

# Revision of Directive (EU) 2015/2366 on Payment Services

*This briefing is one in a series of implementation appraisals produced by the European Parliamentary Research Service (EPRS) on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law that is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. Implementation appraisals aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness to date of specific EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the Ex-Post Evaluation Unit of EPRS to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.*

## SUMMARY

Payment services enable digital payments through direct debits, credit transfers or payments with cards or similar devices. Within the EU, these are regulated through the revised Payment Services Directive (PSD2), which sets rules for payment services, their providers and consumer protection. Announced in September 2021 under the digital finance strategy and the retail payments strategy, the Commission published two proposals on the revision of PSD2 on 28 June 2023 as part of the financial data access and payments package. This implementation appraisal first outlines PSD2 before reviewing and summarising evaluations and assessments of its implementation already conducted by EU institutions and their advisory bodies.

Overall, PSD2 is found to have contributed to the development of the European payments market and to have improved customer protection and the efficiency, transparency and choice of payment instruments. However, shortcomings pertaining to regulatory deficiencies regarding new players and services in the payments market, divergences in implementation across Member States and unclear alignment with other EU legislation remain.

The proposal to revise PSD2 comprises a proposal for a directive on payment services and electronic money services (PSD3) and a proposal for a regulation on payment services in the internal market (PSR). These proposals include both payment services and electronic money services, which were previously regulated separately. With the forthcoming revision, the Commission aims to harmonise the implementation of rules on payment services across Member States, align the legislation with market and technological developments, strengthen customer protection and improve the level playing field between bank and non-bank payment service providers.

## Background

Part of increasing digitalisation, digital payments are growing in significance and popularity within the EU, despite the continued importance of cash transactions. Payment services are defined as those services offering the storage of cash on a digital payment account and the withdrawal of funds from this account through direct debits, credit transfers and payments via cards or similar devices.<sup>1</sup>



Throughout the late 1990s and early 2000s, payment services were regulated at national level, inhibiting payments between EU Member States and resulting in legal uncertainty and differences in consumer choice and protection. To harmonise the EU payment services market and establish a level playing field, [Directive 2007/64/EC](#) on payment services in the internal market (PSD1) was adopted in November 2007. This directive sought to increase innovation, security and ease of payment services across the EU and provide the foundation for a [single euro payments area](#) (SEPA).

Technological developments on the payment services market after 2007 saw the emergence of new players and services, notably payment initiation services and account information services. Additionally, several rules included in PSD1 were interpreted and transposed differently by Member States, resulting in legal uncertainty and in some cases diminished consumer protection. This highlighted the need for modernisation and clarification of the directive's scope and its definitions to continue to provide a level playing field and to increase innovation and competition. Consequently, PSD1 was revised and [Directive \(EU\) 2015/2366](#) on payment services in the internal market (PSD2) was adopted in November 2015. The directive was [incorporated into the European Economic Area \(EEA\) Agreement](#) and is in force in the EEA. Unless stated otherwise, PSD2 provisions are therefore taken to be applicable in both the EU and the EEA, even if only the EU is mentioned throughout this briefing to provide better readability.

Since the adoption of PSD2, technological developments in the market have demonstrated the necessity to modernise PSD2 so as to align the directive's scope with new services and players and their potentially disruptive nature. The importance of non-EU fintech companies for the market, and the increasing prevalence of contactless cards, digital wallets, instant payments and e-money services present challenges in consumer protection and fraud prevention.

## The revised Payment Services Directive (PSD2)

To modernise the regulation of payment services in the EU, [PSD2](#) repealed [PSD1](#) and entered into force on 12 January 2016. Member States were required to transpose the directive into national law by 13 January 2018.

The **objectives** of PSD2 were fourfold:<sup>2</sup>

- to increase integration and provide a framework for the single euro payments area ([SEPA](#));<sup>3</sup>
- to promote competition and innovation by improving the level playing field for payment service providers (PSPs);
- to increase the safety, convenience and efficiency of payment services; and
- to provide a high level of consumer protection.

PSD2's **scope** comprises payment services provided within the EU, regardless of the currency that is used. As per the definition of payment services, cash, paper and electronic money transactions are not included. Contrary to PSD1, which was restricted to intra-EU transactions, the revised directive concerns both 'one-leg' and 'two-leg' transactions. 'One-leg' transactions refer to payment transactions where only one of the payment service providers (PSPs) is located within the Union. Conversely, 'two-leg' transactions describe those payment transactions where both the payer's and the payee's PSP (or the sole PSP) are located within the EU.<sup>4</sup> In both cases, PSD2 only applies to the parts of the payment transaction that are carried out in the EU.

