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Confirmation of Payee Consultation
Payment Systems Regulator
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Email to: app-scam-pso-project@psr.org.uk

8 January 2019

Dear Hannah

Re: EMA response to PSR Consultation on general directions on implementing Confirmation of Payee

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide that provide online payments, card-based products, electronic vouchers and mobile payment instruments. They also include a large number of smaller Payment Service Providers, including startups. The majority of EMA members are authorized in the UK, and operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

We would like to highlight the difficulty with responding to this consultation without full access to the details of how the Confirmation of Payee (CoP) service will operate. We cannot adequately assess the impact and consequences of the proposed PSR directions on the PSP community without access to technical specifications. Our responses are therefore based on assumptions about how the service may operate and not a full analysis of the impact on our Members.

I would be grateful for your consideration of our concerns.

Yours sincerely

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response to consultation

General comments

We would like to highlight the difficulty of responding to this consultation without full access to the details of how the Confirmation of Payee (CoP) service will operate. Specifications, documentation, and guidance on the CoP service are only available to PSPs under NDA with Pay.UK. Without access to the operational details of CoP it is impossible to adequately assess the impact and consequences of the proposed PSR directions on the PSP community.

Separately, some of our members have raised significant concerns in relation to the NDA that PSPs are required to sign in order to obtain the technical specifications for the CoP service.

Specifically, these concerns are:

- Disclosure of the specification and rules documents are limited to entities and individuals in the EEA. This is problematic for EMA members that operate on a global scale, and may have IT operations based outside the EEA, who will be building the service. This will also be problematic for all PSPs based in the UK in the even of a "hard Brexit", as UK staff wil no longer be in the EEA.
- The IP protection clause in the NDA is very broad and goes beyond ensuring that Pay.UK remains the owner of any specs produced. It prevents Fintech PSPs that may be working on something similar product enhancements already from signing the NDA, due to the risk that the disclosing party later claims ownership of IP in the PSP's end product by arguing that the information they provided was used by the PSP in their product.

As a result, many of our Members have, as yet, not been able to assess the full details of the CoP service and our responses are based on assumptions about how the service may operate.

Consultation Questions

Q1: Is giving directions under section 54 of FSBRA to PSPs requiring them to introduce CoP the right approach to securing our objectives, in particular to reduce significantly losses and harm from APP scams and accidentally misdirected payments as soon as possible? Are there other approaches that would lead to the same outcomes that we should consider, and, if so, what are they? Do you have any other comments on the issues raised above?

We understand and welcome the PSR's aims to address the negative consequences resulting from misdirected payments, whether malicious or not. However, we note that the PSR's projected benefits of implementing the Confirmation of Payee (CoP) service has not been based on quantified evidence demonstrating the effect of Confirmation of Payee on losses due to APP scams.

In addition, the consultation does not indicate that the payments industry should conduct technical trialing of CoP as a service to generate such evidential data.

We recommend that the PSR base any decision to give directions under section 54 of FSBRA to **all PSPs** on proven evidence that CoP is effective in reducing APP frauds. Following the experience of the Netherlands, PSPs could be required to operate CoP in the background for several months before displaying any CoP information to the end customer. During this time PSPs could monitor and report on the performance of their and other PSPs' algorithms in order to assess the effectiveness of different implementations of CoP in reducing losses due to malicious misdirected payments. At the same time, this trial period would minimise the impact on customer experience and allow any issues to be addressed before payments are affected, thus ensuring the service will run as expected when rolled out, and offering the opportunity to iron out any unintended consequences and educate and inform consumers.

We also note that the success of CoP will depend heavily on the name-matching algorithm that each PSP employs and hence the quality of response that can be provided by payee PSPs. Neither of these appear to have been standardized, although we understand that the specifications provide some level of direction in this area, so there will likely be a high percentage of inconsistencies and false negative responses. For example, more unusual names, or names from cultures where several different names can be used interchangeably, or with different spelling are likely to come back with a 'no match' result, even if the details are correct.

Q2: Assuming directions in respect of FPS and CHAPS are given, are there any types of PSP that should not be given the directions? What is the basis for your view, particularly having regard to the likelihood of achieving the benefits of CoP?

We support as wide adoption of CoP as possible, and that adoption should be coordinated between all relevant PSPs. However, as mentioned under Question 1, there appears to be little quantified evidence that CoP will have the intended effect on APP fraud reduction. We therefore propose that the PSR require PSPs to run CoP in the background for a number of months before displaying any information to the customer to manage any unintended consequences or technical issues.

