



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

Horizontal policies  
Retail financial services

### CONSULTATION DOCUMENT

#### TARGETED CONSULTATION ON THE REVIEW OF THE REVISED PAYMENT SERVICES DIRECTIVE (PSD2)

##### **Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 5 July 2022** at the latest to the **online questionnaire** available on the following webpage:

[https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review\\_en](https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review_en)

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

The responses to this consultation paper will provide important guidance to the Commission in preparing a report on the application and impact of the revised Payment Services Directive (PSD2) and will serve as input for an impact assessment accompanying a possible legislative proposal for revising PSD2, if considered appropriate.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage:  
[https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review\\_en](https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review_en)

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at [fisma-psd2-review@ec.europa.eu](mailto:fisma-psd2-review@ec.europa.eu).

# INTRODUCTION

## Purpose and structure of the consultation

The present targeted consultation is launched in order to gather evidence to assist in the review of the [Revised Payment Services Directive \(PSD2\)](#). In line with the [better regulation principles](#), the evaluation will assess the effectiveness, efficiency, coherence, relevance and EU-added value of the Directive.

In parallel to this targeted consultation, a [general public consultation](#) has been launched. It includes questions for a broader audience that does not necessarily possess specific knowledge of payment services. While the general public consultation is available in all 27 Member States languages, this targeted consultation is only available in English.

This targeted consultation includes questions that require more in-depth knowledge and/or (working) experience in the field of payment services, and questions concerning the more technical topics of the PSD2.

## *Target group*

For this targeted consultation, views are welcome in particular from persons and entities representing:

- payment service providers (e.g. payment institutions, electronic money institutions, credit institutions)
- payment service users (e.g. consumers, businesses including small and medium-sized entities, public administrations, citizens with special needs and/or disabilities, citizens who potentially use payment services);
- national authorities (e.g. national governments and national competent authorities)
- EU authorities and international organisations (e.g. European Banking Authority, European Central Bank, European Data Protection Supervisor)
- other players in the payments market (e.g. operators of payment systems, card schemes, outsourcing companies, technical services providers including processors)
- other stakeholders (e.g. academia and think tanks, economic and legal experts, industry groups).

The results of both public- and targeted consultation will inform the PSD2 evaluation. The results will serve as input for an impact assessment accompanying a possible legislative proposal for revising PSD2. The aim is to make sure that PSD2 continues to meet its objectives in terms of a more integrated, competitive and efficient European payments market, a level-playing-field for all payment service providers, safer and more secure payments and consumer protection.

**In addition to answering to the questions raised in this online survey, you can add any useful documents and/or data (this can be done at the end of this questionnaire). Please give concrete examples in your answers when possible. Where appropriate, please illustrate them with concrete examples and substantiate them numerically with supporting data and empirical evidence and make specific operational suggestions to the questions raised. This will support the review process.**

## Background for this consultation

This targeted consultation is part of the overall consultation strategy for the review of the PSD2. The revised Payments Service Directive (Directive 2015/2366/EC, hereinafter “PSD2”) applies across the EU since 13 January 2018, save for some selected provisions on Strong Customer Authentication (SCA) and access to payment accounts, which apply since September 2019. PSD2 forms the basis for the licensing and supervision of payment institutions and defines the information requirements and the rights and obligations between payment services providers (including payment institutions, electronic money institutions, credit institutions) and payment service users (including consumers and retailers).

The review clause of PSD2 (Article 108) requires the Commission to report on the application and impact of the Directive. The [Commission’s Retail Payments Strategy of 24 September 2020](#) announced the launch of a comprehensive review of the application and impact of PSD2 at the end of 2021.

The PSD2 aims for an integrated, competitive and innovative EU payments market, with a high-level of consumer protection, and for ensuring the security of payments and their ease of use. In particular, PSD2 includes rules to:

- make it easier and safer to use online payment services
- better protect payment services users against fraud, abuse, and payment problems
- promote innovative payment services
- strengthen the rights of payment services users.

Since the implementation of the PSD2 the payments market has continued to evolve. New market players as well as new payment solutions, services and technologies have emerged and payment needs of payment service users (PSUs) have changed as a consequence of the continuing digitalisation of our society. These changes may have created new challenges and new risks, which must be taken into account.

The review will take stock of the Directive’s impact on the payments market and its developments as described above. The review will examine whether newcomers and traditional players are treated equally, based on the principle of ‘same business, same risks, same rules’.

The review aims to assess the effectiveness, efficiency, costs and benefits, coherence and the EU added value of the Directive. It will determine if the PSD2 objectives have been achieved or if changes are needed (and if so, the type and scope of changes).

The review will have two dimensions It will be backward-looking (evaluating the application and impact of the Directive, including enforcement by national authorities), and forward looking (assessing the need for possible legislative amendments ensuring that the EU legal framework for retail payments remains fit for purpose and future- proof).

## CONSULTATION QUESTIONS

### PART 1: GENERAL QUESTIONS

This part covers general questions concerning PSD2's main objectives and specific objectives grouped by theme.

The second part covers questions on whether the specific measures and procedures of PSD2 remain adequate. They are grouped in subsections, following in principle the structure of the Directive. Please note that part two includes questions concerning possible changes or amendments.

The questions are asked in a statement-like manner. You will have the option to rate the statements on a scale from 1 to 5 (1 being "strongly agree" and 5 being "strongly disagree"). Every topic includes the option to provide an explanation of your views, and/or any argumentation.

#### Main objectives

The objectives of PSD2 are to create a more integrated and efficient European payments market, and to open up this market to more competition. PSD2 aims to facilitate innovation in the payments market, for example by facilitating new ways to pay (e.g. wallets, mobile phone etc.), while ensuring a high level of security and consumer protection, in a technology and business model-neutral way that allows for the development of new types of payment services.

#### 1. Has the PSD2 been effective in reaching its main objectives?

- a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

Objective to...	1	2	3	4	5	6
Improve the level playing field between the different categories of payment service providers		X				
Create an environment which stimulates innovation in payment services			X			
Make payments safer and more secure		X				
Ensure a high level of protection for PSUs across all EU Member States	X					
Strengthen consumers' rights	X					
Making it easier to make cross-border		X				

payments within the EU						
Enable PSUs to have a wider choice between different types of payment services providers	X					
Improve the transparency of conditions when PSUs make use of payment services		X				
Contribute to lowering the cost of remittances through a more diverse and transparent market		X				

b. Please explain your reasoning and provide arguments for your views (500 words maximum). [open text box, including “don’t know”/”no opinion” option]

The benefits of PSD2 include the creation of a new type of PSP, that of a Payment Institution, establishing a level playing field for payment service providers on a range of issues, thereby increasing competition, and the introduction of AIS and PIS services that have the potential to further increase competition on the one hand, while enriching the value of transaction data for PSUs on the other.

The challenges that have been encountered relate to some extent to inconsistent application of some provisions across the EU, absence of clarity in relation to some provisions, and significantly, adopting detailed technical solutions to security and IT problems that are better addressed by industry without the obligation to adopt a single legislated solution. We suggest that provisions relating to SCA for example be set out as security objectives and that the solutions are left to industry to develop and to innovate.

#### Level Playing Field

PSD2 has made important strides in creating a single level playing field for different types of PSPs.

There are, however, legacy payments infrastructure related issues that merit review, as well as poor practices that discriminate against non-bank PSPs as well as important asymmetries: namely access to payment systems, access to bank accounts, and procedural distinctions at authorisation. The ability to introduce innovative means of authentication and in deploying services across the EU without onerous host member state requirements are common challenges that need to be addressed.

#### High level of protection of PSUs

In addition to PSD2 obligations, level 2 text issued by the EBA and by NCAs, as well as new provisions relating to operational resilience, wind down planning, consumer protection including vulnerable customer policies etc require time to be adopted by businesses. We urge the Commission to consider the merits of further regulatory intervention in the prudential, conduct of business and supervisory framework.

#### Easier cross-border payments within the EU

NCAs tend to have varying degrees of experience in the implementation of PSD2 provisions to non banks and further legislative guidance addressing authorisation, passporting, application of SCA obligations and scope of AIS/PIS data access may be helpful.

Greater harmonisation of PSD2 implementation is likely to increase the efficiency of the single market and competition by encouraging new entrants to join the market. The Commission could play a role in further development of the international payments and remittance market by sharing best practices in the regulatory framework for payment institutions more broadly on a global basis.

#### Recognising the role of non bank PSPs

EMIs and PIs have played an increasingly important role in provisioning an alternative to traditional banking service providers, whether this relates to card issuance, acquiring or online payment services. There are also specialist products addressing the financially excluded with more comprehensive payment facilities using e-money, and some that compete with banks' FX and international remittance services.

PIS services offer the potential of creating a competitive offering to the use of cards online, and perhaps also in physical points of interaction ("POI"). This will require the removal of technical and regulatory barriers that have the potential to hinder adoption.

- c. Do you consider that PSD2 favours specific technological solutions over others? Please be as specific as possible (e.g. include direct references and examples) and elaborate. [open text box, including "don't know"/"no opinion" option] [max. 250 words]

There are two instances of PSD2 being technologically non-neutral and which would benefit from review.

(i) We have set out above in our response to question 6 the impact of setting out an authentication solution in legislative text, as opposed to definition authentication and security outcomes. The latter would allow industry to innovate and keep up with threat vectors, whereas provisions for specific technological solutions hinder development and innovation. We therefore suggest that the Commission consider its approach to regulatory provisions dealing with technological problems.

(ii) The second issue relates to the likely adoption of distributed ledger technology in parts of the payments infrastructure. This results in distinct roles for different players in the value chain, as well as novel functionalities. This could for example result in an e-money issuer having little or no visibility of payment transactions that take place after e-money is issued, and certainly little control over the execution of payment transactions. This could result in a requirement to review the appropriateness and means of applying many transparency, liability and service level provisions in the PSD to ensure it could apply to different technological implementations.

Payment user needs & Innovation

Supporting innovation and payment user needs are two of PSD2’s main objectives. For example, PSD2 covers new business models based on access to payment accounts, such as payment initiation services (PIS) and account information services (AIS) (‘open banking’). The market evolution led to a wide array of new services and payments solutions such as account-to-account mobile-initiated payments, the development of different types of wallets (including to store payment instruments), the use of wearables such as smart watches, etc. In addition, new means of payment, such as stable coins, have emerged.

**2. In your view, has the current PSD2 framework achieved its objectives in terms of meeting payment user needs?**

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don’t know/no opinion/not relevant.*

Payment user needs	1	2	3	4	5	6
Making electronic payments is easier than 5 years ago	X					
Making international payments between the EU and other jurisdictions is easier than 5 years ago		X				
There are more options available to make payment transactions than 5 years ago	X					
PSD2 has contributed to market players developing more convenient payment solutions		X				
PSD2 adequately addresses current payment needs			X			

b. Please explain your reasoning and provide arguments for your views.

[open text box, including “don’t know”/”no opinion” option] [max. 250 words]

Has PSD2 contributed to more convenient payment solutions/adequately addresses current payment needs?:

The SCA solution and elaboration in Level 2 text has increased friction, resulted in poor PSU experience, and restricted the use of alternative means of authentication.

- SCA has impeded the delivery of services to PSUs with lower levels of digital literacy (or access to digital devices) & vulnerable customers. PSPs are increasingly relying on less secure fallback channels (e.g. SMS, email) to complete PSU authentication for these customers.
- Future iterations of PSD2 should adopt a risk-based SCA application approach whereby Strong Customer Authentication is only applied where necessary
- Avoiding a prescriptive approach and **setting out a set of security objectives** will minimise systemic payment ecosystem security risks.



- PSD2 SCA rules limit the number of options/technologies available to payment market participants,
- The initiation of payment transactions where SCA is applied involves more friction on the PSU side. Current SCA rules emphasise active authentication, with explicit customer intervention; this limits choice and distorts the customer experience.
- The requirement to apply SCA (and Dynamic Linking) has severely impacted the use of remote payments that involve the use of service delivery intermediaries and aggregators.
- User authentication frameworks that leverage “adaptive authentication” to reflect the varying risks of account interactions can preserve current SCA PSU security benefits while minimising friction.
- The current treatment of all payment account interactions - Art.97(1) of PSD2 as a trigger for SCA ignores the different risk profiles of interactions (balance/history look up, etc.). This monolithic treatment has resulted in **multiple SCAs to complete a single payment transaction.**

**3. In your view, has the current PSD2 framework achieved its objectives in terms of innovation?**

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

<b>INNOVATION</b>	1	2	3	4	5	6
PSD2 supports the development of innovative payment services		X				
PSD2 supports the development of innovative payment solutions			X			
PSD2 has contributed to innovation within payments		X				

b. Please explain your reasoning and provide arguments for your views, in particular as regards the payment services offered by PISPs, AISPs and CBPII<sup>1</sup>. [open text box, including “don't know”/”no opinion” option] [max. 250 words]

(i) The contributions of PSD2 to innovation are numerous, from creating the concept of a payment institution, to competition in payment services and latterly to the introduction of AIS and PIS services.

(ii) The costs and the difficulties that have been encountered relate to inconsistent application of some provisions across the EU, absence of clarity in relation to some provisions, and significantly, adopting detailed technical solutions to security and IT problems.

(iii) There are instances where there is no demand for TPP access (for example, in the case of some smaller ASPSPs). There is therefore an opportunity to introduce thresholds for TPP access to payment accounts data as well as to consider the following points in the context of a new legislative proposal:

- The multiple types of interfaces (APIs and MCIs) to access data and the operational complexity and cost.
- Poor stability and performance of PSD2 APIs, in some cases

- Data parity between customer interfaces and dedicated interfaces: for example, some APIs do not contain FX pricing information, etc.
- 180-day re-authentication requirement: AISPs should be able to operate their services on a continuous unattended basis without the need for the PSU to re-authenticate with the ASPSP
- Regulatory perimeter – PISPs should be able to access AIS data in order to manage their payment risk even if they don't intend to offer AIS products.
- Definition of AIS: Account information service is defined as relating to the provision of consolidated information on accounts, this is outdated and requires update.

## Market integration & competition

PSD2 aims to contributing to a more integrated and efficient European payments market. The Directive also aims to facilitate competition and to improve the level-playing field for payment service providers (see also question 1) – including new players and FinTechs.

### 4. In your view, has PSD2 achieved its objectives in terms of market integration and enhancing competition?

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

MARKET INTEGRATION AND COMPETITION	1	2	3	4	5	6
PSD2 has improved the functioning of the internal payments market		X				
PSD2 has contributed to the development of cross-border payments within the EU		X				
There is a wider choice of payment service providers than 5 years ago	X					
The EU payment market is more competitive than it was 5 years ago		X				
PSD2 has contributed to lower fees for digital payments		X				
PSD2 has contributed to lowering the costs of remittances		X				

b. Please explain your reasoning and provide arguments for your views? .  
[open text box, including “don't know”/”no opinion” option] [max. 300 words]

### 1. Internal market:

PSD1 introduced the concept of a PI with mutual recognition rights across the EU; PSD2 added AIS and PIS services and service providers and this has further extended this regime.

The anti-money laundering framework also plays an important role in enabling user access and efficiency through a risk-based approach. Avoiding over-regulation requires vigilance, and its impact is broad.

Greater harmonisation of supervisory practices would be helpful, together with NCA cooperation to reduce the need for host member state intervention; often through insisting on a right of establishment passport where services suffice.

### 2. Cross-border payments

PSD2 has harmonised payment services in the EU, but interpretative differences across member states remain. IBAN discrimination is also problematic.

Financial crime requirements: Local central Contact Point, and application of local AML regulation present barriers to cross-border services.

3&4. Choice & competition

The number of PIs and EMI in the EU provides ample evidence of competition and choice. The new PSPs have driven legacy providers to improve their offerings, whether in terms of quality, innovation or pricing. This is clear in the take-up of SEPA Inst and in the restructuring of banks’ payment businesses.

5 & 6. Lower fees

Competition necessarily drives fees down, and innovation such as that in PIS services also offers the means to lower user costs. Regulation can however undermine such benefits through overregulation or inappropriate regulation; we have provided SCA as an example above.

Ensuring access to bank accounts, to payment systems, to user accounts and to data are also all key requirements to enable new PSPs to compete with legacy service providers.

We also believe that provisions relating to FX fees could be alternatively set out as total costs to users of making transactions, enabling more direct comparisons to be made in the same way as an APR is used for credit.

- c. Do you think the current PSD2 provisions on access to accounts lead to an un-level playing field between payment service providers offering payment accounts, who have to be accessible to TPPs, and other players who do not offer payment accounts, and therefore are not obliged to share their users’ data?