To bring the regulation of the EU payment services market into line with technical developments, the directive opened the EU market and extended its application **from traditional banks or account servicing payment service providers (ASPSPs)**<sup>5</sup> **to also include third-party providers (TPPs)**, i.e. payment service providers that are authorised to access accounts and conduct transactions.<sup>6</sup> TPPs include the following players:<sup>7</sup>

- payment initiation service providers (PISPs): PISPs enable online purchases without a credit card by offering direct payments from a payer's bank account to the payee's account with an immediate confirmation from the merchant;

- account information service providers (AISPs): AISPs gather all information of a consumer's bank accounts in a single application, offering a financial overview and further options relating to the management and analysis of the consumer's spending patterns and expenses;
- card-based payment instrument issuers (CBPIIs): CBPIIs issue card-based payment instruments from a bank account that is serviced by another provider by confirming the sufficiency of funds with the customer's bank account provider.

Before providing services in the EU, a PSP requires authorisation to operate as a payment institution (PI), a category introduced under PSD2. Once PIs are authorised, banks are required to grant them access to payment accounts. To this end, the directive includes rules on **PI authorisation, registration, licensing and supervision by the competent national authorities**. PIs must fulfil a set of conditions that demonstrate their payment security, for example by presenting a security policy, a security incident management procedure and the fulfilment of capital requirements. Additionally, TPPs must hold professional indemnity insurance or a comparable guarantee.<sup>8</sup>

Furthermore, PSD2 sets out the rights and obligations of PSPs and their users. Specifically, the directive includes **transparency of conditions and information requirements** that oblige PSPs to provide payment service users with the information mandated under Title III of PSD2. For example, the directive calls for information on the maximum execution time for the provision of services, a breakdown of all charges or a confirmation of the initiation of a payment order.

To increase the security of payments and consumer protection, PSD2 introduced the **requirement of strong customer authentication (SCA) for all payment service providers**. This requirement applies to the payer's online access to a payment account, the initiation of electronic payment transactions and the execution of any action through a remote channel with a risk of fraud. SCA verifies the customer's identity through at least two out of three independent factors, classified as knowledge (information only known to the user), possession (possessed only by the user) and inherence (biometric information). Exemptions to this requirement are defined by the European Banking Authority (EBA).

Regarding consumer protection, PSD2 **lowered the liability of payers in cases of unauthorised payments**, with the maximum amount to be paid by the consumer reduced from €150 to €50. Additionally, an **unconditional refund right for direct debits** within a period of 8 weeks after the funds were deducted from the account is included. 'Surcharges', i.e. additional charges, for payments with consumer debit or credit cards instead of other payment methods are prohibited in most cases of in-store and online payments, both for domestic and cross-border transactions. To inform consumers, the Commission published a [leaflet](#) on consumer rights under PSD2 and other connected EU legislation.<sup>9</sup>

PSD2 also tasked the **European Banking Authority** (EBA) with developing a public [central register of authorised PIs](#) and drafting guidelines and regulatory technical standards. As a result, a series of delegated and implementing acts have been adopted, for example pertaining to strong customer authentication and secure communication.<sup>10</sup>

According to Article 108 of PSD2, the Commission was required to **evaluate** the directive's application and impact by 13 January 2021, with a special focus on charges, the directive's scope, thresholds and access to payment systems. However, the review was delayed owing to some Member States' failure to **transpose** the directive into national law by 13 January 2018. Consequently, the Commission has launched a total of 16 [infringement procedures](#) against several Member States for their failure to fully transpose PSD2 on time. The procedures against Latvia and Sweden are still ongoing after the reference of a [reasoned opinion to Latvia in July 2021](#) and to [Sweden in October 2021](#) regarding their failure to fully transpose the directive into national law. Both countries were given a period of 2 months to take the necessary action.

# European Commission proposal for the review of PSD2

## PSD2 revision proposals

The review of PSD2, to be launched in 2021, was initially announced in September 2020 under the [digital finance strategy](#) and the [retail payments strategy](#). The revised PSD2 was set to contribute to the open finance framework announced under the digital finance strategy and [initiated](#) in parallel to the PSD2 revision. An open finance framework would enable TPPs to access customer data across a large range of financial services, going beyond merely banking.

Initially announced as an open finance package, the Commission presented the [financial data access and payments package](#) on 28 June 2023. It consists of a [proposal for a regulation on a framework for financial data access](#) and two proposals to revise PSD2. These were accompanied by an [impact assessment](#) which identified the following key problems with PSD2:

- continued risk of fraud and lack of confidence in payments by customers;
- challenges in the functioning of the open banking framework;
- inconsistencies in the supervisory powers and obligations;
- an uneven playing field between banks and non-bank PSPs.