The position of **indirect participants** of the Faster Payments scheme in terms of connection to CoP remains unclear, so we propose this is clarified before CoP is rolled out to participants. Initially Indirect PSPs are likely be dependent on a software vendor for providing a solution to participate in the CoP service. Pay.UK report that several vendors are developing CoP solutions but the level of maturity of their solutions is not confirmed, and none have so far built a solution for receiving CoP requests. We propose therefore that the PSR deadlines are applied once a sufficient number of vendors have developed products that are available at a reasonable price that is affordable for smaller PSPs.

In terms of which accounts should be in scope, on the payee side we support all accounts (consumer and business) falling within scope. However, the percentage of negative name matches is likely to be much higher for business accounts than for consumer accounts. We therefore propose that before applying CoP, PSPs should be required to capture nicknames, trading names, and other alternative names for their business customer accounts so that name-matching algorithms can also accommodate the types of variations seen in business account names without impacting on the effectiveness of the CoP service.

On the payer side, the CoP service may impact on the payment service user's experience, and slow down the payment process. We therefore propose that the payer's PSPs may exercise discretion on whether to opt customers out of the service. For example, an acquirer transferring funds to a merchant's bank account using bank details provided by the merchant at an earlier date. In this case, the PSP may assess that the risk that this payment would be maliciously misdirected as low and should have the discretion to not apply CoP. The sending PSP in this scenario would therefore take on the risk that the payment was fraudulent.

Please note that smaller PSPs, in particular non-banks, may not have a distinction between business and consumer accounts, and may wish to apply CoP to the full customer database. They should not be prevented from doing so if they wish.

We welcome the exclusion of **Head Office Collection Accounts ("HOCA")** at this stage, and the consultation states that this exclusion is designed mainly to account for Building Society accounts. E-money institutions (EMIs) often operate accounts in a similar way (i.e. that the sort code and account number are associated with the e-money institution rather than the individual customer) and we understand from Pay.UK that the intention is that EMI's operational bank accounts structured in this way would also fall under the HOCA definition. However, we would welcome confirmation from the PSR on this issue, as EMIs and their customers are likely to suffer a high level of confusion if this issue is not clarified. EMIs may also need to change the payment instructions given to their customers, as well as obtain comfort that payments into their customers' accounts won't be delayed or disrupted as a result of being excluded from CoP.

In terms of **geographical scope**, we note that transactions where "one or more of the parties is outside the UK" are out of scope. This is clarified as "where either the sender or the payee is outside of the UK". We would welcome further guidance as to whether this geographical limitation applies to the jurisdiction of the contractual relationship between PSP and customer, or to another geographical indicator (such as physical location of customer, physical location of PSP etc.). We believe it would be simpler to limit the Direction for CoP to FPS/CHAPs payments only, regardless of geography. Some PSPs may apply CoP to all customers, in which case customers from non-UK jurisdictions are likely to be confused by the response received.

The consultation contains a broad definition of PSP and we would welcome clarification on whether the PSR intended to include PISPs in the scope of the proposed Directions.

We would recommend that CoP as a service should be optional for **PISPs** to offer their customers and as a result PISPs should not be within the scope of any proposed PSR directions. Without access to the technical specifications for CoP it is unclear if PISPs could offer CoP directly to their customers or via the ASPSP from which payments are initiated. The focus should be on ensuring the customer experience is a positive one for customers using PIS. The need for a PISP to offer CoP depends on the interaction between ASPSP and PISP. As the PISP does not hold customer funds, but merely provides the setting up and initiation of a payment, there may be many circumstances where a requirement to offer CoP may confuse the customer.

Q3: Should the same PSPs be subject to a requirement to respond to a CoP request as those that are required to send a request?

We support the PSR's approach to require implementation of CoP first on the receiving side and later on the sending side.

Q4: Do you think that we should consider giving directions in relation both to FPS and CHAPS transactions? If you believe that we should consider giving directions in relation to only one of these payment systems, or more than FPS and CHAPS, please set out why. Are there any other issues that we should consider when deciding which payment systems should be in scope?

We support the proposed approach to apply CoP to FPS and CHAPS transactions only.

Q5: Should the directions apply to all payment channels that an FPS or CHAPS payment can be initiated from? Should a CoP request only apply when a new payment mandate is being set up or changed?

A CoP request should only apply when a new payment mandate is being set up or changed, and only to new payees set up after CoP has been implemented. There is limited value in applying CoP to any payments where the payee is not new as a payee's personal details are unlikely to change very often. On a risk weighted basis, PSPs may opt to offer CoP for existing payees to customers when the CoP service is first implemented but this should not form part of the PSR's directions. It would also be disproportionate to require CoP to be applied to all payments made to existing payees once the service is introduced.

Q6: How should any directions deal with the potential for people to opt out of the CoP process?