Yes	

- d. If yes, please elaborate on your answer and include any suggestions for (legislative) amendments. [open text box, including “don’t know”/”no opinion” option] [max. 200 words]

The cost and resources required to develop and support real-time networked access to payment accounts for PSD2 has been substantial. Whilst this investment has undoubtedly improved competition and innovation in payment services, the full benefits are yet to be realised because of the limited scope of PSD2 functionality in relation to payment accounts. In order for a level playing field to develop, the case for opening up data and ‘write’ functionality to all types of financial products should be considered as part of the open finance framework.

Impact on smaller PSPs

However, a blanket requirement to provide access to all types of accounts held by all providers can have unintended consequences. Some of our EMA members have implemented, and now maintain, PSD2 compliant interfaces and report no demand at all for access from TPPs. The requirement can also be a barrier to entry for small and niche innovative financial solutions.

There is an opportunity to introduce thresholds (volume of payment accounts, of transactions etc.)

below which ASPSPs could operate payment services without having to provide TPP access. This could also be coupled with an exemption process for those ASPSPs whose payment services and accounts see no demand from TPPs for access.

### Consumer protection

Another important objective of PSD2 is to protect consumers. Key consumer protection features in PSD2 include: transparency of conditions for access and use of payment services, clear definition of rights and obligations for PSUs and PSPs, requirements enhancing fraud prevention, dispute resolution procedures, etc.

**5. In your view, has PSD2 achieved its objectives in terms of consumer protection?**

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

CONSUMER PROTECTION	1	2	3	4	5	6
PSD2 has contributed to improving consumer protection	X					
PSD2 has led to a reduction in fraud in digital payments		X				
PSD2 has effectively removed surcharges for the use of a payment instrument		X				
With PSD2, payment service providers now provide clear information about payment services and their terms and conditions, for example about fees	X					
PSD2 has improved complaint procedures	X					

b. Please explain your reasoning and provide arguments for your views.  
 [open text box, including “don't know”/”no opinion” option] [max. 500 words]

1. Improving consumer protection

- PSD2 provides service levels and apportions liability for PSPs and their users.
- Authorisation and supervisory obligations set a high bar for regulatory supervision.
- Title 3 sets out disclosure obligations that assist users.

2. Reduction in fraud

- SCA has reduced fraud but at the cost of significantly reducing successful completion of transactions. The principle is welcomed but the means of implementation requires revision. Members have also witnessed a migration towards manipulation of the payer fraud, which SCA does not address.

- Instant payments have created opportunities for ‘authorised push payment fraud’ scenarios. These are payments correctly authorised by a user but relating to an underlying fraud. PSPs should not be made into underwriters for such risk. It needs to be dealt with in a connected manner addressing the underlying transaction or behaviour..

### 3. Surcharging

This issue will require some further time to explore, but industry is supportive of the ban on surcharging, enabling users to use whatever payment product they prefer at the point of interaction.

### 4. Effective disclosure

PSD2 requires specific disclosures relating to the PSP, the transactions, and to liability and dispute resolution; this has been effective.

There remains some uncertainty when a service involves multiple PSPs and their relative roles. Industry is seeking to increase clarity.

### 5. Complaints procedure

The timelines set out at Article 101 have been effective in ensuring good dispute resolution.

### There are related issues that merit review:

- Article 42(1) reducing information requirements for low-value payment instruments should be increased in value to reflect inflation and utility and individual transaction limit of EUR100, and spending/storage limits of EUR500.
- Article 42(2): For national payment transactions, we similarly propose that the e-money storage limit should be increased to EUR1,000 to reflect utility and inflation.
- Article 51(1) and similar, referencing a ‘durable medium’: providing information through an app or a dedicated online interface (e.g. online account) should be treated as providing information on a durable medium to reflect current consumer practices and expectations.
- The notice period for changes to a framework contract must not be increased, and the language relating to the customer’s deemed acceptance of the changes is very valuable and should be retained.

## Secure payments

### 6. In your view, has PSD2 achieved its objectives in terms of secure payments?

a. To which extent do you (dis)agree with the following statements:

1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.

SECURE PAYMENTS	1	2	3	4	5	6
Making electronic payments is safer than before PSD2		X				
PSD2 has contributed to creating trust in electronic payments, by implementing measures to support the correct and safe processing of payments			X			
PSD2 has contributed to ensuring that consumers' financial data are protected				X		

b. Please explain your reasoning and provide arguments for your views.

[open text box, including “don't know”/”no opinion” option] [max. 500 words]

## Electronic payment safety

- EMA members report a reduction in fraud rates since the introduction of SCA, but there has also been a sharp drop in successful transaction completion rates and widespread use of Exemptions in order to counteract the negative impact on user experience.
- EMA members also point out the ongoing payment fraud migration to typologies that cannot be counteracted through the use of SCA (e.g. Social Engineering attacks leading to Authorised Push Payment fraud) and an increase in average fraud incident value as fraudsters attempt to maximise their “return on investment”.
- PSD2 SCA provisions are overly prescriptive and reflect legacy technologies. These have been interpreted in divergent ways by MSs. PSPs can deploy innovative authentication and security techniques, if PSD requirements were expressed as objectives.
- PSD2 SCA rules limit the options/technologies available to PSPs. Furthermore, the narrow interpretation of inherence-based SCA elements to include only a limited range of behavioural biometrics set out in the EBA Opinion (EBA- Op-2019-06) does not take into account the extensive experience of the payment sector in data-driven authentication, limiting the options available. This has added friction to PSU interactions and limited access for some users. PSPs are increasingly relying on less secure fallback channels (e.g. SMS, email) to complete PSU authentication for some vulnerable customers.
- PSD3 should adopt a risk-based SCA application approach reducing the likelihood of legitimate transaction declines and lowering abandonment rates. PSPs can deploy holistic authentication frameworks that leverage “adaptive authentication” to reflect the varying risks of payment account interactions.

## Trust in electronic payments

- The combination of a supervisory framework, transparency, liability and dispute resolution

provisions all contribute to trust. There are elements that are disproportionately resource intensive, costly or that have eroded user convenience through friction.

- SCA involves more friction on the PSU side, when frictionless solutions might also be available.
- The current treatment of all payment account interactions listed in Art.97(1) of PSD2 as a trigger for SCA ignores the different risk profiles of such interactions. This has resulted in **multiple SCAs being performed by payment ecosystem participants to complete a single payment transaction**. Examples include (i) The use of digital wallets to initiate a payment when both the wallet funding and the outward payment transaction require SCA or (ii) Combined AIS/PIS payment account accesses where a user first reviews account information before initiating a payment transaction.
- The revision of Art. 97 (1) of PSD2 to afford greater PSP flexibility to apply SCA only in higher-risk payment account interactions would offer a viable solution. PSPs could still be required to apply appropriate customer authentication techniques (e.g. leveraging a single authentication element type) for lower-risk interactions.
- Therefore, it would be useful to define more tightly the payer's activities that must trigger SCA in Art.97 (1) of PSD2. Specifically, condition (c) should be revised to identify the actions - carried out over a remote channel - that must trigger SCA. The specification of SCA exemptions should continue to be included in Level 2/3 legal text that can be revised more frequently to address evolving fraud threats.
- Retailers and Acquirers are making increasing use of Merchant Initiated Transactions (MITs) including DDs. These and MOTO transactions experience low levels of fraud, and should not be moved within scope of SCA. Significant disruption to multiple payment ecosystem participants would otherwise ensue.

#### Protecting Consumer Financial Data

- Requiring SCA for access to payment account data has led to inconsistent practices by ASPSPs, curtailing AIS solutions, and introduced significant friction for end customers using AIS. This could lead to consumers taking counterproductive actions that put their data at risk, such as creating one password across all accounts.
- There is an opportunity to re-examine the SCA model for access to consumer data and move to a more proportionate approach where SCA is only applied when the customer first establishes a third-party connection. Thereafter, the third party should be responsible for ensuring that they continue to have the customer's consent to access data. The implication being that the third party would have to re-confirm consent on a periodic basis, but that SCA would not be required for each access to the account or on a recurring basis.



## Costs and benefits of PSD2

The implementation of PSD2 required investments from the financial industry. For example, payment service providers had to adapt their systems in order to properly implement strong customer authentication, account servicing payment service providers had to enable access to payments accounts by other payment service providers, and certain service providers that were already in business prior to the PSD2 (third party providers, “TPP”) had to adjust to the new, regulated, environment.

**7. Would you say that the benefits stemming from the application of the PSD2 outweigh the costs of its implementation?** Note that “costs” and “benefits” need not necessarily be quantitative.

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

Costs and benefits of PSD2	1	2	3	4	5	6
As a payment service provider, the implementation of PSD2 resulted in higher costs for me		X				
The implementation of PSD2 has led to higher costs						
- for merchants		X				
- for corporates		X				
- for individual consumers			X			
I or my company have benefitted from PSD2	X					
The investments required to comply with PSD2 were proportional to its benefits		X				
The benefits related to SCA exceed the costs of its implementation		X				
PSD2 has simplified and reduced the regulatory burden in comparison to the previous framework (PSD1)					X	

b. If available, could you provide an estimate of the investments your institution has made to implement PSD2? In your response, please explain the most significant cost components [open text box, including “don't know”/“no opinion” option] [max. 250 words]

Not Applicable.

- c. Did your business experience any problems due to the implementation of PSD2? [open text box, including “don’t know”/”no opinion” option]  
[max. 250 words]

PSD2 has continued to offer a framework for non-bank payment service providers to offer payment products, through payment institutions, and has enabled new entrants (AISPs and PISPs) to offer innovative services within this framework. This has, in turn, encouraged innovation and competition

There have however been associated difficulties, and some of these are set out below:

(i) SCA related obligations: have given rise to a range of practical issues and these are set out in detail at our response to question (d) below.

(ii) Access to payment accounts

Smaller ASPSPs have faced significant costs in developing compliant access interfaces to payment accounts. This has been accompanied with limited or no demand for access from TPPs. The requirement to provide an interface for data access could better be qualified to take account of likely demand.

(iii) Costs associated with Open Banking API functioning:

The costs associated with access to payment accounts have been addressed above. TPPs are keen to move towards common standards that will decrease the cost of doing business whilst maximising access to data. This is likely to increase innovation and industry growth.

- d. Please explain your reasoning and provide arguments for your views.  
Overall, from your own stakeholder perspective, would you say the aggregated benefits stemming from the implementation of PSD2 outweigh its implementation costs? [open text box, including “don’t know”/”no opinion” option] [max. 750 words]

**(i) SCA:** The PSD2 SCA rules limit the number of options/technologies available to payment market participants, meaning that most forms of SCA combine passwords (knowledge) with some sort of form of device-based authentication factor as possession (e.g., OTP, app-based notifications). The narrow interpretation of inherence-based SCA elements to include only a limited range of behavioural biometrics set out in the EBA Opinion (EBA-Op-2019-06) does not take into account the extensive experience of the payment sector in data-driven authentication, thus limiting the options available to firms. This has added further friction to PSU everyday interactions with payment accounts. The introduction of SCA has also impeded the ability of PSPs to deliver their services to PSUs with lower levels of digital literacy (or access to digital devices) or to vulnerable customers. We hope that a revision of PSD2 would largely focus on payment account security objectives rather than specify acceptable authentication elements.

Detailed SCA requirements and SCA exemption requirements prescribed in the regulatory technical standards have imposed costs on PSPs significantly beyond those originally envisaged. PSPs have expended time, effort and costs in understanding, preparing for and implementing solutions compliant with regulatory technical standards that became outdated as soon as they

were published, hindering innovation and competitiveness in the market. Further changes to SCA should be focused on the outcomes, with industry determining the most appropriate measures to address fraud risk.

There is industry evidence<sup>[1]</sup> pointing to increased numbers of dropped/abandoned remote electronic payment transactions after the requirement for full SCA compliance started to apply to credit transfers (14th September 2019) and to payment cards (30th December 2020). Data on failed/abandoned transactions will be available at EU Retailers and Acquirers. There is also anecdotal evidence of similar rates of user abandonment at the point of failure in the application of SCA in other channels.

It is generally accepted that the initiation of payment transactions where SCA is applied involves more friction on the PSU side. Current SCA rules emphasise active authentication techniques, with explicit customer intervention; this approach limits choice and distorts the customer experience, when frictionless solutions might also be available.

Payment ecosystem participants (Acquirers, Issuers) have been trying to limit such friction through the balanced use of SCA Exemptions (Low Value, Trusted Beneficiary, Acquirer TRA, Issuer TRA). There has also been growing use of Merchant-Initiated Transactions (MITs) that are excluded from SCA requirements.

The requirement to apply SCA (and Dynamic Linking) has severely impacted the use of remote payments in certain Use Cases (Travel, Entertainment) that involve the use of service delivery intermediaries and aggregators. Many of these Use Cases continue to operate on the back of sector-specific SCA exemptions/waivers granted by local NCAs.

There are also good arguments to distinguish the application of SCA for payments involving corporate entities from those for purely retail payments; the former face more limited fraud risks. A risk-based application of dynamic linking for remote payments may reduce friction in use cases where the payer (or payee) is a corporate entity.

Small/medium size retailers are facing integration difficulties (and increased costs) to deploying SCA compliant solutions that allow the use of payment cards for remote/e-commerce payment transactions. These retailers are dependent on the support of Acquirers and Payment Gateways to deploy SCA-compliant payment solutions; acquirers and gateways have prioritised onboarding the larger e-commerce merchants and that has created a backlog of SME e-retailers that have limited access to such solutions. Total Merchant Service Charges (MSCs) incurred by e-retailers for SCA-compliant payment card solutions (e.g. 3DS v2.x) are higher than for previous, non-SCA compliant solutions. Increased Acquirer, Gateway, technology vendor (ACS) and Card Scheme fees contribute to the increased MSCs incurred by retailers.

Finally, whilst device manufacturers can provide compliant and seamless payment experiences, competing PSPs are blocked from accessing the more diverse OS/device-level controls because of Data Protection limitations. This has led to a distortion in competition in the market, as the level of friction has a direct impact on customer experience, and therefore on customer choice.

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[1] Card Scheme (MCI) data from Q1/Q2' 2021 indicates c.22% of all browser-initiated card transactions and to 53% of in-

app card transactions failed to complete Issuer Step Up (Soft Declines).

## Enforcement

PSD2 also aimed to enable competent authorities to better monitor and supervise the activities of the (new) payment service providers that entered the payments market over the years, and to enhance cooperation and information exchange between authorities in the context of authorisation and supervision of payment institutions. With this aim PSD2, amongst others, introduced a more detailed passporting procedure and mandated the drafting of technical standards specifying the framework for cooperation and the exchange of information between the competent authorities of home and host Member States. PSD2 also provides for a general obligation on Member States to lay down rules on the empowerment of NCAs to ensure and monitor effective compliance with the directive, on penalties for breaching the rules transposing the directive, and on the disclosure of the penalties actually imposed by NCAs. Next to that, PSD2 requires that all payment service providers put in place sufficient and effective complaint procedures for PSUs and other payment service providers. NCAs should also implement a complaint procedure to allow stakeholders to submit a complaint where they consider that their rights established by the Directive have not been respected.

**8. Would you consider that the application and enforcement of PSD2 rules by national competent authorities (NCAs) are satisfactory?**

a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

ENFORCEMENT PROVISIONS	1	2	3	4	5	6
NCAs are sufficiently empowered by national law to ensure that PSD2 rules are correctly applied (Art. 100)			X			
NCAs are sufficiently empowered by national law to impose sanctions where needed (Art. 100, 103)			X			
The types and severity of sanctions available to NCAs are effective, proportionate and deterrent			X			
PSD2 provisions are sufficient to ensure investigation and sanctioning of a cross-border breach of PSD2			X			

The EBA should conduct mandatory peer review analysis of the supervisory activities of all competent authorities in accordance with Article 30 of Regulation (EU) No 1095/2010		X				
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b. Please explain and provide arguments for your views, in particular

whether you consider that the enforcement shortcomings identified are due to the PSD2 legal framework or to its application. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

We support a peer review of relative approaches by MS NCAs with a view to harmonisation and adoption of good practices.

MSs can adopt different policies when calculating own funds. The three methods can give rise to significantly differing outcomes. The choice between turnover (method B) and income (method C) is particularly important and is subject to variations in business model and business practices. Some NCAs adopt a non-flexible approach and result in discrepancies in the capital charged from one MS to another.

We also note reliance by host MSs on engagement with passporting firms rather than on cooperation with home MS supervisors. This places undue burdens on firms, results in MSs creating local reporting and engagement obligations, and ultimately leads to the fragmentation of the common market. We encourage the EC to address harmonisation through soft factors such as cooperation and data sharing in a more robust manner, removing the need for host MSs to seek to impose obligations directly.

As highlighted in the EBA’s Report of 29 October 2019, there is a lack of direction in Level 1 rules for determining the location of provision of financial services, when offered from one MS to another. This can give rise to overlapping obligations that are burdensome and unpredictable.

