PSD2 & GDPR: an opportunity for the African mobile payment business?

Africa is the leading continent in mobile money with over 60% of the world's mobile payment accounts located south of the Sahara.

Mobile money in Africa

Mobile money allows payments and transfers with a mobile phone, without a bank account or internet connection. This medium has been embraced in those African countries whose traditional banking infrastructure has a low penetration rate and is characterized by scarcity of bank branches and ATM machines, especially in rural areas, and by higher costs of banking services (including account holding fees). In 2017, mobile money transactions amounted to 20% of Sub-Saharan Africa's GDP and less than 2% of Europe's GDP. Mobile money is typically used for low-cost transactions, primarily to send and receive remittances, but also to pay utility bills, wages, school fees and agricultural products. East Africa has been the most dynamic region with Tanzania, Kenya, Uganda, Zimbabwe and Rwanda as the top 5 countries when it comes to mobile transactions, followed by West African Ghana and Côte d'Ivoire. The mobile payment infrastructure was developed and is still led by telecommunications companies whose market shares range from 45% to 70% depending on the countries.

Another characteristic of the African continent is that it is the one whose economy is the most reliant on investment and family-support remittances from its diaspora, especially the European-based expatriates. Yet the cost of money transfer to Africa remains, for several reasons, the highest globally. Blockchain and other distributed ledger technologies are being considered to tackle the fee issues. Some African governments have also expressed their intent to capitalize on the success of mobile payments to promote development via financial inclusion by encouraging portfolio diversification with credit services, investment products and cross-border payments. Similarly a number of mobile money companies have developed application programming interfaces (APIs) facilitating diverse transactions.

Expanding to Europe for transfers from Europe?

The 2015 Payment Services Directive (PSD2) and the 2016 General Data Protection Regulation (GDPR) both have an extraterritorial scope; they apply to entities beyond the borders of the European Union. PSD2 applies to transactions with "one leg out" and denominated in non-EU currencies. GDPR applies to non-EU data controllers and data processors that process the personal data of EU-based individuals.

As regards PSD2, its main innovation is that it acknowledges and welcomes new players such as FinTech companies. The Directive's objectives are to make payments safer, increase consumers' protection, foster innovation and competition

Toolkit

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while ensuring a level playing field for all players. One key change brought by the Directive is the new security requirement to use strong customer authentication.

With respect to GDPR, the regulation enhanced data subject rights (such as the right to data portability, the right to be forgotten), data governance obligations (such as data mapping or audits) and information security requirements.

The set of rules governing electronic payments and the processing of personal data can appear onerous, especially to an organization which is not based in the EU. However, without a harmonized approach at EU level, different laws would undoubtedly have been enacted within the EU (some perhaps more onerous than the Union laws). Complying with more than one legal or regulatory framework would thus have been challenging, especially where compliant functionalities must be embedded in the technology solutions such as the APIs or the mobile applications.

In addition, both PSD2 and GDPR have been emulated outside the European Union. Data protection laws recently enacted in Africa (in Nigeria and Benin, for example) have taken GDPR into account, especially in respect of data subject rights and data security obligations. Likewise, Rwanda's new rules on electronic payments were significantly inspired by PSD2 with the introduction of a regulatory sandbox and payments initiation service providers.

If anything, PSD2 and GDPR can facilitate compliance on an EU level provided that compliance-by-design is adopted, even by embedding dormant functionalities to be activated where and when legally required. As mentioned above, given the infrastructure of the African banking sector, mobile money has been able to thrive on the continent. Exporting mobile money to Europe for use only within Europe could be more challenging. A non-conclusive attempt was recently made in Romania. However, in relation to Europe-to-Africa money transfers and other operations, the ability to comply with PSD2 and GDPR could open new opportunities and would most likely be more achievable than complying with different local legal frameworks in Europe.

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