The PSR does not set out in which circumstances an individual or a business may wish to opt out, and in the absence of data indicating the effectiveness of CoP as a service, the EMA cannot make any recommendations on the necessity or benefit of opting out of CoP. We do recognise that the creation of any mechanism for opting out will create a fraud vector and this should be considered in the PSR's analysis.

We do however believe there may be legitimate reasons for a payer (as opposed to payee) to wish to opt out of CoP. For example, a business sending high volumes of individual payments (non-batch) on a regular basis, particularly where these are time-sensitive, may wish to opt-out of applying CoP to every transaction based on its own risk analysis.

As discussed in our response to Q2, sending (payer) should be able to exercise discretion on whether to opt customers out of the service. The PSPs would then take on the risk of a misdirected payment, whether maliciously misdirected or not.

Q7: Should any directions cover the sending of money from both individual and business accounts?

As set out in our response to Q2, the CoP service may impact on the payment service user's experience, and slow down the payment process. We therefore suggest that any directions on the sending of payments should give sufficient flexibility to allow the payer's PSPs to exercise discretion on whether to apply the CoP service from either individual and business accounts.

If the paying PSP operates business accounts and assesses the risk of misdirected payments from those accounts to be low, then that PSP could opt not to apply CoP to transactions from those accounts. Equally, PSPs should not be prevented by the Directions from applying CoP to business accounts should they require.

Q8: Should the directions separate out responding to CoP requests from being able to send CoP requests? Should directions cover both sending and responding?

As mentioned above, it is difficult to respond to this consultation without full access to the details of how the Confirmation of Payee (CoP) service will operate. As a result, our response is based on assumptions about how the service may operate.

Yes we agree that the directions should separate out responding to CoP requests from being able to send them.

In relation to the Directions covering the sending of CoP requests, as set out in Q8 above, the CoP service may impact on the payment service user's experience, and slow down the payment process. We therefore suggest that any directions on the sending of payments should give sufficient flexibility to allow the payer's PSPs to exercise discretion on whether to apply the CoP service from either individual and business accounts.

If the paying PSP operates business accounts and assesses the risk of misdirected payments from those accounts to be low, then that PSP could opt not to apply CoP to transactions from those accounts. Equally, PSPs should not be prevented by the Directions from applying CoP to business accounts should they require.

Q9: Do you agree with the deadlines for the introduction of CoP? If you do not agree, please set out why you consider different dates would be more appropriate and your view of the impact that would have on the costs and benefits of CoP. If the dates are not considered achievable, please give reasons and alternative dates that you consider achievable and the reasons why.

We do not agree with the deadlines for the introduction of CoP.

Indirect PSPs are likely be dependent on a software vendor for providing a solution to participate in the CoP service. Pay.UK report that several vendors are developing CoP solutions but the level of maturity of their solutions is not confirmed, and none have so far built a solution for receiving CoP requests. We propose therefore that the PSR deadlines are applied once a sufficient number of vendors have developed products that are available at a reasonable price that is affordable for smaller PSPs.

Although the technical specifications are available, the NDA required in order to obtain them is very restrictive and difficult for global firms to sign, as it limits the sharing of information with non-EEA staff and the IP provisions are restrictive. A number of firms are still in discussion with Pay.UK regarding these and other elements of the NDA, and unless these issues are resolved in time for firms to be able to review the specifications in order to implement them, it will be impossible to meet the April and July deadlines.

[Members to indicate what alternative timescales are feasible]

Q10: **Are there any alternative approaches that we should consider instead of giving directions to PSPs as set out in this document?**

We recommend the PSR consider requiring PSPs to run CoP in the background for several months before displaying any information to the end customer. During this time PSPs could monitor and report on the performance of their and other PSPs' algorithms in order to assess the effectiveness of different implementations of CoP in reducing losses due to malicious misdirected payments. At the same time, this trial period would minimise the impact on customer experience and allow any issues to be addressed before payments are affected, thus ensuring the service will run as expected when rolled out, and offering the opportunity to iron out any unintended consequences and educate and inform consumers.

Q11: Is our assessment of the benefits the right one? If you do not agree, please set out what you consider would be more appropriate and your view of the impact that would have.

We believe that CoP will benefit the UK payments industry, UK customers, PSPs, and reduce fraud. However it is unclear where the figure of an estimated 20% reduction in malicious APP scams has been obtained. In fact, the implementation of CoP as a service may lead to a number of unintended consequences, which we have set out under Q12, thus reducing the benefit of the service set out in the PSR's consultation.

We also note that whilst CoP may reduce some types of APP fraud, it will have no impact on many other types of APP fraud, for example investment scams (which are second to highest in terms of value) and advance fee scams. For other types of scams, the effectiveness of CoP and thus any benefits to consumers will depend on the scope of implementation and the algorithms that are developed by PSPs to send a response to the sending PSP.