To address these issues, the revision of PSD2 was split between a [proposal for a directive on payment services and electronic money services](#) (PSD3) and a [proposal for a regulation on payment services in the internal market](#) (PSR). The PSD3 proposal updates and clarifies the licensing and supervision regime for PIs, which remains regulated through a directive since it concerns competences of national authorities. On the other hand, the PSR proposal lays out rules for the provision of payment services in the form of a regulation, providing for mandatory and harmonised provisions for payment services across the EU. Notably, these **proposals include both payment services and electronic money services** provided by electronic money institutions (EMIs) which were previously regulated separately under PSD2 and the second e-Money Directive ([EMD2](#)).

The PSD3 proposal on the supervision and liability regime of PIs is largely based on Title II of PSD2 on PSPs, but introduces the following key changes:

- including EMIs as a sub-category of PIs, thereby repealing the [EMD2](#);
- including provisions concerning cash withdrawal services provided by retailers or independent ATM deployers, thereby amending the [Settlement Finality Directive](#) (SFD);
- amending the previous requirement for PISPs and AISPs to hold a professional indemnity insurance to permit the holding of initial capital as an alternative.

The PSR proposal updates the rules on payment services that were previously included in PSD2. Apart from the inclusion of electronic money services, the list of payment services and exclusions remaining largely unchanged. The main changes concern the following areas:

- clarifying and extending several provisions regarding the authorisation of payment transactions;
- extending the requirement for access rules and procedures to payment systems designated by a Member State under the SFD;
- strengthening the rules on PI access to accounts with a credit institution;
- introducing the requirement to provide information on the estimated time of receiving funds for transactions from EU to non-EU countries;
- aligning the requirements for providing information on the estimated charges for currency conversions between intra-EU and one-leg transactions;
- extending the surcharging provision from credit transfers and direct debits in euros to all currencies of the EU;
- introducing the requirement for PSPs to provide all customers with at least one accessible means of SCA.

## Evaluation report on PSD2 (2023)

The Commission published an evaluation of PSD2 in Annex 5 to the [impact assessment](#) accompanying the June 2023 proposal. The report analysed the directive's implementation and impact between 13 January 2018 and the end of 2022 against the [Better Regulation Guidelines](#).

The evaluation was informed by a 2022 external [study](#) on the application and impact of PSD2, feedback to the Commission's May 2022 [call for evidence](#) and contributions to the [public consultation](#) between 10 May 2022 and 2 August 2022 and the [targeted public consultation](#) on PSD2 between 10 May 2022 and 5 July 2022. Furthermore, the report benefited from dedicated meetings with Member States through the Commission Expert Group on Banking, Payments and Insurance (CEGBPI) (meetings on 30 November 2021 and 7 April 2022) and the Payment Systems Market Expert Group (PSMEG) (meetings on 16 December 2021, 5 April 2022 and 3 October 2022). Additionally, the [EBA's response](#) to the October 2021 [call for advice](#) by the Commission and bilateral exchanges with stakeholders supported the evaluation's findings.

Overall, the evaluation confirms PSD2's added value, its contribution to the development of the payments market in Europe and its **success in meeting some of its objectives**. The report commends the directive for its advances particularly when it comes to **increasing the efficiency, transparency and choice of payment instruments and consumer protection**, as SCA requirements as introduced under the directive have decreased the risk of fraud for consumers.

However, important **shortcomings remain regarding other objectives, the directive's implementation and adaptability to technological developments** in the market. While PSD2 succeeded in extending the legislative coverage to TPPs, the directive shows deficits in fostering innovation and especially in providing a level playing field between bank and non-bank PSPs, pertaining to the restrictions of direct access to payment systems faced by non-bank PSPs. Moreover, the objective to broaden market access for TPPs through open banking provisions has only partly been realised owing to fragmentation in the quality of application programming interfaces (APIs) and deficits in data sharing.

**Divergences in the implementation of PSD2 across Member States** have resulted in the fragmentation of the EU cross-border payments market and a limited operability between domestic account-to-account and card payment schemes. Consequently, the EU-cross border card payments market is concentrated on international card schemes, despite some advances through the SEPA Regulation. Some implementation issues also relate to a lack of consistency between PSD2 and other EU legislation on payments.

Considering technological developments in the market, the evaluation finds PSD2 **lacks clarity regarding the regulation of new business models and service providers**, such as processors and digital wallets. Additionally, some deficits persist in the directive's adaptability, specifically regarding SCA in light of the evolving mechanisms of payment fraud and the emergence of new practices, such as social engineering fraud. Connected to technological advances, the report finds some technological bias towards mobile devices, effectively depriving some consumers of effective consumer protection through SCA and excluding them from several services such as remote electronic payments or online access to payment accounts.