A related issue concerns MS’ interpretation of when a payment services agent appointment is required. In one member state, mere promotion of activity by an established business can trigger agency, while others require the provision of regulated payment services.

**9. In your view, has the PSD led to improved complaint procedures?**

a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don’t know/no opinion/not relevant.*

COMPLAINT PROCEDURE	1	2	3	4	5	6
The provisions on the complaint procedures to be implemented by NCAs are effective (Art. 99)		X				
The provisions on the complaint procedures to be implemented by PSPs are effective (Art. 101)	X					

b. Please explain your reasoning and provide arguments for your views, including possible suggestions for changes to the provision (if any). If you have ever filed a complaint at either an NCA or a PSP, please include this experience in your response. [open text box, including “don’t know”/”no opinion” option] [max. 500 words]

We believe that provisions for dispute resolution are effective; we do however raise one

issue in relation to the application of these obligations to non-consumers.

The derogation for non-consumer PSUs set out at Article 61(1) is better removed, and non-consumer PSUs and PSP should be free to contractually agree to disapply the provisions of the domestic implementation of Article 102 (ADR procedures). This would give the businesses the same freedom to agree their own bespoke ADR mechanisms as in other commercial arrangements without the PSP being caught in a government-mandated system that is consumer focused and not business focused, and that operates without the benefit of the court systems' legal expertise and the intermediation of lawyers.

- c. To which extent do you agree that the out-of-court complaint and redress procedures set up on the basis of Article 102 PSD2 are effective? [open text box, including “don’t know”/”no opinion” option] [max. 500 words]

Article 99 seeks to strike an appropriate balance by recognizing that Member States should be able to determine the specifics of the procedures for the submission of complaints to the competent authorities in that Member State whilst also ensuring that PSUs are informed and made fully aware of the availability of ADR procedures.

However, in the context of passporting PSPs, we think there are opportunities for further harmonisation and consistency in the approach to complaint handling by clearly reserving to Home State ADR entities the responsibility for reviewing complaints about the obligations arising under Titles III and IV of the PSD.

We would advocate for the application of the passporting principle in this context, which would enable consumers to lodge complaints locally in the host state, but through which the case would be referred by the local authority to the home state regulator of the service provider.

This would facilitate both market integration and consumer trust – it would also help solving the problem of inconsistent implementation. We believe that the provisions in Art.101 of the PSD resulted in greatly improved complaint procedures and are effective, representing a proportionate and reasonable approach to the issue of complaint handling by PSPs.

The prescriptive nature of the requirements in Art.101 ensures that complaints are responded to promptly, thoroughly, and that information on alternative dispute resolution is provided in a clear and comprehensible way.

## General changes to the PSD2

### 10. Taking your responses to the above questions into consideration, **should PSD2 be revised?**

a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

Payment legislation	1	2	3	4	5	6
PSD2 needs to be amended to cater for market developments	X					
PSD2 must be complemented by self-regulatory measures and industry-led initiatives (e.g. standardisation)	X					

PSD2 should be a Regulation, not a Directive <sup>2</sup> , to avoid transposition differences			X			
Specific parts of PSD2 should be a regulation, to avoid transposition differences			X			
PSD2 could be simplified to reduce compliance costs, without undermining its effectiveness		X				
All PSD2 provisions must be subject to the full harmonisation rule (Art. 107)		X				

b. Please explain and provide arguments for your views, in particular if you are of the opinion that PSD2 should be (partly or fully) transformed into a Regulation (500 words maximum).

#### PSD2 needs amending to cater for market developments?

Some provisions need to evolve to better address the PSD's objectives, while others have created difficulties in implementation; these have been set out elsewhere in this response, and include SCA provisions, updates to transaction and storage limits for low value payment instruments, further development of the bank account access provisions for PSPs to counter de-risking behaviour, better NCA data sharing and thereby reducing the need for host MS intervention, considering the impact on DLT based payment products. Also, direct access to payment schemes and systems, changes to definitions, payment services categories, reduction of notice periods for advantageous changes for users etc.

#### PSD2 must be complemented by self-regulatory measures and industry-led initiatives

There are a number of areas where industry standardisation initiatives are preferable and more effective than legislative provisions; these include the development of API related standards, SCA standards and any other technology related provisions relating to security, IT infrastructure etc. We strongly believe that legislation should only set out objectives, and not seek to prescribe solutions. Technology and threat vectors change at a much faster



pace than legislation, and must additionally be tailored to the needs of different environments. Industry can be tasked with creating interoperable solutions that meet requisite objectives.

The Directive or parts of the Directive should be a Regulation to minimise transposition differences:

The compromise text of a Regulation will generally reflect more onerous requirements, as member states seek to ensure that the common text meets their existing obligations. This results in a greater burden across the EU, for many MSs disproportionately so, and consequent cost to industry and to users.

We are in favour of a combination of Directive and Regulation, where provisions that benefited overwhelmingly from harmonisation could be set out in a Regulation, whilst others, continued to be provided in a Directive.

PSD2 could be simplified to reduce compliance costs, without undermining its effectiveness

PSD2 has contributed to a more harmonised approach across the EU, as evidenced by the growth in the sector. NCAs do however have varying approaches in the implementation of PSD2 and further legislative guidance would assist, addressing authorisation, passporting, application of SCA obligations and scope of AIS/PIS data access.

We are in favour of IT security related provisions being **set out at a high level, as objectives rather than specific solutions**. The EBA can also be given a mandate to implement changes to Level 2 RTS/GLs (& Q&As) on a regular basis to keep pace with market changes.

Reporting obligations draw considerably on firms' resources, without the impact or benefit to supervision or policy being visible.

- We suggest simplification and alignment between ECB and EBA regarding reporting requirements, and some means of providing feedback on the outcomes of data collection exercises.
- Changes to the data elements give rise to considerable additional resource requirements. Some longer term plan ensuring predictable and non frequent changes would be helpful.

- c. Is there any PSD2 provision that is, in your view, no longer relevant?  
Please be as specific as possible (e.g. include articles, paragraphs) and elaborate. [ open text box] [max 500 words]

<sup>2</sup> A "regulation" is a binding legislative act. It must be applied in its entirety across the EU.

A "directive" is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals.

## **PART 2: MEASURES AND PROCEDURES**

PSD2 includes various measures and procedures that regulate the retail payments activities. These relate to the authorisation (licensing) of payment institutions and supervision of payment service providers, including a list of payment services that require a payment institution authorisation, what is needed to obtain such authorisation and what is required of entities that are authorised to provide payment services included in the list.

This part of the questionnaire aims to determine whether the PSD2's requirements have contributed to a sound and effective regulation of the provision of payment services, and whether they are still fit for purpose. Since PSD2 was implemented in January 2018, new players have entered the market, and new payment solutions, services and technologies have been developed. The Commission has also observed that new means of payment fraud have emerged. The questions therefore focus on the adequacy of PSD2's current provisions (backward-looking), and whether specific requirements of the current PSD2 need to be changed and further improved, taking into account market developments and the evolution of users' needs (forward-looking).

## Title I: Subject matter, scope and definitions

PSD2's first Title covers, amongst others, the scope of PSD2 (including exclusions) and the definitions of the most important and frequently used terms. The payments market has continued to evolve since the implementation of PSD2. It is thus important to ascertain that the subject matter, scope and definitions of the legislation are still fit for purpose.

### 11. Do you consider that the scope of the PSD2 is still adequate?

a. To which extent do you (dis)agree with the following statements?

1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.

TITLE I						
SUBJECT MATTER & SCOPE	1	2	3	4	5	6
The PSD2 scope (Art. 2) is adequate and does not need to be modified		X				
Article 3 on exclusions is adequate and does not need to be modified				X		
The exclusion from PSD2 of payments by a provider of electronic communications network or services as described in Art. 3(1) of PSD2 is still appropriate		X				
The limits to the transaction values set for payment transactions by a provider of electronic communications network or services as described in Art. 3(1) of PSD2 are still appropriate					X	

b. In your view, should changes be made to PSD2's scope (as in Art. 2)? Please explain your answer and provide arguments for your views expressed and, where possible, explain the added value that the changes would have. [open text box, including "don't know"/"no opinion" option] [max. 250 words]

- (i) We consider the scope of PSD2 in terms of geographical and transactional cover to be sufficient..
- (ii) We do not believe that further extending PSD related obligations to one leg out transactions or to transactions in non-EU Member State currencies to be helpful, as aspects of such transactions are not under the control of the obligated PSP.
- (iii) The provision allowing for member states' exclusion of central banks from the scope of the Directive under Article 2(5) may need to be qualified in the event that central banks offer retail digital payments or CBDCs that would otherwise be captured if offered by a private service provider.
- (iv) If payments with crypto assets are brought within the scope of PSD, then amending this Article

2(2) to allow for payments in private currencies may be required. It may then be appropriate to address payments in other non EU fiat currencies.

We have a number of comments on the Article 3 negative scope/exemptions: (see response to c. below)

- c. Article 3 lists the exclusions to PSD2. Do you believe there are exclusions in PSD2 that should be changed or deleted? Should there be more exclusions? [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

**CA: Article 3(b):** There is significant benefit in maintaining the commercial agent exclusion, as it allows for bill payments and similar arrangements to be offered, where the merchant can manage the risk in a similar way to other commercial risks.

**TSP: Article 3(j):** is key. The exclusion is required and should be part of a redrafted PSD3, overregulation would be detrimental to innovation and, ultimately, harm consumers and the economy. TSPs should be allowed to operate under an exclusion as they are subject to oversight by regulated entities. There is, however, a need to ensure there is non-discriminatory access to those parts of the infrastructure that are needed for PSPs to compete on a level playing field; these may include payment schemes or device infrastructure.

**LNE: Article 3(k):** NCA assessments of scope diverge and more harmonisation is helpful. There should also be an ability to passport an exclusion to other EU member states, or simply to recognise the home member state’s assessment as having authority across the EU. This is in line with the approach in the E-commerce Directive (2000/31/EC). Article 37(2): Allowance for up front notification should also be made to avoid service providers having to terminate products that are interpreted differently by the NCA. The threshold trigger for notification should also be increased (from EUR 1M) to EUR 3M to address increased use of non cash products and inflation. Notification processes should also be harmonised.

**ECN: Article 3(l):** We support the scope of exclusion, and for the monetary limits increasing reasonably or with inflation. All parties in the chain should also benefit from the exclusion. If the MNO benefits from exclusion, other intermediaries for that transaction should also benefit from the exclusion.

**GCE: Article 3(n):** This is an important exclusion that should be part of a redrafted PSD3. This incorporates established commercial practice that reflects the fact that a group of companies is a single economic undertaking and that in many instances there will be a dedicated company providing treasury services to the other members of the group, without any intention of providing payment services as a business activity. Therefore, such activities should be excluded from regulation.

**CWS: Article 3(o):** this exemption is helpful and enables independent ATM service providers to offer the technical facilities to enable cash withdrawals. At a time of increasingly sparse ATM coverage that is offered by the banking industry, this service is particularly important, and should be encouraged. Regulation of such providers as PIs would introduce complexity and cost that is not warranted.

## 12. Do you consider that the definitions in PSD2 are still adequate?

- a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly*

disagree; 6: don't know/no opinion/not relevant.

DEFINITIONS	1	2	3	4	5	6
The definitions under article 4 remain adequate and do not need to be modified					X	

b. Should any PSD2 definition be modified (Art. 4)? Please provide a proposal.

Term defined	Proposal
Art. 4(16) 'account information service' means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;	<p>Clarify the intention behind AIS and the broad scope of services which could be provided.</p> <p>(i) The current definition reflects the nature of AIS services at the time of drafting of PSD2, but today only reflects a small part of such services. It would be better to define AIS more broadly, for example, as services that involve authorised access to payment account data held by an ASPSP.</p> <p>The current definition restricts innovation in AIS service offerings, by restricting the scope of products that can be offered.</p> <p>(ii) The definition of 'account information services' also refers to the provision of information on account(s) held with another PSP or more than one PSP. Some PSPs offer accounts that can only be accessed (for example, to view balance and/or transactions) by PSUs via an interface (such as an app) developed and maintained by a third party. It would be helpful to clarify that such third parties are not engaging in account information services when providing account information on behalf of a PSP, on an account held with that PSP.</p>
Art 4(12) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;	<p>The definition of payment account is broad, and given the obligations that flow from the holding of a payment account, particularly in relation to Articles 65-67 on account access, and Article 97(1)(a) in relation to the application of SCA, this is of key interpretative importance.</p> <p>The case of <i>Bundeskammer für Arbeiter und Angestellte (Austria) v ING-DiBa Direktbank Austria Niederlassung der ING-DiBa AG</i> has produced an unusual outcome, in that the PSD2 definition of a payment account is being interpreted by reference to the</p>

	<p>Payment Account Directive 2014/92/EU (“PAD”), rather than within PSD2 itself. It would be helpful for the definition of payment accounts to be clarified within PSD itself.</p> <p>The CJEU case suggests that accounts that are intended to be captured in PSD2 under access obligations set out at Articles 65-67 are informed by the definition at Article 1(6) of the PAD which require payment accounts to have a certain number of functionalities, which are:</p> <ul style="list-style-type: none"> <li>(a) placing funds in a payment account;</li> <li>(b) withdrawing cash from a payment account;</li> <li>(c) executing and receiving payment transactions, including credit transfers, to and from a third party.</li> </ul> <p>This relevant functionality that was utilised in the case related to the third functionality listed above (c) which provided for transfers to be possible to third parties. It is however possible to suggest that other functionalities must also be present.</p> <p>The scope of accounts that are captured is interpreted differently in different member states, with resulting uncertainty over which accounts are available to PIS and AIS providers. It would be helpful to clarify scope, and for this to be set out in a pragmatic manner. Please also see our further response to Q33.</p>
<p>Art 4(25) ‘funds’ means banknotes and coins, scriptural money or electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC;</p>	<p>If payments using stable coins and CBDCs are to be regulated under the PSD, then the definition of funds needs to be broadened to include crypto assets used for payment and central bank issued digital currencies.</p>
<p>Art. 4(32) ‘Sensitive payment data’ means data, including personalised security credentials which can be used to carry out fraud. For the activities of payment initiation service providers and account information service providers, the name of the account owner and the account number do not</p>	<p>With the exemptions of ‘<i>name of the account owner and the account number</i>’ the assessment of which data is considered ‘<i>sensitive payment data</i>’ is left to the ASPSP’s discretion.</p> <p>GDPR allows EU member states to define</p>

<p>constitute sensitive payment data</p>	<p>their own rules for “processing special categories of personal data (‘sensitive data’)”, defined as personal data on racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, and the processing of genetic or biometric data.</p> <p>As a result, the absence of further definition of “sensitive payment data” has led to diverging interpretations and given rise to some ASPSPs taking a risk-averse approach to the data made available to AISPs.</p> <p>Further specification of sensitive payment data would remove ambiguity, and provide a clear perimeter for data to be provided for AIS.</p> <p><b><i>Proposed revised definition:</i></b> ‘<i>Sensitive payment data</i>’ means data, including personalised security credentials, whose exposure to unauthorised parties can compromise the customer authentication process.</p>
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c. Are there definitions missing from art. 4? Please provide a proposal.

Term to be defined	Proposal
<p>'Accessible online' or "online access" in the context of PSD2</p>	<p>Art 66(1) provides the right to make use of a payment initiation service provider. The right does not apply where the payment account is not 'accessible online'.</p> <p>Art 30 (1) of RTS on SCA &amp; CSC requires that ASPSPs offering payment accounts that are 'accessible online' shall provide at least one interface for third parties to access those accounts.</p> <p>The phrase 'accessible online' is not defined in the Level 1 Directive Definitions Section and has led to market uncertainty as to when account servicing payment service providers are required to have in place at least one access interface to a payment account that can be used by authorised third party providers (AISPs, PISPs, CBPIIs).</p> <p>This could leverage existing text that appears at Recital 95 of PSD2, and would read as follows:  <i>"services offered via the internet or via other at-distance channels, that enable access to the payment functionality offered by the PSP through any channel and which do not depend on where the device used to access the payment account or initiate the payment transaction are physically located"</i></p>
<p>4(33) Unique identifier</p>	<p>Provided by the PSP, used to deny access to proxy identifiers</p> <p>SCA exemption refers to PSP, include suggestion is any PSP.</p>

**13. Should any changes be made to Annex I of PSD2?**

a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant*

Annex I	1	2	3	4	5	6
<p>In view of market developments, the list of services included in Annex I is still adequate</p>				<p>X</p>		

b. Please indicate whether services in the following list need to be maintained or modified. See question (d) in case you believe services should be added to the list that are currently not included. [selection option – not multiple choice, e.g. “no change” and “change description..”]



for the same line] “

Annex I	No change	Change description of service
(1) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account	X	
(2) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account	X	
(3) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:	X	

a. execution of direct debits, including one-off direct debits; b. execution of payment transactions through a payment card or a similar device; c. execution of credit transfers, including standing order	X	
(4) Execution of payment transactions where the funds are covered by a credit line for a payment service user: (a) execution of direct debits, including one-off direct debits; (b) execution of payment transactions through a payment card or a similar device; (c) execution of credit transfers, including standing orders		X
(5) Issuing of payment instruments and/or acquiring of payment transactions		X
(6) Money remittance	X	
(7) Payment initiation services	X	
(8) Account information services	X	

(i) Whilst the list of payment services is adequate, the description of some of the services could be amended to reflect more diverse products and services. The issuance of payment instruments and acquiring of payment transactions at (5) makes no mention of payment accounts, and so member states have required permission (1) to be sought, as this means explicit mention of payment accounts, even if no cash related services are offered. We suggest adding the operation of payment accounts to permissions (4) and (5) to minimise this ambiguity.

