

Position Paper by the Prepaid Association of Germany on the Revisions of the Anti Money Laundering Directive

Status: August 2016

The Prepaid Verband Deutschland e.V. (PVD), the German association of the prepaid industry, emphatically welcomes the regulatory goal of European lawmakers to consistently prevent the alleged abuse of e-money products for the purposes of money laundering or terrorist financing by limiting the possibilities for use. The 4th Anti Money Laundering Directive passed in 2015 has already led to considerable limitations in the use of anonymous e-money products with respect to the currently valid anti money-laundering legislation. However without awaiting the effects of this tightening of legislation, the European Commission submitted a proposal for the revision of the 4th Anti Money Laundering Directive on 5 July 2016 which overshoots the mark and the objective which is being pursued. The European Commission's proposal stipulates for Article 12 (2) that Member States should be barred in future from releasing providers of e-money products from complying with due diligence should the e-money product be used for an "online payment". If this specification were consistently implemented by the Member States, the proposal would be akin to a ban on using non-identified e-money products in e-commerce. According to this, anonymous, cashless online payment would be virtually impossible, even in the area of micropayments.

The European Commission's proposal would not only have serious, negative consequences for trade and the prepaid sector; it makes no contribution to achieving the goal which has been set, either, and contradicts the actual intention of the Directive. The planned amendment to the legislation in Article 12 (2) largely disregards the actual risk of the abuse of e-money products and insinuates that they generally pose a high level of risk potential. This is neither appropriate nor proportional and partially removes the risk-based approach pursued by the Directive. European e-money issuers have already implemented comprehensive risk-minimisation measures, which must be taken into account in the risk assessment just as much as the fact that many online payments are made with e-money in the unproblematic region of micropayments. Payments made online can be easily retraced as a result of the digital footprint that is left behind. However, the draft legislation submitted by the European Commission will weaken regulated, legal payment methods and lead to a migration of users towards an unregulated, illegal area. In increasing numbers, consumers will reach for products and payment options which are not subject to any kind of due diligence. Consumers got used to being able to pay smaller amounts easily and without laborious identification measures when shopping online.

The PVD is campaigning to maintain the possibility to pay small amounts anonymously online while ensuring personal integrity. Keeping in mind the non-existent added value with regard to the fight against terrorism, the lack of proportionality and anti-innovation of the proposed amendment of Article 12 (2), the PVD rejects it. The PVD therefore suggests that the insertion "*either of online payment or*" in the above Article of the European Commission's draft Directive be removed.

Appendix

Pursuing the risk-based approach consistently

The European Commission submitted its proposal for the revision of the yet-to-be implemented 4th Anti Money Laundering Directive on 5 July 2016. This draft provides for the removal of the possibility of releasing those obliged by the money-laundering legislation from complying with due diligence as far as an e-money product is used for online payments. As of now, the Member States are permitted in accordance with the risk-based approach to allow exceptions to the rule of complying with due diligence if an e-money product carries little risk of money laundering and terrorist financing. The PVD is following the partial renunciation of the risk-based approach provided for in the European Commission's draft Directive with regard to e-money products with great concern. Whether a payment is made online or in stationary retail should be taken into account in each risk assessment and not be a general exclusion criterion on the part of the lawmakers.

The assumption that online payments using e-money carry a high risk per se is incorrect and not borne out by facts. In fact, previous experience has shown that appropriate value limits are sufficient for adequately reducing the actual risk potential of e-money, in particular with regard to the online use. For example, the annual report of the Bundeskriminalamt [German Federal Criminal Police Office] Financial Intelligence Unit (FIU) states that suspect notifications in the area of electronic payment systems have been within the lowest range since the introduction of strict sum limits in Germany in 2011. The British government also attests in its national risk assessment of October 2015 that e-money products carry a low risk of being abused for the purposes of terrorist financing.

Although it should still be possible, according to Article 15 of the EU's Anti Money Laundering Directive, for Member States to permit the application of simplified due diligence, even in the case of internet payments using e-money. Since this provision contains extensive room for interpretation there is no level playing field being created in the Member States as a result. For this reason, the possibility of also excluding providers of e-money products intended for online use completely and generally from certain areas of due diligence if the risk is low should be retained under all circumstances. This applies, above all, for the obligation to determine and check the identity of the customer and the beneficial owner. The PVD is therefore advocating the consistent application of the risk-based approach in the regulation of e-money. This is the only way in which the various products can be treated in accordance with their actual risk and improper bans can be avoided.

