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The Merchant Acquiring Conference 2011

Regulatory Developments in Merchant Acquiring

William Long

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Regulatory Developments – PSD and SEPA

- Under the PSD from 1 January 2012 payment transactions must be executed using a D+1 standard
- PSPs therefore need to review their use of the payment schemes
- Payments sent through the Faster payment Service between direct participants are usually executed within 2 hours or D+0
- FPS scheme members are mandated to ensure Bacs addressable sort codes are able to receive payments processed by FPS by end of December 2011
- Review of the PSD expected to commence soon – by November 2012 the Commission must present a report on the impact of the PSD

Regulatory Developments – PSD and SEPA

- In December 2010 the Commission published a Regulation regarding migration to EU wide credit transfer and direct debits which proposed end dates for migration to SEPA
- While generally accepted that migration to SEPA should be by way of EU legislation views differ on the approach – whether there should be one single migration date or separate end dates
- ECB proposes to set specific migration dates of 31 January 2013 for migration to SEPA credit transfer and 31 January 2014 for SEPA direct debit
- Common end dates vary from 24 to 60 months after entry into force of the final Regulation

Reform of the Data Protection Directive

- **There are several reasons why the Data Protection Directive needs to be reformed:**
 - the Directive has been applied inconsistently by different EU Member States so data protection laws are not harmonised
 - advancement of modern technology means the processing of personal data has become easier, faster and global and raises privacy concerns e.g. use of social media and cloud computing
 - the need for a more comprehensive and coherent approach.
- **Principle of Accountability**
 - Accountability – data controllers must put in place effective policies and mechanisms to ensure compliance with the data protection rules
 - Privacy by Design – businesses must build in privacy into design of systems and processes e.g. use of privacy impact assessments
 - Self-Regulation and Certification Scheme - promoting the use of self-regulation, such as Code of Conducts, and establish EU certification schemes

Main areas of EU Data Protection Reform

The Global Dimension of Data Protection

- **Extra-territoriality** – it is proposed that businesses outside the EU that target customers in the EU should be subject to EU data protection laws even when they are not established in the EU
- **International Data Transfers** – it is recognised that the current rules on international data transfers are problematic and need to be streamlined but also strengthened – one option is for a new “Safe Harbor” where business outside the EU could certify as adhering to EU data protection rules
- **Mandatory Data Breach Notification** – the obligation to notify authorities and customers of data security breaches is likely to be extended to all sectors including financial services and payments
- **Cloud Computing** – clarification is required of data protection requirements in relation to use of cloud computing including the role of the different parties
- **Class Actions** – collective forms of redress could be permitted including class actions as a tool for individuals to collectively defend their data protection rights

New EU Cookie Consent Law

- From 26 May 2011 amendments to the EU's ePrivacy Directive require website operators to obtain express and informed consent to use cookies
- A limited exception is provided where the use of "cookies" is "strictly necessary" to carry out an activity requested by user e.g. create a "shopping cart"
- Implementation differs between EU Member States with many partially implementing or requiring further time. UK has adopted grace period until May 2012
- There is no consensus as what type of consent will be sufficient. In the UK options include use of pop ups, active agreement through terms and conditions, consent through browser settings, or use of a scrolling header text
- Special care needs to be taken when allowing third parties to set cookies on a user's device

Comments/Questions

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