**Consequently, the evaluation identifies a continued need to harmonise implementation of PSD2, to resolve fragmentation and to improve effective competition and consumer protection in a modernised market.** Technological and policy developments pertaining to the emergence of pan-European payment solutions, the uptake of crypto-assets and the adoption of the digital euro should be taken into account. Furthermore, the revision should address consistency issues between PSD2 and other EU legislation, regarding for example the [General Data Protection Regulation \(GDPR\)](#), EMD2 and the SFD.

## Commission consultations ahead of the review

In preparation for the directive's revision, the Commission published a [call for evidence for an evaluation](#); it was open to [feedback](#) between 10 May 2022 and 2 August 2022 and received a total of 195 valid feedback instances. The majority of responses (77.95 %) came from EU citizens, followed by non-EU citizens (9.23 %) and business associations (6.15 %). Contributions from companies, consumer organisations and other stakeholders each made up less than 5 % of total contributions. Most feedback (37 %) originated in Slovakia while responses from other EU and non-EU countries each accounted for 1 to 7 % of the total number of instances.

The Commission also launched three parallel consultations. Both the general public and relevant stakeholders were asked to contribute to a [public consultation](#) between 10 May 2022 and 2 August 2022, focusing on both the application and impact of PSD2 as well as on open finance. The consultation received 101 feedback instances, the majority of which (51.49 %) stemmed from EU citizens, followed by companies (19.80 %) and business associations (10.89 %). Non-governmental organisations (NGOs) and academic and research institutions made up only 0.99 % of the responses. 92 % of contributions originated in EU Member States.

Overall, the **consultation sought to assess whether PSD2 was fit for purpose and future challenges**. The consultation asked for contributions and experiences regarding payment methods, digital payments, SCA, contactless services, the blocking of funds and fraud. According to the [summary report](#), the majority of respondents preferred to pay by card both in a physical store and online. The attitude towards new companies entering the payments market was generally positive, but concerns regarding data privacy of (non-EU) big tech companies remained.

The consultation found that 73 % of respondents conducted digital payments and the majority (79 %) found they had become easier, especially cross-border transactions within the EU. For transactions involving non-EU countries, only 28 % reported improvements. However, the **biggest challenge with digital payments remained connected to obtaining information about fees**. The consultation found that 35 % did not consider the information they received clear, with an even higher share of respondents (46 %) reporting this problem when currency conversions were involved.

The majority of contributions deemed SCA easy to carry out and important for the prevention of fraud. However, most respondents **called for the introduction of a requirement to offer SCA solutions beyond those connected to a mobile phone**. Views on limits for contactless payments were mixed, but overall, more respondents explicitly asked for lower limits than those requesting an increase.

The two remaining targeted consultations were aimed at more professional stakeholders with in-depth (technical) knowledge and/or experience in the field of payments. Beyond a [targeted consultation on open finance](#) between 10 May 2022 and 2 August 2022, the Commission also launched a [targeted consultation on the review of PSD2](#) between 10 May 2022 and 5 July 2022. This included an online questionnaire inquiring into PSD2's success in achieving its main objectives. Furthermore, respondents were asked to assess the directive's costs, benefits, enforcement and need for a revision with the possibility to provide suggestions for this revision. The 169 individual responses to the online questionnaire are publicly available.

## European Parliament

### Parliamentary resolutions from the current legislative term

Throughout the current term, the European Parliament has engaged with the emerging challenges for payment services and the connected revision of PSD2 in several parliamentary resolutions.

In its [resolution](#) of 8 October 2020 on digital finance, Parliament underlined the **significance of open banking for increasing the quality of payment services**, notably by including new market players. The transition from open banking to open finance, by including financial services beyond

payments, was affirmed as a strategic priority that might increase efficiency, reduce risks of concentration and strengthen financial inclusion.

In its [resolution](#) of 16 February 2022 on the implementation of the sixth VAT Directive, Parliament recalled the **role of PSPs in combating VAT cross-border fraud** through efficient information exchange.

Lastly, in its [resolution](#) of 13 December 2022 on the digital divide, Parliament generally recognised the contribution of PSD2 to fraud reduction, economic growth for small businesses and increased product choice. However, the resolution called on the Commission to use **the PSD2 review** to explore **measures to improve the security of digital payments and the fight against payment fraud**. Parliament specifically underlined the need for data protection and privacy and for special consideration to be given to consumers with limited knowledge of online data security. In this context, the resolution called for SCA to be extended beyond mobile phones to include alternative means. It criticised PSD2 for not including the right to an alternative authentication method and called on the Commission to consider the resulting risk of discrimination against vulnerable groups when assessing PSD2.

Furthermore, the resolution called for user-friendly software interfaces for digital payments, customer convenience and continued and effective access to cash to safeguard freedom of choice in payment methods.