(ii) Acquiring of payment transactions is sometimes associated with payment card acquiring only, although acquiring of transactions may utilise other payment instruments including bank transfers or

mobile wallet payments; clarity on the generality of this provision would be helpful.

(iii) We would like to address the definition of AIS, as it impacts its inclusion as a service in this Annex. AIS is defined in relation to the provision of consolidated information on accounts held in a number of places. This reflects the nature of AIS services at the time of drafting of PSD2, but today only reflects a small part of such services. It would be better to define this term more generally, for example as services that involve access to payment account information held by an ASPSP. The current definition is resulting in restrictions on innovation and AIS service offerings in member states.

The definition of 'account information services' also refers to the provision of information on account(s) held with another PSP or more than one PSP. Some PSPs offer accounts that can only be accessed (for example, to view balance and/or transactions) by PSUs via an interface (such as an app) developed and maintained by a third party. It would be helpful to clarify that such third parties are not engaging in account information services when providing account information on behalf of a PSP, on an account held with that PSP.

iii) We would like to address the inclusion of (7) Payment Initiation Services and (8) Account Information Services in this Annex. Neither AIS or PIS involve the PSP entering into the flow of funds of a payment transaction, and as such represent an ancillary service to payment services (1) – (6). For this reason, we argue that they could be removed from the Annex of payment services, and a sub-Annex of ancillary services created to provide clarity on the nature and risk of providing such services.

(iv) It would then be helpful to clarify that AIS services do not fall within the scope of AML legislation, where the relevant money laundering risks do not arise. Their inclusion was simply a consequence of the legislative framework within which they were established.

(v) In the long term we can see the possible rationale for providing the regulated activity of account information services within a new Open Finance framework. However the impact on TPPs who wish to offer both AIS and PIS services may be significant, as this may require authorisation under two separate regimes. There should be a means for payment firms to be able to offer AIS services that are related to their payments business under a single regulatory framework, even if AIS services are also made available under a separate framework. This could for example be analogous to credit institutions being able to offer e-money services under their banking licence, while EMIs are able to do so separately under the e-money Directive.

(v) The concept of '**initiation**' of payment transactions could also benefit from clarification, having occupied significant time in discussions between payment services experts, regulators, legislators and central banks. The closest general term that helps understand the intention, we believe, is 'set up'. In other words, initiating a transaction involves the preparatory steps needed for an ASPSP to execute it. This includes completing payee fields, amount, currency, indicating consent etc. It would be helpful if this could be elaborated in the revised PSD text.

- c. Cash-in-shops is being offered in various Members States across the EU and falls under service (2). The current authorisation regime for this particular service, however, might not be proportionate to the risk involved. Should a specific authorisation regime be considered for cash-in-shops, as a distinct service enabling cash to be withdrawn in shops, from a payment account<sup>3</sup>? [open text box, including "don't know"/"no opinion" option]

We do not see the rationale for a separate authorisation for this service, or for this service to be separately defined. It appears to be fully covered under permission (2). Providers of such services can do so as PIs or as agents of PIs.

- d. Should any of the services listed below be added to the list of payment services in Annex I? You can also make suggestions yourself (end of the table).

ANNEX I	Y	N	Don't know/ no opinion	Other [for last two options]
Issuance of e-money		X		
Payment transactions using crypto assets (incl. stable coins)	X			
Digital wallet services (e.g. mobile apps for payments) <sup>4</sup>		X		
Payment processing		X		

<sup>3</sup> Please note that “cash-in-shops” is not the same as “cash-back”. Cash-in-shops allows withdrawing money without making a purchase.

<sup>4</sup> Both pass-through wallets and digital wallets.

services				
Operating payment systems		X		
Operating payment schemes			X	
Buy-Now-Pay-Later services		X		
Other/specific services in the payment chain provided by a technical service provider, please specify		X		[100 words]
Other, please specify				[100 words]

e. Please explain your reasoning and provide arguments for your views to (d). [open text box, including “don’t know”/”no opinion” option] [500 words maximum]

1. **Issuance of e-money:** it is not clear why issuance of e-money is included in the list of payment services. The issuance of e-money does not involve the provision of a payment service; it is the creation of electronic value that represents a claim against the issuer. The use of e-money to make payments is a separate activity, and is adequately addressed by existing payment permissions. E-money is a financial instrument in the same way as deposits are, or the issuing of credit; both of which can also be used to make payments. We are, for these reasons therefore, against the inclusion of e-money issuance in the list of payment services.

EMD2 seeks to regulate the e-money product, setting out issuance and redemption requirements, and defines e-money as a prepaid instrument. E- money is neither a deposit nor a debt instrument, and consequently attracts its own legal treatment. It can be purchased and sold, and is modelled on cash. The prudential risks associated with e-money go beyond those of payment settlement, as funds are held by the issuer; pending a payment instruction. This is an important distinction that separates immediate payments from those that are prepaid and contemplated to be held on an ongoing basis.

There is also little merit in combining the e-money regime with that of payment services; one relates to the payment services while the other to the product. We strongly urge the European Commission not to pursue this approach as the consequences could be disruptive and unpredictable, and this is a mature industry that has been applying this regime for some 20 years.

The e-money industry has put in place a detailed contractual structure that utilises the legal attributes of e-money, enables its distribution and creates business models that rely on these attributes. The utility of the instrument and its distinction from bank funds should therefore not be underestimated or degraded.

We are furthermore not aware of any shortcomings in relation to the current supervisory framework. We are not aware of any systemic failings or risks that have led to failings at an

industry-wide level. The EMA has branches in 6 EU member states, and has observed national supervisory activity of the e-money and payments sectors increasing significantly over recent years. NCAs are increasing their supervisory engagement with the sector, their understanding of the market is greater than before, and the degree of scrutiny of firms is higher.

There is however benefit in cross referencing a recast PSD and EMD in a manner that enables providers of payment services to be able to vary their permissions to obtain an e-money issuing permission without having to apply for an entirely new licence.

2. **Payments using crypto assets:** if crypto assets, whether as stable coins or otherwise, are used to undertake payments, then some parts of PSD2 will likely apply to ensure consumer protection and a level playing field. The manner in which crypto asset products would be addressed by a revised PSD must take account of the distributed nature of such systems, the degree of oversight that an issuer or crypto asset service provider may have and the distinct attributes associated with crypto asset systems. The issuer for example is unlikely to have sight of transactions and cannot be responsible for consequent service levels.

Similarly, crypto asset service providers (“CASPs”) that may execute transactions or hold ‘accounts’ for users may have distinct obligations in this regard. The applications of a recast PSD2 to crypto assets will require careful assessment, and the manner in which this is accomplished may or may not merit the addition of a new category of payment service.

3. **Digital wallet services:** we assume this refers to the provisioning and presenting of tokenised payment instruments for payment purposes. So-called pass-through wallets that hold payment instruments should not be regulated as a payment service as the actual payment service is undertaken by the provider of the payment instrument which will be a regulated PSP. Individual payment transactions already benefit from the protections of PSD2, and there is little further benefit in regulating the wallet provider as a PSP.

We note that such arrangements, where they meet the scope criteria, are potentially subject to the oversight of PISA, addressing some of the operational risk concerns that may arise.

Where such services form part of the broader payments infrastructure, there will be a wish to ensure access by all PSPs is available, and on a non discriminatory basis, in accordance with Principle 18 of PISA on fair access.

4. **Payment processing services:** these are also technical services and we do not believe they amount to payment services. There is some concern however in relation to larger technical service providers, whether processors or otherwise, who may through an imbalance in negotiating position impose service levels on PSPs that may not be compatible with PSD obligations, and this would benefit from being addressed. This could for example be achieved through an obligation on outsourced service providers offering services to the payments industry to meet PSD levels of service in order to qualify for the provision of such services.
5. **Operating payment systems and payment schemes:** in both cases we do not believe payment systems and schemes merit regulation as PSPs, given the oversight framework of PISA. However, given the potential role of a scheme in implementing regulatory obligations on behalf of scheme participants as a whole, say for example in relation to SCA, there may be some merit in applying some PSD provisions to such schemes.
6. **Buy now pay later services (“BNPL”):** this is a financial instrument or credit product rather than a means of payment, and could be better dealt with under consumer credit legislation. Consumers are able to sign up for a deferred payment scheme to purchase consumer goods. This could potentially give rise to issues relating to consumers over-borrowing, or borrowing where this is not appropriate. This is better addressed in existing or new consumer credit legislation and not in the PSD which regulates payment services not consumer credit.

- f. In case you are in favour of including specific services into the list of payment services, which adjustments to PSD2 would you propose to make, for example to the supervisory provisions (Title II) and the provisions regarding the relationship between the payment service provider and the customer (Title III and IV)?

Not applicable.

- 14.** Should any other changes be made to the provisions and/or topics dealt with under Title I of PSD2? Please be specific and if possible, offer textual proposals [open text box, including “don’t know”/”no opinion” option] [300 words]

No opinion.

## Title II: Payment Service Providers

PSD2 aimed to modernise the payments market and create room for the development of new payment services and providers. Title II covers the authorisation (licensing) of payment service providers (e.g. requirements regarding applying for authorisations, calculation of own funds etc.), the exemptions to authorisations and the supervisory framework.

### 15. Do you consider that **the provisions on authorisation (licensing) of providers of payments services in PSD2 are still adequate?**

a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

TITLE II						
GENERAL RULES: AUTHORISATION	1	2	3	4	5	6
PSD2 is sufficiently clear in determining whether a service must be authorised or not			X			
The requirements to apply for an authorisation (Art. 5) are still adequate			X			
The exemption of small payment service providers (Art. 32) is adequate	X					
The dedicated regime for AIS-only providers is adequate		X				
The authorisation regime for PIS providers is adequate		X				
The authorisation regime for payment institutions that are part of a group of entities is adequate	X					
The minimum initial capital a payment institution needs to hold at the time of authorisation is adequate, taking into account the type of payment service provided (Art. 7)	X					
Provisions on the own funds for payment institutions are required to hold at all times are adequate, taking into account the type of payment service provided taking into account the type of payment service provided (Art. 8 and 9)	X					
The provision on own funds for payment institutions with a hybrid character (Art. 8) are adequate	X					
The methods to calculate the own funds are adequate (Art. 9)				X		

TITLE II						
GENERAL RULES: AUTHORISATION	1	2	3	4	5	6
PSD2 is sufficiently clear in determining whether a service must be authorised or not			X			
The requirements to apply for an authorisation (Art. 5) are still adequate			X			
The possibility for PSPs to choose a method to calculate their own funds is adequate (Art 9)				X		
The safeguarding options (Art. 10) are sufficient/adequate				X		
The granting of an authorisation (Art. 11) is adequately defined		X				
PSD2 does not lead to regulatory arbitrage						

**16.** In your view, should changes be made to PSD2's authorisation regime? In your response, please consider the following two principles:



- (i) Can the application for authorisation be simplified without undermining the integrity of the authorisation process, e.g. by reducing the amount of required information payment service providers have to submit with their application (Art. 5.1)?
- (ii) Should the application for authorisation be accompanied by more information from the payment service provider than required in article 5.1?
  - a. Please explain your reasoning and provide arguments for your views (500 words maximum) [open text box, including “don’t know”/”no opinion” option] [open text box, including “don’t know”/”no opinion” option]

#### Authorisation

requirements introduced by PSD2 significantly increased obligations for payment services firms. Since then, further requirements have been introduced, such as those in level 2 text issued by the EBA and by Competent Authorities (CAs), as well as increasing expectations relating to outsourcing and operational resilience.

We strongly urge the Commission to refrain from setting down further regulatory measures in the prudential and conduct of business framework, given the size of payments businesses and the risk that they pose to customers or the financial system. There is a real risk that further authorisation requirements could limit the ability of new firms to become authorised, and thereby reduce market competition and innovation.

#### Regulatory arbitrage

Competent Authorities have differing levels of experience in authorising and supervising payment services providers. This is mostly driven by the number of PSPs that choose to be located in different jurisdictions. Having said this, different CAs have differing authorisation and supervisory approaches, as well as differing levels of familiarity with PSPs business models and risk profiles which is also a factor in applicants' choice of jurisdiction.

It would be helpful to cultivate greater communication between industry and CAs at an EU level to improve understanding, to better inform decision making and facilitate a more consistent interpretation of regulatory requirements and approach to authorisations. Similarly, greater harmonisation of supervisory practices would be helpful, together with CA cooperation to reduce the need for host member state intervention.

#### Level-playing field for gaining AIS/PIS permissions

The Directive distinguishes the authorisation process for EMLs and PIs seeking to offer AIS and PIS services, from that for credit institutions. The process, whether it amounts to notification or variation of permission should be identical to avoid giving an advantage in speed to market and service launch cost to credit institutions.

#### Initial capital/own funds

We do not see a need to amend capital requirement provisions; the method of calculating own funds however varies considerably by member state, and there could be better alignment in this regard. There is a tendency to err on the side of caution, resulting in onerous obligations that may deprive a business of working capital without contributing significantly to risk mitigation. Operational risk may not necessarily be addressed by increasing own funds requirements.

#### Article 32 exemption (small PIs):

The PSD2 waiver and notification requirement has operated effectively, and allowed smaller institutions to operate, scale up, and then apply for a full licence. It is a useful tool to allow market entry for new players with limited available resources.

#### AIS-only regime - use of agents

Article 33(1) PSD2 provides that persons providing only AIS are exempt from the application of sections 1 and 2 of PSD2 (including Article 19 PSD2 on the registration of agents), whereas section 3 of PSD2 (including Article 28(1)(d) PSD2 on passporting that cross-refers to Article 19 PSD2) apply to AIS. This has led to uncertainty and differing interpretations by Member States as to when an AISP's agents need to be registered, and whether passporting obligations apply to AISP's agents.

**17. PSD2 offers 4 different calculation methods (Art. 9) to a payment services provider's own funds.**

a. Should any method be changed, or deleted?

Annex I	Don't change	Change	Delete	Comment
Method A	X			
Method B	X			
Method C	X			
Method D		X		

b. Please explain your answer to (a). In case methods should be changed, please provide an alternative calculation method. [open text box, including "don't know"/"no opinion" option] [ max 250 words]

Although PSD2 is a maximum harmonisation directive, member states can adopt different policies when applying the prudential regime. One particularly important choice relates to that of calculating own funds. The three methods of own funds calculation under PSD2 can give rise to significantly differing outcomes. The choice between using turnover (method B) and income (method C) as own fund indicators is particularly important and is subject to variations in business model and business practices (which may also change over time). We therefore consider it important that both methods remain available to payment institutions to adopt as appropriate.

In order to ensure a consistent approach to capital requirements for PSPs and EMIs, we would urge the Commission to consider a consistently calibrated scaling factor  $k$  for Method D (Art 5(3) EMD). Since Method D is based upon average outstanding electronic money as a size indicator and is effectively proxy for operational risk. However, in contrast to both Method B and C it lacks the built-in digression by the decreasing scaling factor  $k$ , and thus assumes a linear character of operational risk with increased e-money volumes, which we submit may not necessarily be the case.

Some Competent Authorities (CAs) adopt a non-flexible approach which results in discrepancies in the capital requirements from one member state to another - the approaches taken by CAs should be based on consistent criteria (set out in legislation or secondary guidance) which are proportionate to the operational and financial risks faced by payment firms, and consider the relatively low risks that are posed by new firms (looking to establish their business and which have relatively small operations).

c. Should any method be added? If yes, please explain why [open text box, including "don't know"/"no opinion" option] [max 250 words]

Please refer to our comments on method D above.

- 18.** If you are responding to this questionnaire in the capacity of an NCA: do you deviate from the authorisation requirements set out in the PSD2 in any way, e.g. due to national legislation? If yes, could you specify which ones and why this is the case? [open text box, including “don’t know”/”no opinion” option] [max 250 words]

Not Applicable.