We believe the estimated reduction in APP scams of 20% is too high, and would welcome evidence to support this figure.

Q12: Is our assessment of the costs the right one? If you do not agree, please set out what you consider would be more appropriate and your view of the impact that would have.

Whilst the PSR has identified the technical build costs of CoP, and estimated the on-going costs, it is not clear which operational costs are included in the anticipated annual running costs. There is also no indication of estimated loss of PSP revenue when customers abandon a transaction due to the CoP response (for non-fraudulent transactions). As a result, we consider that the estimated costs are too low.

The cost of helping customers to resolve issues with using the CoP service will not be insignificant. For instance, customer service contact rates will increase as customers try to understand negative or 'maybe' CoP responses whilst making a payment. It is not clear whether these costs have been included within the estimated annual costs to the industry of the CoP service and we would welcome more details on how the annual costs were calculated. EMIs whose accounts fall within the definition of a Head Office Collection Account may need to change the instructions they provide to their customers for the funding of their e-money accounts. Depending on the messaging instructions set out in the CoP specifications, they may also be required to address a high level of customer confusion, or worse, a loss of business.

Another significant cost that it is not clear has been taken into consideration is the cost over time of the increase in volume of API calls. As the number of PSPs participating in the service increase over time, volumes of API calls will increase, and PSPs will need more hardware to respond to such calls, as well as engineering to optimize the searches. The number of new (direct and indirect) participants in FPS has doubled in the last 18 months. It is reasonable to consider that this grown rate will continue and each new member in the future will introduce a new set of CoP API calls for participating PSPs

The cost to PSPs may be higher for their vulnerable customers who are accustomed to the payment process with which they are familiar, and may need a higher degree of customer education and information to transition to the CoP customer experience. Participant PSPs will need to account for this cost when analysing the total cost to them of implementing CoP.

Q13: Is our assessment of the trade-off between costs and benefits the right one? If you do not agree, please set out what you consider would be more appropriate and your view of the impact that would have.

As mentioned above, the PSR may have overstated the benefits of CoP in terms of the impact on APP scams, and failed to account for the costs associated with the likely high number of false negative responses.

Q14: What is your view on the impact of the proposed dates in our approach to the trade off between costs and benefits. Do you consider that imposing April and July deadlines impacts either the costs or benefits of implementing CoP relative to a later implementation date – for example, 2020 or later?

If PSPs are unable to obtain the technical specifications in good time due to issues with the NDA required by Pay.UK, there might be additional cost as they may have to outsource some services. Pay.UK report that several vendors are developing CoP solutions but the level of maturity of their solutions is not confirmed, and none have so far built a solution for receiving CoP requests. We propose therefore that the PSR deadlines are applied once a sufficient number of vendors have developed products that are available at a reasonable price that is affordable for smaller PSPs.

Q15: Do you have any comments on our assessment of the impacts of the directions we are considering on protected groups or vulnerable consumers? Do you have any evidence that will assist the PSR in considering equality issues, and in particular complying with its public equality duty, in deciding whether to give directions and considering alternatives?

The cost to PSPs may be higher for their vulnerable customers who are accustomed to the payment process with which they are familiar, and may need a higher degree of customer education and information to transition to the CoP customer experience. Participant PSPs will need to account for this cost when analysing the total cost to them of implementing CoP.

List of EMA members as of January 2019:

Airbnb Inc
Allegro Group
American Express
Azimo Limited
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network Ltd
Boku Inc
CashFlows
Circle
Citadel Commerce UK Ltd
Coinbase
Corner Banca SA
Curve
eBay Sarl
ePayments Systems Limited
Euronet Worldwide Inc
Facebook Payments International Ltd
First Rate Exchange Services
Flex-e-card
Flywire
GoCardless Ltd
Google Payment Ltd
IDT Financial Services Limited
Imagor SA
Intuit Inc.
Ixaris Systems Ltd
Merpay Ltd.
MuchBetter
myPOS Europe Limited
Nvayo Limited
One Money Mail Ltd
Optal
Ozan
Park Card Services Limited
Paybase Limited
Paydoo Payments UAB
Payoneer
PayPal Europe Ltd
PayPoint Plc
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PPRO Financial Ltd
PrePay Solutions
QIX Ltd
R. Raphael & Sons plc
Remitly
SafeCharge UK Limited
Securiclick Limited
Skrill Limited
Starpay Global Ltd.
Stripe
Syspay Ltd
Transact Payments Limited
Transact24 (UK) Ltd
TransferMate Global Payments
TransferWise Ltd
TrueLayer Limited
Trustly Group AB
Uber BV
Valitor
Vitesse PSP Ltd
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Wave Crest Holdings Ltd
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