## Selected parliamentary questions from the current legislative term

During the current parliamentary term, Members have submitted a multitude of questions to the Commission regarding PSD2. The majority of questions related to the directive's provisions for consumer protection and the upcoming revision. The list of selected questions below offers an overview of the topics raised by Members.

### Consumer rights and discrimination

Several members were concerned with PSD2's contribution to safeguarding consumer rights and combatting discrimination in the payment services market.

In her written [question](#) of 11 June 2020, Roberta Metsola (EPP, Malta) asked whether providers were permitted to issue **additional charges for card payments** under PSD2. According to the Commission's [answer](#) of 21 August 2020, surcharges for consumers using either consumer credit or debit cards falling under Chapter II of the [Inter-change Fee Regulation](#) were prohibited under PSD2. This also applied to payment services under the [SEPA Regulation](#). Consequently, retailers that still applied additional charges for using a consumer credit card were acting against national measures transposing Article 62(4) PSD2.

Alex Agius Saliba (S&D, Malta) in his priority written [question](#) of 23 June 2022 was concerned with a **new charge**, introduced by Maltese communication companies, **for consumers** choosing to pay their bills in cash rather than using a direct debit facility. The Member asked the Commission to analyse the new charges as a form of illegal price-fixing, distortion of competition, hampering of consumer rights and a violation of PSD2. Additionally, he inquired into measures by the Commission to guarantee consumer rights as well as competition, transparency and non-discrimination regarding the access to telecommunication services.

In its [answer](#) of 25 July 2022, the Commission clarified that additional charges depending on the means of payment were prohibited for all card-based payments, credit transfers and direct debits under PSD2. At the same time, the answer stated that the directive permitted discounts as incentives for using a particular payment type. Regarding the case of the Maltese telecommunication companies, it seemed to the Commission that the base fee was increased. However, it refrained from giving a final decision, considering that this was a competence of the national authorities.

In a [question](#) regarding consumer rights and discrimination of 23 February 2023, Maite Pagazaurtundúa (Renew, Spain) considered the **financial exclusion of the elderly in digital payment services**. The Member asked when the review of PSD2 would be presented and whether

it would include alternatives to digital basic services. According to the Commission's [answer](#) of 12 May 2023, the presentation of the PSD2 review was planned for the end of June 2023 and would take into consideration EU citizens who were unable or unwilling to use digital payments. Stakeholder feedback had shown the need to revise the provisions on SCA so as to provide at least one means of SCA for those unable to access digital channels or devices.

## Fraud prevention

Similarly connected to consumer protection, two questions concerned PSD2's contribution to the prevention of fraud. In a written [question](#) of 26 January 2022, Antonius Manders (EPP, the Netherlands) inquired into the Commission's position on including **chargeback options** or other effective measures for the prevention of fraud in the revision of PSD2. According to the Member, chargeback options for direct debits, under which the payment would be notified to the beneficiary but become available only after a certain time period, were not currently included in PSD2. In its [answer](#) of 14 March 2022, the Commission referred to the refund provisions for direct debits in Articles 76 and 77 of PSD2, which make refund requests possible within 8 weeks of the date the funds were debited. However, the Commission found chargeback procedures or suspended payments to be contrary to the principle of irrevocability of payment orders as set out in Article 80 PSD2. The answer assured the Member that consideration would be given to measures for fraud prevention throughout the review process.

Criticising PSD2 as unfit to protect consumers from **push payment fraud**, in his written [question](#) of 7 March 2023, Chris McManus (The Left, Ireland) asked whether the revision of PSD2 would include any provisions requiring PSPs to increase protection and decreasing the victim's responsibility for providing proof. Furthermore, the Member inquired into the possibility for Member States to introduce regulations on compensation for victims of authorised push payment fraud.

According to the Commission's [answer](#) of 4 May 2023, refund rights in PSD2 related only to unauthorised credit transfers and did not include newer forms of fraud such as push payment fraud. The reply confirmed the possible introduction of amendments to PSD2's liability and refund regime. The Commission clarified that Member States were permitted to introduce said regulations since PSD2 currently did not include any liability regime on authorised push payments.

## Revision of PSD2

Considering the need to regulate new PSPs under the revised PSD2 in light of the Wirecard scandal, Fabio Massimo Castaldo, Chiara Gemma, Mario Furore and Daniela Rondinelli (all NI, Italy) posed a written [question](#) on 13 July 2020. The question referred to technological developments in the payments market since the adoption of PSD2, with a **number of PSPs** such as digital wallets and fintech firms effectively **operating outside the regulatory framework** for financial services. The Members inquired into the Commission's plans for a regime to supervise non-bank participants and PSPs as part of its new digital finance strategy.