- 19.** Article 10 of PSD2 describes the requirements around **safeguarding**. Should these requirements be further adjusted? As PSD2 includes provisions that are applicable mutatis mutandis to electronic money, which is also regulated by the Electronic Money Directive (EMD2), please consider the safeguarding requirements as they are included in the EMD2 too (Art. 7 of Directive 2009/110/EC) (see also question 11(c)). [open text box, including “don’t know”/”no opinion” option] [max 250 words]

The criteria for determining permissible credit institutions for the purposes of providing safeguarding accounts is delegated to the competent authority in home member states. This is often interpreted as being restricted to EEA authorised credit institutions.

This restriction is inflexible and does not consider the diverse PSP business models in the market, particularly those with a global presence, and operating on a 24-hour basis. Whereas often CIs holding safeguarding accounts only operate during banking hours. It would assist business if eligible CIs, for the purpose of safeguarding, are set out more broadly in the legislation, including credit institutions authorised outside of the EEA.

### **Additional issues**

Firms need greater clarity regarding the type of secure, liquid and low risk asset that safeguarded funds can be invested in. There is a need for diversification and proportionate flexibility to enable a limited revenue to be generated in order to contribute to the cost of safeguarding. The assets that firms can invest in could be widened to those that are of a high quality but less liquid, at least for that part of safeguarded funds that is not likely to be required to meet redemption requests at short notice.

PIs and EMIs continue to experience de-risking practices. This is particularly acute in relation to safeguarding accounts, and distorts the competitive landscape in favour of legacy credit institutions as they use their position to place barriers to entry for PIs and EMIs.

EMIs and PIs should be permitted to safeguard customer funds at central banks, removing investment risk altogether, and assisting in the resolution of part of the de-risking challenges that are faced by the industry.

Legislation should also clarify that the safeguarded funds of PIs are customer funds held by PIs on behalf of their customers, while the safeguarded funds of EMIs are owned by the EMIs themselves. The absence of this distinction has led to legal uncertainty about the ownership of funds in the context of insolvency.

Finally, the market for safeguarding by insurance appears limited with very little uptake so it would be helpful to review the underwriting conditions and seek to resolve the market challenges.

**20.** Should the **activities** listed under article 18 (e.g. closely related services ancillary to the provision of payment services) be revised to reflect any changes in the day-to-day business of payment institutions, due to developments in the payment market? If yes, please specify what should be modified, added or removed. [open text box, including “don’t know”/”no opinion” option] [max 250 words]

Since the first EMD was adopted in 2000, and the first PSD in 2007, the businesses of PIs and EMIs have steadily evolved. The payments businesses of these firms are now more diverse and offer a range of payment and related services. These do include credit both as a revolving line (credit cards), one-off credit services such as buy-now-pay-later products, and intermediate products such as charge cards.

Both EMIs and PIs however have to fund such credit from their own funds, while payment services customer funds are safeguarded separately. There is therefore minimal impact on the payments business through the addition of such services. Where consumer credit is offered, firms do of course also have to apply and be authorised under the relevant consumer credit regime.

The EU consumer credit regime is focused on consumer credit agreements and does not create a harmonised regime for licensing that can be subject to mutual recognition. A harmonised and passportable consumer credit licence could greatly increase competition for consumer credit in the EU.

With the exception of a harmonised regime, we do not believe any additional regulation in relation to the offering of credit by EMIs and/or PIs is required.

## 21. Other requirements

a. To which extent do you (dis)agree with the following statements:

1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.

OTHER REQUIREMENTS	1	2	3	4	5	6
The regime for PSPs providing services through third parties (agents, branches, outsourcing), as outlined in article 19, is still adequate				X		
The provision on liability (Art. 20) in case a PSP uses third parties to provide services is still adequate	X					

b. Should article 19 be amended? [open text box, including “don't know”/”no opinion” option] [max 250 words]

**Host member states exercising supervision over passporting (incoming) PSPs:** There is variation in supervisory practices and reliance by host member states on engagement with passporting firms rather than on cooperation with home member state supervisors.

This means that passporting on the basis of freedom to offer services is often interpreted as one through right of establishment; often by requiring local contact points to be appointed through PSD2 or AML legislation, or regarding distributors as establishments, or regarding outsourced services in a similar way etc. This then results in member states applying local reporting and engagement obligations, and ultimately leads to a compromise of the value of the single market. The single market fragments and service offerings are restricted to the biggest member state markets by size.

Unnecessarily supervising passporting firms is a fetter on the freedom to provide services in the single market. PSD3 should remove the need for host member states to seek to impose obligations on passporting PSPs, to seek a finding of establishment, and to otherwise regulate at a host member state level. This could be done, for example, by establishing a data-sharing regime between competent authorities in PSD3. Under a data-sharing regime, a host competent authority could obtain all information it requires on an incoming passporting firm from the firm's home competent authority, without, for example, imposing reporting / disclosure obligations on the firm itself.

c. Should “triangular passporting” be regulated? If yes, how? Triangular

passporting occurs where an authorised service provider in a Member State A makes use of the services of a service provider (e.g. an agent) in a Member State B in order to provide payment services in a Member State C. [open text box, including “don’t know”/”no opinion” option] [max 250 words]

There is no need to further regulate passporting. Whether standard passporting or “triangular passport”, the authorised firm remains liable for the conduct of its service providers (such as agents). There is no need to change this standard model.

As set out in 21(b), PSD3 should establish a regime that allows competent authorities to share data on firms’ passporting arrangements thereby enabling the host competent authority to contact the firm’s home state authority when they are in need of information and not burden the firm itself with reporting / disclosure obligations.

**22. Do you consider that PSD2 is applied consistently, and aligned with other related regulation?**

a. To which extent do you (dis)agree with the following statements:

APPLICATION & SUPERVISION	1	2	3	4	5	6
The PSD2 authorisation framework is applied consistently across the EU					X	
The PSD2 supervisory framework is applied consistently across the EU					X	
The PSD2 framework is aligned and consistent with other EU policies and legislation, in particular with <sup>5</sup> :						

<sup>5</sup> EMD2: Directive 2009/110/EC; GDPR: Regulation (EU) 2016/679; eIDAS: Regulation (EU) No 910/2014; SEPA: Regulation (EU) No 260/2012; SFD: Directive No 98/26/EC; AMLD: Directive (EU) 2015/849; MiCA: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM/2020/593 final; DORA: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341

<u>Electronic Money Directive 2 (EMD2)</u>	X					
<u>General Data Protection Regulation (GDPR)</u>				X		
<u>Revised eIDAS (electronic Identification, Authentication and trust Services) Regulation (Commission proposal)</u>		X				
<u>Single Euro Payments Area (SEPA) Regulation</u>		X				
<u>Settlement Finality Directive (SFD)</u>		X				
<u>Anti Money Laundering Directive (AMLD)</u>		X				
<u>Market in Crypto Assets (MiCA) (Commission proposal)</u>				X		
<u>Digital Operational Resilience Act (Commission proposal)</u>				X		
Other (please specify)						

b. Should the directive's requirements related to competent authorities and supervision be changed? Please explain your reasoning and provide arguments for your views. In your response, please consider the following:

- (i) If, in your view, there is anything in PSD2 that is not consistent with other EU regulation, please be as specific as possible (e.g. include articles, paragraphs, names of regulations).
- (ii) Should the Directive's requirements related to home/host competent authorities be clarified or amended? If yes, please specify.

[open text box, including "don't know"/"no opinion" option] [max. 500 words]

**Differing approaches to supervision across EU:** Competent Authorities have differing levels of experience in authorising and supervising payment services providers. This is mostly driven by the number of PSPs that choose to be located in different jurisdictions, which in turn is driven by broader choices including availability of qualified staff, the cost of doing business, and access to resources and to given markets. It would therefore be helpful to cultivate greater communication between industry and Competent Authorities at an EU level to improve understanding and to better inform decision making. Generally speaking, wWe are not aware of any shortcomings in relation to the current supervisory framework. We are not aware of any systemic failings or risks that have led to failings at an industry-wide level.

**Inconsistency with own funds requirements:** Although PSD2 is a maximum harmonisation directive, member states can adopt different policies when applying the supervisory regime. One particularly important choice relates to that of calculating own funds. The three methods of calculation

can give rise to significantly differing outcomes. The choice between using turnover (method B) and income (method C) as own fund indicators is particularly important and is subject to variations in business model and business practices. Some NCAs adopt a non-flexible approach and result in discrepancies in the capital charged from one member state to another.

**EMD2:** EMD2 is consistent with PSD2 and should be maintained as an independent regulatory regime separate from payments. This approach has been effective and continues to be so. We do not believe there is merit in combining for example the e-money regime with that of payment services; one relates to the payment services while the other to the product. We strongly urge the European Commission not to pursue this approach as the consequences could be disruptive and unpredictable, and this is a mature industry that has been applying this regime for some 20 years.

**MICA:** There are discussions in relation to the manner in which crypto-assets used as a means of exchange (e.g. electronic money tokens and, potentially, asset-reference tokens) would be addressed by a revised PSD. Please note this is not necessary as these products and any related crypto-asset services and service providers will already be subject to a comprehensive regulatory regime including specific requirements regarding the protection of users as well as related liabilities of issuers and service providers.

**DORA:** PSD3 must clarify whether the operational risk monitoring and incident reporting requirements that the DORA regulation introduces are to be treated as part of the operational and security risk frameworks that regulated entities have already deployed to comply with the relevant requirements in PSD2 as this is not clear at present.

**Payment Accounts Directive:** The definition of “payment account” for the purposes of PSD2 has been interpreted differently between member states (even since the CJEU case on point). This creates uncertainty for AIS and PIS providers. PSD3 should clarify the definition and scope and set this out in a pragmatic manner.

**23.** In your view, should the current payment volume limit for exempted payment institutions (Art. 32) be increased or decreased?

Increase (to [amount])	Decrease (to [amount])	Don't change it
------------------------	------------------------	-----------------

Yes this should be increased to reflect the continued need for innovation in this sector, and to remain in line with inflation for the next 5 years or so. An increase from EUR 3 million to EUR 4 million is reasonable.

This PSD2 waiver and notification requirement has operated effectively, and allowed smaller institutions to operate, scale up, and then apply for a full licence. It is a useful tool to allow market entry for new players.

**24. Participation in payment systems** - Article 35 provides for non-discriminatory access for payment service providers to payment systems. Article 2(a) provides for an exemption regarding payment systems designated under [Directive 98/26/EC \(Settlement Finality Directive, SFD\)](#). Between 12 February and 7 May 2021, the



Commission conducted a targeted consultation<sup>[1]</sup> asking for views on the SFD to prepare a report to the European Parliament and the Council.

- a. If it were decided to amend the SFD to allow payment institutions and e-money institutions to be direct participants in SFD-designated systems, do you consider that the exclusion of systems designated under in article 35.2(a) should be removed, thus facilitating participation of authorised payment institutions and e-money institutions in such designated payment systems? Please explain your answer. [open text box, including “don’t know”/”no opinion” option] [max 250 words]

Access to designated payment systems are restricted to credit institutions and this should be resolved. The exclusion does not reflect an appropriate risk allocation methodology, and should be resolved to exclude the resulting discrimination.

### **Article 35 on access to payment systems**

Open, non-discriminatory, access drives competition in the payments market, the uptake of instant payments, and achieving economies of scale. In order to generate a level playing field, and leverage innovative PSP models, other PSPs cannot act as gatekeepers to payment system technical infrastructures.

Competition between PSP benefits end users; reduces costs and drives innovation.  
Direct access by non-bank PSPs will also lead to:

- Improved resilience – reducing complexity and links in technical chains means PSPs are more resilient and protected from IT failures elsewhere
- Increased coverage – the economies of scale are more rapidly achieved with more PSPs offering cost-effective services to PSUs.
- Improved speed of adoption of SCTInst – non-bank PSPs would no longer be reliant on their sponsor banks’ capacity to implement new payment schemes or features, such as SCTInst.

**Article 35(1)** provides that *... rules on access ...to payment systems are objective, non-discriminatory and proportionate and that they do not inhibit access more than is necessary to safeguard against specific risks....*

In order to ensure access, and if the SFD is not amended before PSD2, we suggest removing the exemption for Article 35(2)(a) enabling access to designated payment systems, perhaps under specific conditions that are non-discriminatory to PIs and EMIs.

*[If your answer to (a) is negative, i.e. the exclusion should be retained in your view, skip b) and c) below.*

- b. If your answer to a. is positive, do you consider that certain conditions for access by authorised payment institutions and e-money institutions to designated payment systems should be laid down, and if so, should they be laid down in EU legislation or elsewhere (for example, in the rules of the system)? Please note that the question of whether specific risk assessment criteria should apply under the SFD, if it were to be decided to amend the SFD to allow payment institutions and e-money institutions to be direct participants in SFD-designated systems, was covered in the targeted consultation on the SFD? [open text box, including “don’t know”/”no opinion” option] [max 250 words]

There have been no arguments made for the exclusion of EMIs and PIs from participation in designated payment systems. In the absence of any defensible justifications, this becomes a matter of competition and discrimination. Industry has developed significantly over the last 20 years and non credit institutions offer robust and often superior payments infrastructure that should be able to benefit from participation in the entire payment system.

Changes to the Settlement Finality Directive (SFD) will be needed to allow EMIs and PIs to participate in designated payment systems; this should not be a contentious matter.

C. If your answer to question b. is positive, please specify which conditions could be included in EU legislation. [open text box, including “don’t know”/”no opinion” option] [max 250 words]

We are of the view that the regulatory and supervisory framework that governs EMIs and PIs should be sufficiently robust to allow for such participation, subject to amendment of the SFD. Where payment systems require specific collateral or technical infrastructure to be implemented, then this can apply in a proportionate manner to PIs and EMIs.

**25. Access to accounts maintained with a credit institution** - Article 36 of PSD2 provides for a right for payment institutions<sup>6</sup> to access to credit institutions’ payment accounts services on an objective, non-discriminatory and proportionate basis.

- a. Do you think that article 36 PSD2 should be modified, for example, by extending it to the termination of business relationships in addition to the access? [open text box, including “don’t know”/”no opinion” option] [max 250 words]

Yes.

PIs and EMIs still have difficulty opening accounts with CIs, and most are subject to increasing de-risking practices. This is particularly acute in relation to safeguarding accounts, the requirements for which are set out in the PSD2. PSD2 needs to complement this with the basis under which CIs should be required to provide such services. Whether intentionally or not, the outcome will otherwise be the creation of barriers to entry for PIs and EMIs that may provide competing services. This issue has become acute and distorts the competitive landscape in favour of legacy CIs.

### **Article 36 on access to bank accounts**

Article 36 has not been implemented consistently, and EMIs, PIs and cryptoasset firms continue to have great difficulty obtaining or holding on to bank accounts. Amending Article 36 could improve the situation:

- Member States should be obliged to make access to banking services a right for PSPs, or to intervene where no banking services have been forthcoming
- The assessment of a bank account application from a PSP should have distinct criteria that favour granting an account, and this should not be a solely commercial matter. The latter, together with compliance related arguments have resulted in an absence of banking services for PIs and EMIs, and particularly those being established.
- The obligation for a CI to notify the NCA should also be triggered when closing an existing account (“de-risking”). Member State interpretations have differed on this point, so the quantity and quality of notifications is inconsistent.

- b. Should the European Banking Authority (EBA) be mandated to developing technical standards or guidance further specifying PSD2 rules and/or ensuring the consistent application of Article 36? Please specify

what could ensure more consistency (e.g. a common reporting template for credit institutions rejecting an application to open an account) [open text box, including “don’t know”/”no opinion” option] [max 250 words]

It would be appropriate for the EBA to provide CIs with guidance on what basis is acceptable for refusing to offer an account to a PSP, as distinct from other businesses. There should be a higher duty to do so. Guidance should then be offered in relation to their obligations in relation to notification. For example at what stage a refusal to onboard must be notified to the NCA, what mechanism they should use to notify the NCA, or in what circumstances the closure of an account must be notified to the NCA.

MS should also be obliged to collect, report to the EBA, and publish data at national and EU level on the number of PSPs that are de-risked or refused an account at the application stage.

<sup>[1]</sup> Amongst other questions, the targeted consultation on the SFD asked about including payment institutions and e-money institutions amongst the list of possible participants in designated systems. The SFD targeted consultation is available at [https://ec.europa.eu/info/publications/finance-consultations-2021-settlement-finality-review\\_en](https://ec.europa.eu/info/publications/finance-consultations-2021-settlement-finality-review_en)

<sup>6</sup> And mutatis mutandis e-money institutions

26. Should any other changes be made to the provisions and/or topics dealt with under Title II of PSD2? Please be specific and if possible, offer textual proposals [open text box, including “don’t know”/”no opinion” option] [300 words]

**Title III: Transparency of conditions and information requirements for payment services**

One of the objectives of PSD2 was to improve the transparency of conditions for providing payment services (see also part 1: main objectives). For example, payment service providers are required to be transparent about all charges payable by the PSU to the payment service provider, the maximum execution time of the transaction and the type of information provided to payers and payee’s after transactions have been executed. There are some exceptions and differences in the provisions on the transparency of conditions and information requirements for payments with/to countries outside of the EU (“one-leg transactions”). The following questions cover both the adequacy of the current provisions as well as any possible amendments to these.

