding, but reducing the risk of AML. They have even less information than AISPs about users’ accounts and transactions.

The EFA and ETPPA welcome the exclusion of AISPs from AMLR and recommend also the exclusion of PISPs. Find below the suggested amendments to Article 2. This would exclude PISPs as well as AISPs.

If the exclusion of PISPs is not accepted:

The EFA and the ETPPA recommend strengthening the text of Recital 34, to make clear that PISPs serving merchants under no circumstances have to perform CDD on payers. Otherwise, this would kill the PISP business model altogether.

Rationale

- The established practice in Europe is that the **account-servicing payment service provider** (typically a bank) **performs CDD on its customers**, the account holders **while merchant-facing payment services providers perform CDD on their customers which are the merchants.** This makes sense since the payer is the customer of the bank and in all instances, the payment comes directly from the payer’s bank account.
- The **current AML legislation** does not address the PIS case explicitly and **leaves room for interpretation** with some **national competent authorities taking the view that** under current legislation **payers can become customers of PISPs.**
- Such interpretation would make it very difficult for PISPs to carry out the mandate given to them in PSD2 to compete with cards and other payment solutions. Why would any consumer take the time and effort to scan and submit their passport copies and pay slips when paying

from their bank account using PIS, if they never have to think about this when paying with debit or credit cards, or iDeal and similar solutions?

- The EBA Q&A [2021_6048](#) (published on 17 Mar-2023) brought payer-CDD into scope for occasional transactions. This clarification is of utmost importance, otherwise, PISPs could not compete with card payments, where neither Card Acquirers nor Card Processors (nor their facilitators like ApplePay or GooglePay) have any obligation to CDD the payer, neither for the establishment of a business relationship nor for occasional transactions.
- **EFA and ETPPA call on to ensure in AMLR dialogues that Recital 34 of the AML Regulation makes it 100% clear that merchant-facing PISPs should perform CDD on the payee only, both in terms of the establishment of a customer relationship and for occasional transactions, and no matter whether they touch payee (merchant) funds or not. This is required to put PIS on a level playing field with cards, online banking payment solutions**

Suggested amendments to Article 2

**(EFA- ETPPA suggested changes in red)*

Article 2 Definitions

For the purposes of this Regulation, the following definitions apply:

(6) 'financial institution' means:

(a) an undertaking other than a credit institution or an investment firm, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of the Annex I to Directive 2013/36/EU of the European Parliament and of the Council²⁷, including the activities of currency exchange offices (bureaux de change), or the principal activity of which is to acquire holdings, including a financial holding company and a mixed financial holding company; creditors as defined in Article 4, point (2) of Directive 2014/17/EU of the European Parliament and of the Council²⁸ and in Article 3, point (b) of Directive 2008/48/EC of the European Parliament and of the Council²⁹ and the activities of central securities depositories as defined in Article 2(1), point (1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council³⁰, but with the exception of the activities ***listed in points (7) and (8) of Annex I to Directive 2015/2366/ EU [PSD1 now replaced by PSD2]; of account information service providers as defined in Article 4, point (19) of Directive (EU) 2015/2366;***

In the event PISPs are not descoped, the following amendment would be needed for recital 34 in order to avoid unnecessary detriment to PISPs business models in Europe, with zero AML benefit.

Suggested amendments to Recital 34

(34) Some business models are based on the obliged entity having a business relationship with a merchant for offering payment initiation services through which the merchant gets paid for the provision of goods or services, and not with the merchant's customer, who authorises the payment initiation service to initiate a single or one-off transaction or several transactions to the merchant. In such a business model, the obliged entity's customer for the purpose of AML/CFT rules is the merchant, and not the merchant's customer, both for the establishment of a business relationship and for occasional transactions. Therefore, customer due diligence obligations should be applied by the obliged entity only vis-a-vis the merchant. If the same obliged entity also provides payment services to the merchant, which brings it into the possession of funds, then the obliged entity's customer is also the merchant as regards the combined offering of payment initiation services, account information services and payment services.