European e-money issuers have the risks under control

The measures implemented by regulated e-money issuers in order to minimise the risk of e-money products being misused for purposes of money laundering or terrorist financing, in combination with appropriate storage limits, are sufficient to effectively combat the abuse of these products. Close-meshed transaction monitoring systems and amount-related usage limits are just some of the measures which, today, already lead to effective risk-minimisation without carrying out laborious and expensive customer-identification measures in the area of micropayments. E-money issuers are able, in particular with the help of the transaction monitoring carried out, to detect suspect transactions in real time and report them immediately. The costs for the identification process would not be proportionate to the actual added value of the data collected.

Identification obligation promotes migration towards unregulated markets

For the above reasons, the proposal submitted by the European Commission does not only contribute little to the achievement of the objectives; it actually encourages users to migrate to unregulated, illegal areas. If consumers will not be able to use regulated and uncomplicated e-money products anymore, which also guarantee data minimisation and personal integrity, users will increasingly reach for unregulated, illegal payment procedures whereby no measures to reduce the risk of money laundering and terrorist financing are taken. Although European lawmakers are trying to prevent this by adding a new Article 12 (3), which says that payments with e-money products from third countries may only be accepted by European banks and financial institutions (acquirers) if the prepaid card issued in the third country meets requirements equivalent to those met by the product issued within the EU. This is barely controllable in practice, however. The proposal submitted in this respect also fails to recognise that there are no acquirers regulated in the EU in the case of unregulated, illegal payment procedures.

Along with the migration towards unregulated, illegal services, there is also the risk that users will turn to cash. There are already online offers such as CASHWAY in France, which enables payment of a product or service purchased in an online shop at a later date using cash sums of up to EUR 999.99. Neither registration nor customer identification are required for this. Users can therefore turn away from easily traceable digital payment options and look for other ways to pay their bills conveniently and without laborious identification measures. The aim of better checks on cash flows is therefore undermined. Any implementation of the Commission's proposal would damage regulated e-money issuers in a lasting way to the benefit of low-threshold offers, which is why the proposed amendments to Article 12 (2) should be dismissed as unsuitable and disproportionate. Product innovations and the further development of the market can only be guaranteed if there is a level playing field and security of investment for all market participants.

Strengthening payment methods and data protection

The European Commission's proposal is an obstacle to innovation for payment instruments especially designed for online and e-commerce use. This kind of competitive distortion and disadvantaging of digital payment methods should be avoided, keeping in mind the growing marketplace offered by the internet and the advancing digitalisation of society. The proposed measure also contradicts the European objective of accomplishing a modern and legally coherent payment area within the single market. Improper bans should not pose an obstacle to access to digital goods or stand in the way of technological development.

Identification obligations for online payments (only using e-money) starting from €1 are also highly dubious from a consumer and data protection perspective. Honest and law-abiding users would no longer be able to pay smaller amounts on the internet without identifying themselves. In our view, this conflicts with the right to informational self-determination and denies consumers the ability to effectively protect their personal data online. Payments in a low-value, low-risk segment that ensure personal integrity must therefore continue to be possible.

Conclusion

The elimination of the threshold value for using anonymous e-money products for online payments proposed by the European Commission will hardly entail any added value in the fight against terrorist financing and is not in keeping with the risk-based approach. It would, however, have a far-reaching, negative impact on the entire e-money market and puts the existence of innovative payment possibilities at stake. With its minimal actual benefit and lack of proportionality in mind, the proposed measure should be rejected. The possibility of anonymous online payment of small amounts must be retained at all costs. The PVD therefore pleads in favour of removing the insertion „*either of online payment or*“ in Article 12 (2) of the submitted draft Directive.

About the PVD

The Prepaid Verband Deutschland (PVD), founded in 2011, is the German trade association representing the interests of the prepaid industry in Germany. This includes providers of prepaid payment instruments (e.g. banks and e-money institutions), processing companies, commercial enterprises which issue prepaid cards, wallet providers, card organisations, loyalty system providers and distributors of prepaid payment instruments in trade. Currently, 22 companies are members of the PVD.

Contact

Dr. Hugo Godschalk
Managing Director
Prepaid Verband Deutschland e. V.
Im Uhrig 7
D-60433 Frankfurt

T. +49 69-951177-17
E. info@prepaidverband.de
Web. www.prepaidverband.de