The questions in this consultation are, in principle, about payments occurring within the EU. Please read the questions carefully in case a distinction is made for one-leg transactions.

27. In your view, are the requirements regarding the transparency of conditions and information requirements of PSD2 still adequate?

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don’t know/no opinion/not relevant.*

TITLE III						
TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS	1	2	3	4	5	6
The transparency and information requirements are still adequate: they still fit current payment needs and methods		X				
The transparency and information requirements have contributed to making electronic payments more secure		X				
The transparency and information requirements have contributed to an informed user choice between different payment products, allowing for comparisons	X					
The information and transparency requirements have improved PSUs’ understanding of their rights when using payment services	X					

The transparency and information requirements have contributed to making cross-border payments within the EU as easy, efficient and secure as 'national' payments within a Member State			X			

- b. Please explain your reasoning and provide arguments for your views. In your response, please consider whether there is any additional information that is important for you to know *before* making a payment, which is not currently part of PSD2, namely article 45 and 52. Conversely, do you consider any of the currently required information irrelevant, and better be removed? [open text box, including “don’t know”/”no opinion” option] [max. 500 words].

No further information required. The information required by articles 45 and 52 respectively are sufficient and such disclosure obligations must not be increased. Any further information provided to the payment service user prior to the payment transaction (as required by 45) or prior to their entering into the framework contract (as required by 52) will merely create confusion on the part of the payment service user.

Please note that it is not just PSD2 articles 45 and 52 that set down the information that must be provided to the customer prior to the customer making a payment. For instance, the Distance Marketing of Financial Services to Consumers (and its new iteration forming part of the Consumer Rights Directive) sets out information that must be disclosed in the framework contract (in addition to the disclosures already required by article 52).

Please further note that the Cross-Border Payments Regulation provides more disclosure requirements in addition to articles 45 and 52 that the PSP must disclose to the customer prior to the customer making a payment.

Ultimately, the customer is provided with a considerable amount of information before they make a payment. These requirements are significant in volume and do not merely arise from articles 45 and 52 of PSD2.

There may be some uncertainty whether a service is offered to a payer when a PISP is acting on behalf of a payee, and this merits some clarification. We do not believe any additional disclosure obligations are required in legislation, but clarity, together with a simplification of relative obligations of PIS and ASPSPs would be helpful.

There are instances, however, where a number of service providers may be involved in delivering a payment service to the customer; and different arrangements result in different contracting parties. The customer should be able to clearly discern the parties with whom the customer is contracting from their framework or single transaction contract.

- c. For all one-leg transactions, are you of the opinion that currency conversion costs should be disclosed before and after a payment transaction, similar to the current rules for two-leg payment transactions that involve a currency conversion included in the Cross-border payments Regulation that are currently only applicable to credit transfers in the EU? [open text box, including “don’t know”/”no opinion” option] [max. 500 words].

No, one-leg transactions should not be subject to the same information requirements as credit transfers within the scope of CBPR. Please note that the scope of CBPR is two-leg and NOT one-leg. There is no basis to make any proposed new requirements more extensive than that of CBPR. The purpose of CBPR is to promote cross-border payments within the EU and not cross-border payments generally. Further, from an operational perspective, an EU PSP may not be able to specifically guarantee conversion rates for certain currencies (such as non-fiat currencies); accordingly, it would not be possible to provide the estimated value of the transaction in the target currency (as required by CBPR) for one-leg transactions as such an estimated value may not be accurate. If the estimate provided is not sufficiently precise, it is of little value to the consumer. We therefore do not agree with extending CBPR disclosure requirements to one-leg transactions. We could, however, agree to provide such information after the transaction but please note this is not the existing requirement under CBPR.

- d. For one-leg transactions, should any other information be disclosed *before* the payment is initiated, that is currently not required to be disclosed, such as the execution time? [open text box, including “don’t know”/”no opinion” option] [max. 200 words].

No, it is not possible for an EU PSP to undertake a maximum execution time to a payment service user for a one-leg transaction. The transaction may be taking place over a payment system over which the EU PSP has no control in terms of maximum execution times. The payment transaction may also be taking place over a payment system that is subject to completely different regulatory requirements to that of Europe. The Financial Stability Board has produced targets for addressing the challenges of cross border payments; including targets on the speed at which cross-border retail payments will reach recipients. However, please note that such targets will not be in place until 2027. Without international payment systems being subject to the same regulatory standards as payment systems within Europe, it is not operationally possible for an EU PSP to guarantee a maximum execution time for one-leg transactions.

**28.** Should any other changes be made to the provisions and/or topics dealt with under Title III? Please be specific and if possible, offer textual proposals [open text box, including “don’t know”/”no opinion” option] [300 words]

- The MS derogation regarding the treatment of microenterprises as set out in Art. 38(2) PSD2 merits review with a view to removal. Microenterprises are not consumers and need not be

treated as such.

- Article 42(1): the values in this article should be increased to reflect at least inflation if not increased to an individual transaction limit of EUR100, and spending/storage limits of EUR500.
- Article 42(2): For national payment transactions, we have not found any significant argument for MS to reduce the limits set out at Article 42(1). There are however good reasons to double this value, and this should continue to be available. We similarly propose that the e-money storage limit should be increased to EUR1,000 to reflect the passage of time and inflation.
- Article 51(1) providing information through an app or a dedicated online interface (e.g. online account) should be treated as providing information on a durable medium. Consumer practices have changed and it is beneficial to amend provisions to keep up with consumer behaviour.
- Article 54(1) sets out the means by which unilateral changes to a framework contract are permitted. This is an important feature and must be kept, and furthermore, MS consumer protection law should not be permitted to override this important tool used to manage contractual relationships with PSUs. The PSD2 already provides the necessary safeguards and the intervention of MS laws would create inconsistent (and differing) treatment across the EU. Introducing an obligation for consumers to actively accept proposed changes in order to continue using the service is unnecessary and burdensome.
- If the change is beneficial to the consumer, the notice period should be less (e.g. two weeks as would be permitted by article 3 of the Unfair Contract Terms Directive ). This ensures any beneficial changes will be introduced swiftly for the benefit of the consumer.

#### **Title IV: Rights and obligations in relation to the provision and use of payment services**

Another important aspect of PSD2 are the rights and obligations of all parties involved, for both payment service users and payment service providers. These measures are intended to make payments safer and more secure, and to ensure a high level of protection for all PSUs across Member States and to strengthen consumers' rights. Title IV includes, inter alia, certain rules on applicable charges, maximum execution time, irrevocability, the rights to refunds, rules for liability, and the requirements regarding access to payment accounts (who has access, how and under which circumstances). Furthermore, it contains requirements on operational and security risk and on strong customer authentication. The following questions are about the adequacy of the current provisions and whether adjustments to legislation are necessary in light of the developments that have taken place in terms of payment user needs and fraud.

Not all provisions under Title IV apply in case of payments to/from countries outside of the EU ("one-leg transactions"). In principle, the questions in this consultation are about

payments occurring in the EU. Please read the questions carefully in case a distinction is made for one-leg transactions.

**29. Question 29.** In your view, are the requirements for the rights and obligations in PSD2 still adequate?

a. To which extent do you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

TITLE IV						
RIGHTS AND OBLIGATIONS	1	2	3	4	5	6
The rights and obligations as described in PSD2 are clear						
- For PSUs		X				
- For PSPs			X			
The rights and obligations included in PSD2 are adequate						
- For PSUs	X					
- For PSPs		X				

b. Please explain your reasoning and provide arguments for your views (500 words maximum). In case you find that the rights and obligations of stakeholders are not clear or incomplete, please elaborate. [open text box, including “don't know”/”no opinion” option]

***Common provisions***

**30.** In your view, should the current rules on the scope with regard to rights and obligations (Art. 61) be changed or clarified? If yes, please explain why, refer to specific articles to be changed and include suggestions. [open text box, including “don't know”/”no opinion” option] [max. 200 words]

**31.** In your view, **are rules on applicable charges in PSD2 (Art. 62) adequate?**

a. To which extent do you (dis)agree with the following statement:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

APPLICABLE CHARGES	1	2	3	4	5	6
The provisions on applicable charges as laid down in Article 62 are adequate		X				



- b. In your view, should the right of the payee to request charges be further limited or restricted (e.g. regarding “3-party-card-schemes”) in view of the

need to encourage competition and promote the use of efficient payment instruments? [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

The surcharging ban in article 62(4) should not be amended to include three-party schemes. Any subsequent proposal following PSD2 must be consistent with existing law. The Interchange Fee Regulation excludes three-party schemes from the obligations set out in Chapter 2 of that Regulation. Accordingly, PSD3 must be consistent with the scope of the Interchange Fee Regulation.

- c. Please explain your reasoning and provide arguments for your views on the provisions on applicable charges. In case you believe the provisions should be changed, please elaborate. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

The SHARE provision in article 62(2) should be deleted to allow for new products and services that could indeed have such SHARE fee structures. Recital 65 provides that the SHARE provision was included merely for efficiency. Accordingly, it should be removed to allow for products and services that were not anticipated in 2015.

- 32. In your view, are rules on the derogation for low value payment instruments and electronic money in PSD2 (Art. 63) still adequate?** If no, explain your answer [open text box, including “don’t know”/”no opinion” option] [max. 200 words]

**Article 63(1):** reduced obligation requirements for low-value payment instruments and e-money - the values in this article should be increased to reflect at least inflation if not increased to an individual transaction limit of EUR100, and spending/storage limits of EUR500.

**Article 63(2):** we make similar comments to those made above under Title III. For national payment transactions, MSs should not be permitted to reduce the limits, but only to double the amounts in Article 63(1). Same comments as above for Title III. The e-money storage limit should be increased to EUR1,000 to reflect the passage of time and at least the inflation.

### *Open banking and beyond*

PSD2 laid down the rules of ‘open banking’, where a payment service user could securely share certain data of their payments account in order to receive some regulated services from third part providers. The review intends to investigate the current state of ‘open banking’. This also relates to [‘open finance’ for which there is another targeted consultation](#).

- 33. In your view, are the requirements regarding open banking in PSD2 still adequate?**

- a. To which extent to you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don’t know/no opinion/not relevant.*

OPEN BANKING	1	2	3	4	5	6
The rules on access to and use of payments account data in PSD2 are adequate (Art. 66, 67 and 68)				X		
PSD2 ensures a safe sharing of payments data	X					
The provisions on consent management are adequate				X		
When providing consent to a third party to access payment data, is it clear which party is accountable/liable				X		
PSD2 rules on access to payments accounts do not create unnecessary barriers to access these accounts and provide services				X		
PSD2's open banking regime is successful		X				

- b. Please explain your reasoning and provide arguments for your views, in particular regarding your opinion on the success of open banking. In case

you believe provisions on access to accounts should be changed, please explain why, refer to specific articles to be changed and include suggestions. If your remark is about a particular type of service which depends on access to payment accounts (CAF<sup>7</sup>, PIS or AIS), indicate to which service(s) your argument(s) relate. [open text box, including “don’t know”/“no opinion” option] [max. 500 words]

**Article 66:** There is legal uncertainty regarding access to payment accounts for PSPs offering PIS to payees (merchants). Article 66 should be updated to reflect that the PSU may be either the payer or payee as follows:

Article 66 (1) provides the right for ‘*a payer*’ to make use of a payment initiation service provider..’. To provide legal clarity, and reflect the contractual reality of many PSPs offering PIS, we suggest the term ‘payer’ should be amended to ‘payment service user’.

Similarly, Article 66 (3)(c) provides that the PISP will only provide information about the PSU to the ‘payee’. As the PSU of a payment initiation service can be either the payer or the payee, this provision should also reflect that information can be provided to ‘...either the payer or payee..’.

**Article 66(3)(g)** provides that PISPs should not ‘*use, access, or store data*’ for purposes other than the provision of PIS. Limited interpretation of the data required to provide PIS has introduced a constraint on the range of data available to PISPs for transaction execution risk analysis before initiating a payment. With the result that a PISP must have additional AIS permissions to access account data to assess the certainty of a payment being executed and to conduct fraud risk analysis. This is not only a barrier to market entry, but it limits the use of PIS in retail and e-commerce. We suggest that further expansion on the perimeter of data which is made available to PISPs is considered.

**Article 66 (4)(b)** provides the basis for account servicing providers to immediately provide the PISPs with “.. all information on the initiation of the payment transaction and all information accessible to the account servicing payment service provider”. This means that if the ASPSP is not aware immediately after the receipt of the payment order whether the payment will be executed or not, it is not required to provide such information to the PISP at a later stage. Availability of accurate payment execution status is critical for PIS, particularly if it is to become a viable alternative payment type for retail payments (e-commerce or physical POS).

We suggest that this article could explicitly require that the ASPSP should provide accurate payment execution status information immediately following receipt of a payment order.

**Article 67:** Art 67 (2)(d) provides that account information providers (AISPs) shall “*access only the information from designated payment accounts and associated payment transactions*”. This has led to broad interpretation by ASPSPs and varying datasets being made available to AISPs. Thus limiting AISPs ability to provide consumers and businesses with comprehensive services envisaged by PSD2 by reinforcing the informational imbalance between ASPSPs and AISPs.

In order to level the playing field between all parties offering AIS services, we suggest that this provision is updated to clarify the scope of payment account information to be provided to AISPs, and ensure that AISPs can access all data on a payment account. Data parity between ASPSP’s online channels and data accessible to AISPs is not adequate; all payment account data must be made available. In order to achieve this it may also be necessary to further explain the definition and scope of ‘*sensitive payment data*’ to facilitate

a common understanding of the data elements to be made available.

**Consent**

The EDPB has misinterpreted the meaning of “explicit consent” in article 94(2).

To remedy this, article 94(2) must be amended to either:

1. remove “explicit”; or
2. clarify “explicit consent” does not mean contractual consent.

The current misinterpretation can be misconstrued as to indicate that a PISP must enter into a contract with a payer. This is incorrect and inconsistent with PSD2.

34. Next to the rules on access, PSD2 includes ways in which the access to accounts can be limited, for instance by an Account Servicing Payment Service Provider (ASPSP).

- a. Please consider the following suggestions and indicate whether you think the suggestion should be implemented or not.

ACCESS TO ACCOUNTS	Y	N	Don't know/no opinion
The provision on ASPSPs denying AIS- and/or PIS providers' access to payment accounts should be further facilitated:			
- by further clarifying the concept of “obstacle” (see RTS SCA & CSC)	X		
- by further clarifying the concept of “objectively justified and duly evidenced reasons” (Art. 68(5)).	X		
The manner in which access to payment accounts is organised should be further/more extensively regulated		X	
EU legislation on payments should include a common API standard		X	

- b. Please explain your answers [open text box, including “don't know”/”no opinion” option] [max. 500 words]

The EBA's Opinion on obstacles under Article 32(3) of the RTS on SCA and CSC sought to remove subjectivity for competent authorities reviewing fallback exemptions, and ensure that the obstacles in PSD2 APIs are identified and removed without undue delay.

Further clarity in level 1 PSD2 text on the concepts of ‘obstacles’ and ‘justified and evidenced reasons’ for denying TPPs access to payment accounts would be beneficial in assisting regulators seeking to identify obstacles and assess PSD2 interfaces for compliance with regulatory requirements.

ASPSPs have faced significant costs in developing compliant access interfaces to payment accounts. This has had particular impact on smaller ASPSPs who, as yet, have not seen significant demand for account data from the AISP ecosystem.

Indeed, some of our Members have implemented, and now maintain, PSD2 compliant dedicated API interfaces to payment accounts, and report no demand at all for access from TPPs. Having to provide a dedicated interface for data access where there is no market demand, is a barrier to entry for small innovative financial solutions.

Therefore, we consider that any legislative change to mandate the use of a dedicated interface/API should be proportionate in order to maximise the effect of standardising account access via APIs, but minimising the impact on smaller ASPSPs, or those operating in niche areas. There is an opportunity to introduce thresholds (volume of payment accounts, volume of transactions, etc.) below which ASPSPs could launch and operate payment services without having to provide TPP access to payment accounts data. This could also be coupled with an exemption process for those ASPSPs whose payment services and accounts will see no demand from TPPs for access.

We consider that further alignment of industry API standards will help to mitigate against implementation complexity and cost. In particular, when considering payment initiation APIs, there are a number of areas where further standardisation would assist PSPs to develop innovative PIS solutions.