In its [answer](#) of 9 September 2020, the Commission referred to its plans to present a digital finance strategy and a retail payments strategy, including provisions on fintech, to the European Parliament. Concerning the revision of PSD2, the answer pointed to plans to evaluate the potential risks posed by any services not subject to any regulation, notably technical services, and measures to mitigate those risks.

Regarding **bank account portability in the EU**, three non-attached (NI) Spanish Members, Carles Puigdemont i Casamajó, Antoni Comín i Oliveres and Clara Ponsatí Obiols, in their written [question](#) of 3 October 2022 asked whether PSD2 and other related legislative frameworks would be amended to include provisions to enable the opening of a bank account in any EU Member State without residence there. Furthermore, they inquired into the Commission's plans to examine voluntary, additional and complementary EU-wide account number portability. In its [answer](#) of 28 November 2022, the Commission referred to the outcome of an [external study](#) that deemed the cost of setting up account portability to exceed the expected benefits.

## Impact of PSD2 on costs for banks

One written [question](#) of 17 September 2019 by Gunnar Beck (ID, Germany) considered the additional costs for banks since the adoption of PSD2. The question recalled the provision of PSD2 that allows banks to grant external service providers access to the account details of customers. The Member asked whether the Commission had carried out an impact assessment regarding the costs of opening up the digital infrastructure of banks and the protection of consumer data. Additionally, he inquired into any monitoring by the Commission regarding changes in banks' costs since the enforcement of PSD2.

In its [answer](#) of 29 November 2019, the Commission referred to the impact assessment that was to be published alongside the proposal for the PSD2's revision. It clarified however that this assessment would not specifically analyse the costs banks encounter for setting up a digital interface. The Commission noted that the directive included the right for payers to use TPPs but this was not to be understood as a requirement regarding the technological means of establishing access to customers' data. Instead, banks were free to choose and decide on the type of interface, as long as it is in line with the [November 2017 regulatory technical standard](#).

## Council of the European Union

In its [conclusions](#) of 22 March 2021 on the Commission communication on the retail payments strategy, the Council welcomed the review of the implementation of PSD2. The Council argued that this **review should focus on the suitability of the directive's scope**, namely regarding TSPs, as well as any clarification of concepts and definitions that may be required. Furthermore, the Council expected the **review to address the interaction between existing legislation in the field**, in particular pertaining to EMD2, the Anti-money Laundering Directive, the GDPR and any further legislative developments. Moreover, the review was expected to cover the evolution towards open banking, measures regarding privacy-related risks, the interaction with the European Data Protection Board (EDPB) guidelines and the effect on competition, notably regarding the growing importance of big tech and fintech. Lastly, the Council looked forward to an assessment of PSD2's success in limiting fraud and increasing consumer protection. The conclusions also addressed the possibility of applying a maximum execution time to one-leg transactions; currently this only pertains to two-leg transactions. The Council agreed that this issue could be cautiously evaluated in the upcoming revision of PSD2, taking into account any consequences regarding liability for payment services within the EU and the transmission of funds to third countries.

## Position of advisory bodies

### European Banking Authority (EBA)

The EBA is [tasked](#) with contributing to the European Single Rulebook in banking, notably by promoting harmonisation of EU rules applied, investigating the application of EU law by national authorities, advising the European institutions, and issuing regulatory and non-regulatory documents. These include regulatory technical standards (RTS), implementing technical standards (ITS), guidelines (GL), recommendations, opinions and ad-hoc or regular reports.

Under PSD2, the EBA is mandated to set up a public central register of authorised payment institutions and to issue RTS and GL in several areas.<sup>11</sup> Beyond the mandated RTS and guidelines, the authority has issued several opinions on various practices and provisions relating to PSD2, for example concerning [elements of SCA](#), [the RTS on SCA and common and secure communication \(CSC\)](#) and [supervisory actions to remove obstacles to account access](#).

Following the Commission's [call for advice](#) on the **review of PSD2**, on 23 June 2022 the EBA published its [response](#) in the form of a combined opinion and report. The response includes technical advice and proposals concerning the directive's scope and definitions, its licensing and supervision regime for PIs and PSPs, rights and obligations, SCA, access to and use of payment accounts data and the enforcement of PSD2.

Regarding scope and definitions, the EBA proposes inter alia to clarify the directive's key definitions and to streamline the list of payment services in Annex I to PSD2. Furthermore, the **EBA strongly supports merging PSD2 with EMD2**. Concerning the supervisory and licensing regime, the EBA suggests inter alia a revision of the prudential framework with a view to addressing capital or own funds requirements for PIs and clarifying the application of professional indemnity insurance.

## Payment Systems Market Expert Group (PSMEG)

The [Payment Systems Market Expert Group](#) is tasked with advising and assisting the Commission in the preparation of legislative proposals and policy initiatives concerning payments. It consists of individual experts from various Member States in the field of payments, and observers from European public entities.