However, legislating for a common PSD2 API standard risks the technical neutrality of the regulatory framework, and limits the opportunity for market innovation. It also does not consider the experience from existing PSD2 standardisation initiatives, that common standards do not result in common API implementations, performance, or availability. TPPs still have to navigate a complex ecosystem to maintain access to PSD interfaces. As a result, a thriving market of intermediary PSD2 payment API platforms (who manage the complexity of API fragmentation) has emerged as a direct result of PSD2, and the impact of any requirements to use a common API standards on this sector would have to be carefully considered.

There is also the risk that maximum harmonisation principles applied at the API standards level may result in a narrowing in scope of PSD2 API functionality, diminishing their usefulness and driving more functionality to commercial API services. We therefore do not consider it necessary for a legislative solution for common API standards.

**35.** Access to payments data via interfaces is currently provided for free to third party providers.

a. Should access to payment data continue to be provided for free?

Yes	

b. If your answer above was no, please elaborate. [open text box] [max. 250 words]

We recognise that requiring ASPSPs to provide data without compensation has led to misaligned incentives in the market, and has slowed the pace of change. This will need to be addressed if access to wider financial data sets and services are proposed for an Open Finance framework. However, it would not be proportionate to overlay a compensation

framework on PSD2. Nor that the Directive becomes overly prescriptive on the scope of API functionality that must be delivered for free, thus potentially restricting the innovation and competition that continues to be achievable under a revised PSD2.

**36.** What is your overall assessment about open banking in the EU? Would you say that it should be further extended? (500 words maximum) [open text box, including “don’t know”/”no opinion” option]

There is no doubt that PSD2 has pioneered the approach to open banking and shown a positive impact on competition and innovation in payment services, supporting the creation of new payment businesses and solutions. The size of the market of third party providers across Europe alone is a key indicator of success.

Nonetheless there have been significant challenges to applying a legal framework to an area defined by rapid digital innovation. Firms have had to navigate numerous pieces of legislation, regulatory guidance, opinions, and industry thinking before turning to technical standards and solution implementation. The substantial investment by all participants in the open banking ecosystem over a prolonged period of time cannot be underestimated, and has far exceeded original costs envisaged by regulators.

One key issue is that ASPSPs have been developing compliant access interfaces to payment accounts. This has had a disproportionate impact on smaller ASPSPs who, as yet, have not seen significant demand for access by TPPs. Indeed, some of our Members have implemented, and now maintain, PSD2 compliant interfaces to payment accounts, and report no demand at all for access from TPPs. The obligation to provide an interface for data access by TPPs could be developed to distinguish between ASPSPs offering services that are likely to be sought by TPPs and those that are niche and unlikely to be sought.

We consider that the ultimate value of PSD2 implementation will be fully realised when the data sharing regime is expanded beyond payment accounts to other finance sectors. If compelling customer-driven propositions can develop that encourage data providers to facilitate standardised, high quality access to data, the competition and innovation benefits of PSD2 will be greatly magnified.

As discussed in our response to question 35, the investment made by providers of payment accounts under PSD2 to support real-time networked access to account data has been substantial. Therefore, any expansion of the open banking framework should be carefully considered against customer requirements and expected benefits, so that incentives can align and the cost of upgrading infrastructure to allow access to data is focused where there is likely to be significant market demand.

Finally, further alignment of industry API standards is desirable, this will reduce implementation complexity, cost, and will encourage pan-European solutions to emerge. This is particularly true for the PIS market. This should not be defined in any legislative provisions, *except as a desired outcome, enabling market evolution* and standards that reflect developing market requirements.

<sup>7</sup> Confirmation on the availability of funds.

**Liability and refunds**

**37. In your view, are the provisions on liability and refunds in PSD2 still adequate?**

a. To which extent to you (dis)agree with the following statements:

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

LIABILITY & REFUNDS	1	2	3	4	5	6
The provisions on liability in PSD2 are still adequate				X		
The provisions on refunds are still adequate (Art. 71, 73, 74, 76 and 77)				X		
The unconditional refunds requirement has improved consumer protection		X				
The allocation of liability when executing a payment transaction is adequate		X				

b. In your view, should changes be made to the PSD2 provisions on liability and refunds? Please consider the following suggestions:

	Y	N	Don't know/no opinion
The provisions on refunds should be amended to cover:			
- All SEPA credit transfers		X	
- Only SEPA instant credit transfers		X	

c. Please explain your answers to (a) and (b). In case you are of the opinion that any other changes should be made to the PSD2 provisions on liability and refunds, please include those in your answer [open text box, including “don't know”/ “no opinion” option] [max. 250 words]

**Article 74(1):** the maximum liability for a payer as set out in this article should be increased to EUR150. This would reflect inflation as well as discourage carelessness. Further, MS should not have a derogation permitting them to reduce the maximum liability as this creates differing treatment across the EU for different consumers.

**Article 76:** This article does not need to be changed to expressly include SEPA credit transfers. This is because a SEPA credit transfer (which is a payer-initiated transfer) is initiated by or through a payee when that payee (i.e. the merchant) contracts with a PISP that then provides a PIS to the merchant's customers (i.e. payers) (presumably through an API integrated into the merchant's online store) that result in SEPA credit transfers to the payee. Article 76 already applies to ALL transactions initiated by or through a payee and does not delineate between payment methods. Accordingly, this language already captures the situation where a merchant contracts with a PISP to initiate the payment. There is no need to amend the article to address a model whereby a merchant contracts with a PISP.



- 38.** Article 75 of PSD2 allows funds to be blocked in case of a payment where the exact final amount of the payment is not yet known at payment initiation. Is this provision adequate, or should a maximum limit be introduced to the amount of funds that can be blocked? Please explain [open text box, including “don’t know”/ “no opinion” option] [max. 250 words]

We do not see merit in introducing maximum limits to the amount that can be blocked by the payer’s PSP in this scenario. Such an approach would introduce further consumer friction in the delivery of payment services especially in environments where the payer is not present in the payment flow at all times (hotel bookings, car/taxi hire, order fulfilment). The payer’s rights are already secured by the requirements placed on the payer’s PSP (i) to obtain secure customer consent for the exact amount to be blocked, and (ii) to release blocked funds without undue delay after receipt of a payment order/confirmation of the final amount.

### *Execution of payment transactions*

- 39.** Chapter 3 of Title IV covers the execution of payment transactions, including provisions on when payment orders should be received, the irrevocability of a payment order and the execution time.
- a. To which extent to you (dis)agree with the following statements:

EXECUTION OF PAYMENT TRANSACTIONS	1	2	3	4	5	6
The provisions on payment orders and amounts transferred are still adequate	X					
The provisions on execution time and value date are still adequate	X					
The provisions on liability (Art. 88-93) are still adequate		X				

- b. Should the current maximum execution time allowed for payments (Art. 83) within the EU (“two leg”) be adjusted? If yes, please indicate why and include a suggestion. [open text box, including “don’t know”/“no opinion” option] [max. 250 words]

No, the current execution time within the EU (by the end of the following business day following receipt of the payment order) need not be adjusted. Although technology allows for payments to be executed in a shorter period of time, this does not mean that the maximum execution time should be reduced. PSPs are free to execute transactions within a shorter time frame than by the end of the following business day after receipt of the payment order; however, they should not be required to by regulation.

- c. For payments to and from countries outside of the EU (“one-leg”), should action be taken at EU level with a view to limiting the maximum amount of time (execution time) for the payment (or transfer) to reach its recipient? If yes, please indicate why and include a suggestion. [open text box, including “don’t know”/“no opinion” option] [max. 250 words]

No, it is not possible for an EU PSP to undertake a maximum execution time to a payment service user for a one-leg transaction. The transaction may be taking place over a payment system over which the EU PSP has no control in terms of maximum execution times. The payment transaction may also be taking place over a payment system that is subject to completely different regulatory requirements to that of Europe. The Financial Stability Board has produced targets for addressing the challenges of cross border payments; including targets on the speed at which cross-border retail payments will reach recipients. However, please note that such targets will not be in place until 2027. Without international payment systems being subject to the same regulatory standards as payment systems within Europe, it is not operationally possible for an EU PSP to guarantee a maximum execution time for one-leg transactions.

- d. If, in your view, the provisions under (a) are not adequate, please explain and provide arguments for your views. If you have any suggestions for changes (other than those under (b) and (c)), please include these in your answer. [open text box, including “don’t know”/ “no opinion” option] [max. 250 words]

The provisions in articles 88-93 are generally adequate. Please note that it is important to retain the language in 88(1) and 88(2) as it stands. This ensures that PSPs can rely on the instructions given to them by the payment service user and execute transactions without concern they will be unfairly held liable for the payment service user's mistake.

**40.** In your view, is the unique identifier (Art. 88) sufficient to determine the payment account of the payee or should, for example, the name of the payee be required to before a payment is executed?

<u>The unique identifier is sufficient</u> X	Other (please specify) [max. 100 words]
The unique identifier must be combined with the name of the payee	Don't know
The unique identifier must be combined with something else (namely):	

***Operational and security risk***

**41.** In your view, are the requirements regarding operational- and security risk in PSD2 still adequate?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

OPERATIONAL AND SECURITY RISK	1	2	3	4	5	6
The provisions requiring PSPs to implement procedures to manage security risks, including fraud, are still adequate		X				
The provision requiring PSPs to establish an operational and security risk framework is clear (Art. 95)	X					
The security measures introduced by PSD2 have made payment service providers more secure/resilient		X				
The security measures introduced by PSD2 adequately protect the confidentiality and integrity of payment service users' personalized security credentials			X			
The provision on major incident reporting (Art. 96) is adequate		X				

*Note: you will be able to explain your responses and elaborate under question 43.*

**42. In your view, are the requirements regarding fraud prevention in PSD2, in particular those on procedures and reporting, still adequate?**

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don't know/no opinion/not relevant.*

FRAUD PREVENTION – PROCEDURES AND REPORTING	1	2	3	4	5	6
The provisions requiring a PSP to provide documentation on how they deal with fraud (data collection, controls and mitigation measures) (Art. 5) are still adequate		X				
The provision requiring PSPs to provide an annual report on fraud (Art. 95(5)) is still adequate		X				
The provision limiting the use of payment instruments and the access to payment accounts by PSPs (Art. 68) is still adequate				X		
The provision regarding the notification of PSUs in case of suspected fraud helped to prevent fraud			X			
The provision regarding the right of PSPs to block a payment instrument in case of suspected fraud helped to prevent fraud	X					
The provision regarding the right of PSPs to block a payment instrument in case of suspected fraud (Art. 68(2)) is still adequate		X				

The provision allowing ASPSPs to deny TPPs access to a PSU's payment account on the suspicion of unauthorised access or fraud (Art. 68(5)) is sufficiently clear				X		
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**43.** With regard to the provisions on operational-and security risk, including those on fraud prevention: should any changes be made to these provisions?

a. Are the current provisions future-proof?

<u>Yes X</u>	Don't know/no opinion
No	

b. Please explain your reasoning for (a) and provide arguments for your views (e.g. refer to your responses to the previous two questions (41 and 42). If, in your view, any changes should be made to the current provisions describing the necessary operational and security risks procedures payment service providers need to have in place (Art. 95, 96), include these in your response. [open text box, including “don't know”/“no opinion” option] [max. 500 words]

Operational and security risks:

Operational and security risks are only referenced at a high level in Art 95 of PSD2. The risks are detailed in Level 2 text (*the EBA Guidelines on ICT and Security Risk Management*). These Guidelines cover an appropriate range of operational and security risks; they are next scheduled for review in 2022. There is some uncertainty on the treatment of Operational Resilience risks due to the publication of the EC Draft DORA Regulation. An area where additional regulatory guidance is required is the exchange of risk information from NCAs and the ECB to regulated entities. It is not clear at present whether the operational risk monitoring and incident reporting requirements that the DORA regulation introduces are to be treated as part of the operational and security risk frameworks that regulated entities have already deployed to comply with the relevant requirements in PSD2.

Overall, we are in favour of IT security-related provisions being set out at a high level as objectives or properties rather than specifying solutions in future revisions of the Directive.

In the event that this is not achieved we suggest that:

- Level 2 text (RTS/GLs/Opinions) are informed by product and market developments on a regular basis; the EBA should therefore be given a mandate to implement changes to keep pace with market and technology changes.
- Similarly, the process of producing RTS and GLs that are clarified further via Q&As, often over a period of several years, is out of step with the current pace of business, market and technology changes. This process should be revised to enable the delivery of clarifications at an increased pace.

**44.** If you are a payment service provider: how have your payment fraud rates (as % of the total value of payment transactions) developed between 2017 and 2021?

Please use a comma for decimals, e.g. 3,5%

a.	Card present	Card not present
Fraud % by 31/12/2017		
Fraud % by 31/12/2018		
Fraud % by 31/12/2019		
Fraud % by 31/12/2020		
Fraud % by 31/12/2021		

- b. Currently, what type of fraud is your main concern/causing most problems (if available, illustrate with figures)? Is there a particular type of payment transaction that is more sensitive to fraud? Please elaborate [open text box, including “don’t know”/”no opinion” option] [max 250 words]

The respondent is not a payment service provider, it is an industry association; however, please note that one of our main concerns relating to fraud is fraud arising from social engineering attacks. This is where the fraudster uses psychological manipulation to convince the account holder (PSU) to initiate a payment to an account controlled by the fraudster.

One concern we have with respect to this fraud typology is of PSPs being burdened with the full liability for losses arising from such fraudulent transactions where the PSU is absolved of all responsibility.

Firms have put in place various controls and processes to mitigate the risk of fraud; however, in some jurisdictions, firms are now being held liable for the loss arising from this fraud (despite having such mitigating measures in place). The EU must not levy such liability on PSPs (in the manner that other third-country jurisdictions have done) where the PSP is not at fault and has otherwise put in place mitigating fraud controls. Whilst firms can put in place every measure to mitigate the risk, in the case of this type of fraud, the PSP should not be held wholly responsible for the customers’ actions.

**45. In your view, are the requirements regarding fraud prevention in PSD2, in particular those on strong customer authentication (SCA), still sufficient?**

- a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don’t know/no opinion/not relevant.*

FRAUD PREVENTION: STRONG CUSTOMER AUTHENTICATION	1	2	3	4	5	6
The requirements for SCA (Art. 97) are still adequate				X		
SCA has made electronic payments safer		X				
The provisions on SCA do not adversely impact the TPPs' business models					X	
If you are a PSP, the provisions on SCA did not lead to obstacles in providing payment services towards PSUs <sup>8</sup>					X	
The provisions on SCA do not leave room for circumvention		X				
The implementation of SCA has not led to the exclusion of categories of customers/citizens					X	
The implementation of SCA did not negatively impact your business				X		

- b. Please explain your reasoning and provide arguments for your views, including possible suggestions for changes to the provision (if any). If your business experienced any problems due to the implementation of SCA, please include these in your answer. [open text box, including “don’t know”/”no opinion” option] [max. 500 words]

The detailed SCA requirements prescribed in the RTS have imposed costs on PSPs significantly beyond those originally envisaged. PSPs have expended time, effort and costs in understanding, preparing for and implementing solutions compliant with regulatory technical standards that became outdated as soon as they were published, hindering innovation and competitiveness in the market. Further changes to SCA should be focused on the outcomes, with industry determining the most appropriate measures to address fraud risk.

It is generally accepted that the initiation of payment transactions where SCA is applied involves more friction on the PSU side. Current SCA rules emphasise active authentication techniques, with explicit customer intervention; this approach limits choice and distorts the customer experience, when frictionless solutions might also be available.

Payment ecosystem participants (Acquirers, Issuers) have been trying to limit such friction through the balanced use of SCA Exemptions (Low Value, Trusted Beneficiary, etc.). There has also been growing use of Merchant-Initiated Transactions (MITs) that are excluded from SCA requirements.

The requirement to apply SCA (and Dynamic Linking) has severely impacted the use of remote payments in certain Use Cases (Travel, Entertainment) that involve the use of service delivery intermediaries and aggregators. Many of these Use Cases continue to operate on the back of sector-specific SCA exemptions/waivers granted by NCAs.

The current treatment of all payment account interactions listed in Art.97(1) of PSD2 as a trigger for SCA appears to ignore the different risk profiles of such interactions (balance/history look up, payment transaction initiation/execution, account profile lookup/revision). This monolithic treatment of account interaction types has resulted in **multiple SCAs being performed by payment ecosystem participants to complete a single payment transaction**. Common examples include (i) The use of digital wallets to initiate a payment when both the wallet funding and the outward payment transaction require the execution of SCA or (ii) Combined AIS/PIS payment account accesses where a user first reviews account information before subsequently initiating a payment transaction.