The PSMEG has discussed the extension of PSD2's scope in the upcoming revision many times. On [16 December 2021](#), the group focused on the extension of the directive's scope to new payment services such as 'buy-now-pay-later' options and wallet providers and the consideration of behavioural metrics as an additional SCA factor to combat new fraud techniques. Concerning the directive's scope and specifically the exclusion of technical service providers (TSPs), members in a meeting on [3 October 2022](#) were hesitant overall about changing the scope of the exclusions.

In its [meeting of 5 April 2022](#), the group discussed PSD2's main provisions. Regarding TPP's access to accounts, the majority of contributions specified that their concerns lay not with PSD2 itself but with the regulatory technical standards on SCA and CSC and the inefficiencies resulting from the legislative process, which is made up of multiple stages (PSD2, RTS, guidelines and opinions, Q&As).

## Expert Group on Banking Payments and Insurance (EGBPI)

The Expert Group on Banking Payments and Insurance assists the Commission in the preparation of legislative proposals and policy initiatives and in the implementation of existing Union legislation, programmes and policies related to banking and insurance. Furthermore, the group facilitates exchanges and cooperation between the Commission and bodies of Member States.

In several meetings, the EGBPI have agreed on the need to review PSD2's scope, with members referring to the emergence of more complex TSPs (meeting of [30 November 2022](#)) but diverging in their opinions as to whether to extend the directive's scope towards supervising these providers ([meeting of 27 October 2020](#)).

Members have repeatedly discussed the state of play of the SCA requirement, which was supposed to be implemented by Member States by 31 December 2020 (latest meeting on [30 November 2022](#)). The group has voiced **concerns about the cross-border implications of delayed implementation** by some Member States and called for a unified approach to the SCA's implementation ([meeting on 27 October 2020](#)). On [30 November 2022](#), several members pointed to the emergence of a new type of fraud that makes use of social engineering and consequently puts additional pressure on SCA.

Furthermore, the EGBPI was **supportive of streamlining or merging EMD2 and PSD2**, considering increasing difficulties in differentiating between e-money institutions (EMIs) and payment institutions (PIs) ([meetings on 17 June 2020 and 30 November 2022](#)).

## European Economic and Social Committee

In its [opinion](#) of 24 March 2021 on the Commission's retail payments strategy, the European Economic and Social Committee (EESC) supported the establishment of an open finance framework for Europe. However, it deemed PSD2 unfit as a basis for this framework since it only concerns payment accounts, PSPs and providers for one-sided data sharing. Instead, an open-data framework should address all financial service providers in line with the GDPR.

Furthermore, the Committee commented on the upcoming review of PSD2. Under pillar two on 'innovative and competitive retail payments markets', the EESC urged the Commission to make a detailed assessment of the impact of PSD2 before its review. Regarding **potential changes to the maximum amounts for contactless payments** in the PSD2 revision, the EESC called for careful

consideration and balancing of aspects relating to simplifying the use of contactless payments on the one hand and security and liability concerns on the other.

The EESC also agreed on the **need to expand the scope of PSD2** in the upcoming review, with the goal of including service providers that currently fall outside its scope. In the Committee's opinion, any player that is relevant to the market and provides payment services to customers should be regulated and supervised, so as to guarantee a level-playing field among providers of the same services. Furthermore, the EESC stressed the importance of safeguarding the security and integrity of major payment systems.

## Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) has ruled repeatedly on the interpretation of PSD2, mainly clarifying the directive's definitions and customer protection provisions.<sup>12</sup>

In the [Rasool judgment](#) of 22 March 2018 in case C-568/16 the CJEU clarified the **definition of a payment service under PSD2**, specifying that, to fall under the definition, a payment service should include the PSP's operation of the customer's payments accounts. The Court's [judgment](#) of 4 October 2018 in case C-191/17 concerned the **definition of a payment account** under PSD2, specifically regarding savings accounts from which payments and withdrawals can only be conducted by means of reference to a current account. According to the judgment, the categorisation of a savings account as a payments account under the [Payment Accounts Directive](#) (PAD) and PSD2 hinges upon the capacity of that account to 'perform daily payment transactions'. Therefore, the Court held that the savings account concerned did not constitute a payment account under PSD2 since it did not allow the account holder to conduct payment and withdrawal transactions to and from third parties.<sup>13</sup>

The Court's [judgment](#) of 11 November 2020 in case C-287/19 clarified several provisions within PSD2 for the use of bank cards with near-field communication (NFC) functionality, i.e. with the **contactless payment function**. The case concerned terms and conditions of the Austrian bank DenizBank AG relating to the use of these cards.