Payment industry participants have attempted to reduce the impact of this blanket regulatory treatment of different payment account interactions for SCA purposes by re-engineering payment flows and making use of SCA exemption or exclusions (e.g. increasing use of MITs). However, there is growing industry concern that this may not be a viable, long-term approach. The revision of Art. 97 (1) of PSD2 to afford greater PSP flexibility to apply SCA only in higher-risk transactions would offer a more viable alternative. Under the proposed revised treatment of account interactions, PSPs could still be required to apply appropriate customer authentication techniques (e.g. leveraging a single authentication element type) for lower-risk interactions.

Therefore, it would be useful to define more tightly the payer activities that must - trigger SCA in Art.97 (1) of PSD2. Specifically, condition (c) should be revised to identify the actions - carried out over a remote channel - that must trigger SCA. The specification of SCA exemptions should continue to be included in Level 2/3 legal text that can be revised more frequently to address evolving fraud threats.

- c. The current SCA regime prescribes an authentication via a combination of at least 2 distinct factors, or elements, to be applied in case of payer initiated transactions (see Art. 97(1)). Should any changes be made to the current SCA regime?

If yes, please explain your answer, and if you have specific design or application suggestions for SCA, please include these. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

PSD2 SCA rules limit the number of options/technologies available to payment market participants, meaning that most forms of SCA combine passwords (knowledge) with some sort of form of device-based authentication factor as possession (e.g., OTP, app-based notifications). The narrow interpretation of inherence-based SCA elements to include only a limited range of behavioural biometrics set out in the EBA Opinion (EBA- Op-2019-06) does not take into account the extensive experience of the payment sector in data-driven authentication, thus limiting the options available to firms. This has added further friction to PSU everyday interactions with payment accounts. The introduction of SCA has also impeded the ability of PSPs to deliver their services to PSUs with lower levels of digital literacy (or access to digital devices) or to vulnerable customers. We hope that a revision of PSD2 would largely focus on payment account security objectives rather than specify acceptable authentication elements.



It is generally accepted that the initiation of payment transactions where SCA is applied involves more friction on the PSU side. Current SCA rules emphasise active authentication techniques, with explicit customer intervention; this approach limits choice and distorts the customer experience, when frictionless solutions might also be available.

- d. The current regime requires SCA to be applied in case of payer-initiated transactions. Should the application of SCA be extended to payee-initiated transactions too, for example merchant initiated transactions? If yes, please explain your answer [open text box, including “don’t know”/“no opinion” option] [max. 250 words]

No.

Please note that Retailers and Acquirers are making increasing use of Merchant Initiated Transactions (MITs) including Direct Debits, Standing Orders to receive payment using transaction types that are excluded from the SCA requirements in PSD2. ***If MITs were moved within the perimeter of SCA requirements, the payment industry would suffer significant additional disruption.*** MOTO transactions are also currently out of scope of the SCA requirements in PSD2 unless a remote electronic channel is used to initiate such transactions. Our view is that MOTO transactions should remain out of scope SCA requirements since they experience low levels of fraud.

Separately, refunds, even if technically initiated by the payer (merchant) should not be subject to the SCA requirements. Due to their nature, such payment transactions experience low levels of fraud; applying SCA to such payments would introduce an unwarranted level of friction/delays for processing refunds, potentially resulting in poor merchant customer experience.

**46. Contactless payments** can be exempted from SCA, depending on the value of the payment and the number of consecutive payments having been performed without SCA.

<sup>8</sup> Leaving aside any costs incurred for the technical implementation of SCA. For costs and benefits related to the (implementation of) PSD2, please see question 7.

- a. What is your opinion about the applicable value limit to single contactless payments (without SCA)? If the EUR is not the main currency in your country of residence, please convert the 50 EUR limit into your own currency and use that as a point of reference for your response.

The 50 EUR limit should remain	<input checked="" type="checkbox"/> The limit should be higher than 50 EUR
The limit should be lower than 50 EUR	<input checked="" type="checkbox"/> PSPs should be able to fix their own limit

- b. There is also a limit to the cumulative value of contactless payments. These limits differ per country or per PSP. What is your opinion about this cumulative limit for contactless payments (without SCA)? Please provide one response for the EUR-limit, and one for the payments-limit. If the EUR is not the main currency in your country of residence, please convert the 150 EUR limit into your own currency and use that as a point of reference for your response.

Value in EUR	Number of consecutive transactions
The limit of 150 EUR should remain	The limit to consecutive transactions (5 times) should remain
The limit should be lower than 150 EUR	The limit to transactions should be lower than 5 consecutive transactions.
The limit should be higher than 150 EUR	The limit to transactions should be higher than 5 consecutive transactions
<input checked="" type="checkbox"/> Other, please specify [max 100 words] <u>PSPs should be required to apply SCA in accordance with a risk-based approach rather than a prescriptive approach (such as a hard limit of EUR 150).</u>	<input checked="" type="checkbox"/> Other, please specify [max 100 words] <u>PSPs should be required to apply SCA in accordance with a risk-based approach rather than a prescriptive approach (such as a hard limit of 5 consecutive transactions).</u>

- c. In case you are of the opinion the limit(s) should change, please explain your views [open text box, including “don’t know”/”no opinion” option] [max. 250 words].

PSD3 should adopt a risk-based SCA application approach whereby Strong Customer Authentication is only applied where necessary (i.e. for high- risk payment account interactions). Such an approach would reduce the likelihood of legitimate transactions being declined and lower transaction abandonment rates. Allowing PSPs to deploy holistic user authentication frameworks that leverage “adaptive authentication” approaches to reflect the varying risks of attempted payment account interactions can preserve current SCA PSU security benefits while minimising friction in the customer experience.

The adoption of a prescriptive approach to implementing SCA in Level 1 text - rather than **setting out a set of security objectives to be attained** through the use of SCA implementation approaches- may give rise to greater systemic payment ecosystem security risks. Attacks that target a specific SCA implementation can impact the entire payment ecosystem in the Union. The adoption of a prescriptive SCA implementation

approach in Level 1 text that changes slowly can also limit innovation and the use of novel technologies that are showing potential to address payment security risks (AI, machine learning, behavioural biometrics, digital ID Wallets). In this context, future revisions of PSD2 could consider allowing the use of alternative authentication mechanisms that can demonstrate equivalent strength to the current definition of SCA (e.g. one or multiple authentication elements of the same type coupled with additional PSP layered data) to attain the stated security objectives.

47. Overall, do you believe that additional measures are needed to combat/prevent fraud in payments, and to make payment service providers more secure/resilient? If yes, please explain and include drafting proposals for measures. [open text box, including “don’t know”/”no opinion” option] [max. 500 words]

Rather than introducing additional measures, the EMA advocates that PSPs are already implementing effective measures against fraud, based on the specific typologies of fraud encountered by different PSPs, and adapted to their own business models. Measures to combat fraud are only efficient when perfectly tailored to the PSP’s needs, and when they are based on the knowledge of the PSP on its own fraud risks and of the current and emerging fraud typologies that may impact its clients. Therefore, general additional measures against frauds in payment are not needed.

***ADR procedures for the settlement of disputes and penalties***

48. Article 52(7)b requires that, for framework contracts, Member States ensure that information on ADR procedures is provided to the payment service user. Should this information also be made available for single payment transactions?

Yes	Don’t know/no opinion
<u>No X</u>	

No. Please note that article 101 already requires all PSPs to inform the PSU about competent ADR entity on their websites and general terms and conditions, including on how to access further information on the ADR entity and conditions of using it, as well as to put Article 101-compliant complaints resolution procedures in place. Due to the nature of single payment transactions, it would be impracticable and of little benefit to consumers to provide information on ADR procedures before/after each payment transaction. We support a less prescriptive approach, enabling a fit for purpose approach to be developed by industry.

49. The Enforcement section in part 2 asked your opinion on the application and enforcement of PSD2 rules by national competent authorities (NCAs). Should the PSD2 be amended with regard to sanctioning powers and penalties?

a. Please consider the following suggestions and indicate whether you think the suggestion should be implemented or not.

SANCTIONING POWERS AND PENALTIES	Y	N	Don't know/no opinion
PSD2 should be amended to lay down specific investigatory powers [e.g. to make on-site inspections, to request documents] for NCAs to detect breaches of rules		X	
PSD2 should be amended to provide for a minimum set of sanctioning powers [e.g. to impose administrative sanctions and measures, to publish the sanctions adopted] to the NCAs		X	
PSD2 should be amended to provide a minimum list of applicable sanctions [e.g. administrative penalties and fines, periodic penalty payments, order to cease and desist] available to all NCAs		X	

b. In case you are of the opinion that PSD2 should be amended to provide a minimum set of sanctioning powers, investigatory powers or a minimum list of sanctions available to NCAs please explain and include drafting proposals for amendments. [open text box, including “don't know”/“no opinion” option] [max. 500 words]

No. There is no evidence that the existing powers of the Member States to enforce the provisions of the directive are not effective. As with the majority of directives, penalties should be left up to the Member States to decide and enforce. There is no problem with this model.

50. Should any other changes be made to the provisions and/or topics dealt with under Title IV? Please be specific and if possible, offer textual proposals [open text box] [300 words]

- **Article 61(1):** this derogation should be removed and non-consumer PSUs and PSP should be free to contractually agree to disapply the provisions of the domestic implementation of Article 102 (ADR procedures). This would give the businesses the same freedom to agree their own bespoke ADR mechanisms as in other commercial arrangements.
- **Article 61(2):** The MS derogation regarding the treatment of microenterprises should be removed. Microenterprises are not consumers and should not be treated as such. Furthermore, this derogation and the matching one in Title III create inconsistent COB treatments across the EU as not all MSs apply the derogation. This will also ensure consistency with the approach to businesses in EMD2 with respect to holding e-money.
- **Article 63(1):** Regarding a reduced obligation requirements for low-value payment instruments and e-money - the values in this article should be

increased to reflect at least inflation if not increased to an individual transaction limit of EUR100, and spending/storage limits of EUR500.

- **Article 63(2):** Same comments as above for Title III. For national payment transactions, MSs should not be permitted to reduce the limits only double the amounts in Article 63(1). Same comments as above for Title III. The e-money storage limit should be increased to EUR1,000 to reflect the passage of time and at least the inflation.
- **Article 74(1):** the maximum liability for a payer resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument should be increased to reflect inflation and also to discourage careless or reckless behaviour on the part of the consumer - we suggest a new limit of EUR150. Furthermore, MS should not have a derogation permitting them to reduce the maximum liability as this creates differing treatment across the EU for different consumers.

## **Title V: Delegated acts and regulatory technical standards**

According to this title, the European Commission is empowered to adopt specific delegated acts in view of microenterprises and inflation rates (see in detail article 104). The European Commission is furthermore obliged to produce a leaflet, listing the rights of consumers (see in detail article 106).

- 51.** In your view, are the PSD2 requirements on delegated acts and regulatory technical standards adequate? Please be specific and if possible, offer textual proposals [open text box] [max. 250 words]

### ***Micro-enterprises***

The EC's power to adopt delegated acts under Article 104(a) is restricted to "adapting the reference to Recommendation 2003/361/EC in point (36) of Article 4 of this Directive where that Recommendation is amended". The EMA believes that MS derogations regarding treatment of micro-enterprises (as set out in Articles 38(2) and 61(2) and (3) PSD2) should be reviewed with a view to removal (as set out in our response to questions 28 and 50). Such removal would make the EC's power to update the reference to Recommendation 2003/361/EC obsolete.

### ***Inflation***

The EC's power under Article 104(b) to take account of inflation is restricted as regards amounts (i) specified in Articles 32(1) (on MS derogation enabling to exempt from certain requirements small PIs whose executed total value of payment transactions does not exceed EUR 3 million); and 74(1) (maximum EUR50 payer liability for unauthorised transactions). The EMA believes that amounts in Articles 3(l), 37(2), 42(1)(2), 63(1)(2) PSD2 should be revised in line with inflation (as set out in our response to question 50). We further propose that the EC should have a power to adopt delegated acts to revise amounts set out in these Articles as mentioned above.

- 52.** Do you see it as appropriate to empower the European Commission in further fields to adopt Delegated Acts? If so, please specify which fields and why? If not, why? [Open text box, including "don't know"/"no opinion" option] [max. 250 words]

The EMA does not believe that it is necessary nor appropriate to empower the EC in further fields.

- 53.** Do you see a need for the European Commission to provide further guidance related to the rights of consumers? If so, please specify which guidance and why? If not, why? [Open text box, including “don’t know”/”no opinion” option] [max. 250 words]

The European Commission needs to revise the Consumer Leaflet as it is currently unclear. The language used in the leaflet should not distinguish between banks and “other payment service providers” unless there is a specific purpose for such distinction. An explanatory statement in the leaflet clarifying that the term “payment service provider” includes banks can address potential consumer confusion in this regard.

The language used in the leaflet may have the effect of eroding consumer trust in products offered by non-bank PSPs, by suggesting that there may be an inherent advantage to utilising banks over other payment service providers. Or alternatively, that some payment services can only be offered by banks.

- 54.** Should any other changes be made to the provisions and/or topics dealt with under Title V? Please be specific and if possible, offer textual proposals [open text box] [300 words]

The Commission’s power contained in article 104(b) to update amounts in articles 32(1) and 74(1) to take account of inflation should be extended to amounts referred to in Articles 3(l), 37(2), 42(1)(2), 63(1)(2) as amounts in these articles should also be revised in line with inflation. There is no reason as to why the amounts in 32(1) and 74(1) should be revised in line with inflation whilst the monetary amounts in other articles are left to stagnate.

**Title VI: Final provisions**

The final provisions in Title VI include, amongst others, the provision on full harmonisation (see also question 8), the review clause, transitional provisions and amendments to other pieces of EU legislation

- 55.** In your view, are the final provisions listed in Title VI still adequate?  
 a. To which extent do you (dis)agree with the following statements?

*1: strongly agree; 2: somewhat agree; 3: neutral; 4: somewhat disagree; 5: strongly disagree; 6: don’t know/no opinion/not relevant.*

TITLE VI						
FINAL PROVISIONS	1	2	3	4	5	6
The provisions on full harmonisation (Art. 107) are still adequate				X		
The transitional provisions (Art. 109) of the PSD2 are adequate			X			
The amendments to other Directives and regulation (Art. 110, 111, 112) are adequate				X		

- b. Please explain your reasoning and provide arguments for your views, including possible suggestions for changes to the provision (if any). In case you are of the opinion that the amendments to other legislation were not adequate, for example because they omitted something, please specify the inadequacy and why this posed an issue. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

**Article 107:** The provisions on harmonisation are not adequate. The derogations in PSD2 have led to divergence between member states and therefore inconsistency. NCAs have varying degrees of experience on the implementation of PSD2; the derogations combined with the varying levels of experience therefore just increase inconsistency across the EU.

Accordingly, and as set out in our responses to questions 28 and 50, the following derogations should be either removed or amended:

Article 38(2) (Microenterprises) should be removed.

Article 61(1) (ADR) should be removed.

Article 61(2) (Microenterprises) should be removed.

Articles 63(1) and (2) (Low-value payment instruments) should be amended to account for inflation.

- c. In case of a revision of PSD2, would you have suggestions for further items to be reviewed, in line with the review clause (Art. 108) of the PSD2? If yes, please include these suggestions in your response and explain why these should be reviewed. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

The EMA does not consider any further items need to be reviewed; however, the European Commission must ensure that items within the scope of the existing review are reviewed diligently and with care.

- d. Do you see any other issues to be considered in a possible revision of PSD2 related to the final provisions? [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

At this stage, the EMA considers no further issues need to be considered relating to the final provisions. This may change at a later stage of the review process. Again, the European Commission must ensure that items within the scope of the existing review are reviewed diligently and with care. Responses to this consultation are curtailed by the format, namely, multiple choice questions and stringent word counts. The EMA would be available to engage with the European Commission to further provide our responses and reasoning to the questions in this consultation.



### *Any other issues*

- 56.** Are there **any other issues** that have not been raised in this questionnaire that you think would be relevant for the review of PSD2 and its possible revision? If these are specifically relevant for particular stakeholder(s), please make this known in your answer. [open text box] [max 500 words]

The current SCA definition (and subsequent EBA implementation Guidance provided in Level 2/ 3 text) have pushed the industry, in the case of card-based transactions, towards one technology (EMV 3DS) in order to comply with the requirements. As a result, payment card schemes/networks exert oversized control when it comes to developing SCA-compliant solutions for card-based authentication in remote electronic payment use cases.

Whilst the EMA acknowledges the advantages of standardising a complex authentication messaging framework so that issuers and acquirers, as well as others in the payment chain, can communicate about remote, card-based payments transaction, we support the principle that the customer-facing PSP is afforded flexibility to design a compliant customer journey.

Therefore, we would caution against reliance on a single SCA implementation “standard”. and would encourage support for alternative SCA pathways to ensure true competition. One way to achieve the latter, would be to adopt a more risk-based and outcomes-driven approach to SCA, which would provide more flexibility to allow for more varied authentication elements, delegated authentication or liability shifts to other PSPs in the payment value chain.