In the original proceedings, the Vienna Commercial Court had found that NFC functionality may not be a payment instrument under PSD2. The CJEU however found **NFC functionality to be a payment instrument**. While NFC functionality in itself is not a 'personalised device' because the PSP cannot verify the initiator of a payment, NFC functionality is a 'set of procedures agreed between the payment service user and the payment service provider and used in order to initiate payments' according to Article 4(14) of PSD2. Moreover, the judgment classified contactless payments as a form of 'anonymous use' within the meaning of Article 63(1)(a) PSD2. After the activation of the contactless payment feature, no personal security data is used for low-value payments to authenticate the user. Therefore, the bank is unable to prove that a payment was authorised by the holder of the account. The article concerned allows parties to deviate from the PSP's responsibility to authenticate payments.

Furthermore, paragraph 1(b) of that same article specifies liability exemptions for PSPs regarding unauthorised low-value payment transactions if it is not possible to block the instrument or prevent its further use. However, this exemption is only applicable if the PSP can prove these circumstances, respecting the current technical knowledge. Therefore, the Court found the bank's claims in its general terms and conditions to be insufficient for exemption from liability for unauthorised low-value payments.<sup>14</sup>

In the [Vodafone judgment](#) of 2 December 2021 in case C-484/20, the Court elaborated on PSD2's **surcharge prohibition for contracts concluded before the transposition into national law**. The main proceedings covered additional charges for payment methods in contracts of the network and internet access provider Vodafone that were concluded before the transposition of PSD2 into national law on 13 January 2018. The provider applied a standard fee of €2.50 to customers who used SEPA credit transfers instead of authorising automatic direct debits. The referring court

(Oberlandesgericht München) inquired whether the surcharge prohibition in Article 62(4) PSD2 also applied to contracts concluded before the transposition of the directive into national law.

The Court clarified that Article 62(4) PSD2 applied to contracts concluded before, on and after 13 January 2018, precluding the additional charges applied by Vodafone to contracts concluded before that date. Since the surcharge prohibition concerned payment transactions, the latter were to be interpreted 'irrespective of any underlying obligations between the payer and the payee' in line with Article 4(5). Therefore, it was the date on which the payment transaction was initiated that mattered and not the date the contractual obligation was concluded.<sup>15</sup>

## ENDNOTES

- <sup>1</sup> For the definition of payment services see Annex I of [Directive \(EU\) 2015/2366 \(PSD2\)](#) and the [summary](#) of PSD2.
- <sup>2</sup> See [summary](#) of PSD2 and [Call for evidence for an evaluation and impact assessment run in parallel](#), European Commission, 10 May 2022, p. 3.
- <sup>3</sup> The SEPA is made up of 36 European countries, including all EU-27 Member States. Within this area, cashless payments in euros via card, credit transfer or direct debit are harmonised, providing the same conditions for cross-border and for domestic cashless payments.
- <sup>4</sup> See N. Smith, [What you need to know about PSD2 one leg transactions](#), Nethone website, 2023.
- <sup>5</sup> ASPSPs are financial institutions that provide payment accounts for their customers, for example through online banking applications.
- <sup>6</sup> See [Third-Party Payment Service Providers \(TPP\)](#), European Merchant Bank website, 2023.
- <sup>7</sup> [The revised Payment Services Directive \(PSD2\) and the transition to stronger payments security](#), European Central Bank, March 2018.
- <sup>8</sup> See [Payment Services Directive: frequently asked questions](#), European Commission website, 12 January 2018.
- <sup>9</sup> See [summary](#) of PSD2 and [Payment Services Directive: frequently asked questions](#), European Commission website, 12 January 2018.
- <sup>10</sup> For an overview of implementing and delegated acts relating to PSD2, see [Implementing and delegated acts – PSD2](#), European Commission website, not dated.
- <sup>11</sup> For an overview of the EBA's mandated deliverables, see [Payment services and electronic money](#), European Banking Authority website, not dated; [EBA mandates in PSD2 and their timelines](#), European Banking Authority, not dated.
- <sup>12</sup> For an overview of CJEU cases concerning PSD2, see [List of cases related to Directive \(EU\) 2015/2366](#), Court of Justice of the European Union, not dated.
- <sup>13</sup> For an overview of the case and the judgment, see S. Barber et al., [The CJEU provides clarity on the definition of a 'payment account'](#), Bird&Bird, 10 October 2018.
- <sup>14</sup> For an overview of the case and the judgment, see V. Fritz and J. Gesley, [European Court of Justice Rules on Liability of Banks for Unauthorized Low-Value Transactions Using Contactless Payment](#), Library of Congress, not dated.
- <sup>15</sup> For an overview of the case and the judgment, see James Debono, [ECJ ruling on PSD2 halts internet and cable operators from surcharging customers](#), ganado advocates, 8 August 2022.

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