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EBF response to European Commission Consultation on the review of the revised payment services Directive (PSD2)

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Executive Summary

The European Banking Federation welcomes the opportunity to comment on this important consultation. As a general point, we would like to remark that this response represents the status of our thinking at the time of submission and does not prejudice any further reflection and positions the EBF may develop in the future.

It is still too early to comprehensively assess the impact PSD2 has had on the market. We would suggest that before any changes are made to PSD2, sufficient time is taken to assess the market impact thoroughly. Overall, we believe that PSD2 has contributed to **increasing levels of innovation, competitiveness and security**, thus pursuing the objectives of the Directive.

The main positive impacts of PSD2 include:

- Strong Customer Authentication (SCA) and fraud monitoring requirements for all payments are **generally appropriate security measures** and have led to some decrease in fraud rates and to greater security for consumers.
- The implementation of PSD2 requirements enabling the access of Third Party Providers (TPPs) has yielded **some innovative infrastructures** that may be used for further offerings and collaboration between ASPSPs and TPPs.
- It is positive that TPPs are now regulated. PSD2 has brought greater clarity regarding the role of each market player in the ecosystem. Also, by steering away from screen scraping, PSD2 has created a generally secure way for TPPs to access payment accounts and thus protect consumers.

We suggest assessing the following main areas:

- For TPP access to payment accounts, regulation should rather focus on creating a general **win-win framework** under which market players develop their use cases based on market needs. Therefore, the whole premise of PSD2 – i.e. access by some market participants to data held by other market participants, free of charge – should be revisited. PSD2 review should seek to set a more balanced framework, with a **fair distribution of value and risk and the possibility of new revenue streams by all providers**. Other aspects, such as liability provisions, should also be reviewed.
- It should be assessed whether the prescriptive approach of PSD2 is the optimal one in all areas covered (for instance SCA) and whether it is compatible with the swift digital evolution related to the changing technologies, the speed of change in users' behaviours and the even quicker adaptation in fraudsters' modus operandi. **Flexibility** should be introduced, where appropriate.
- The **process** for defining the regulatory requirements at different levels should be improved: the overall regulatory framework should be defined in a clear manner

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that allows for **predictability and consistency** and rules should be concise, clear, and coherently applied and supervised. The timing of all regulatory acts should be carefully planned and communicated to avoid unsynchronized updates and high compliance costs for PSPs. In order to achieve consistency and avoid fragmentation, an advance coordination is necessary among National Competent Authorities for correct and reliable interpretation of the rules as well as among EU institutions.

- An *ex ante* **alignment of any PSD2 review with all relevant and adjacent pieces of legislation** is essential. Considering the compatibility of different legislation after the legislation has been agreed, or even after implementation, will lead to inconsistent outcomes, legal uncertainty and potentially increased costs for market participants.
- It should be ensured that the scope of PSD reflects the actual market developments and the different market actors that are active in the payments market. As the payments landscape is constantly evolving, a possible PSD2 review should **holistically consider the payments market** and how to establish the legal framework for a payments market with crypto-assets, stable coins, digital euro, increasing role of Bigtechs and Fintechs and other developments. Further, some of the current exemptions should be reviewed, for instance considering the emerging role in the overall payment chain of market actors that are now outside the scope but that provide support to the provision of payment services.
- An **overall revision of transparency requirements** is necessary with the aim of simplification and cost reduction for PSPs as well as harmonization with other regulatory acts. It should be considered for example that customers are becoming more digitally-savvy and more market participants emerge in the market. It is important that the payment service user (PSU) receives **relevant and clear information** and that there is a high level of transparency of conditions regarding payment services.
- PSD2 lacks measures to **fight fraud more effectively**. The legal framework should allow PSPs to take a risk-based approach to better manage and mitigate fraud. Greater level of education and consumer awareness would also help alleviate this issue. All the actors involved (also ones outside the scope of PSD) should be part of greater and common efforts to fight fraud.
- Some provisions for **corporate clients** should be dedicated (e.g., transparency requirements, SCA).

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EBF response to European Commission Consultation on the review of the revised payment services Directive (PSD2)

Part 1: General questions

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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 payments within the EU			X			
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			

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Please explain your reasoning of your answers to question 1 and provide arguments for your views:

It is still too early to comprehensively assess the impact PSD2 has had on the market. We would suggest that before any changes are made to PSD2, sufficient time is taken to assess the market impact thoroughly. Overall, we believe that PSD2 has contributed to **increasing levels of innovation, competitiveness** (also in terms of consumer choice) and **security**, thus pursuing the objectives of the Directive.

As positive aspects of PSD2, we note the following:

- Strong Customer Authentication (SCA) and fraud monitoring requirements for all payments are generally appropriate security measures and have led to some decrease in fraud rates and have led to greater security for consumers. However, the full effect of SCA is yet to be seen, since SCA for e-commerce card payments was not rolled out fully until 2021.
- The implementation of PSD2 requirements enabling the access of Third Party Providers (TPPs) has yielded some innovative infrastructures that may be used for further offerings and collaboration between ASPSPs and TPPs. To an extent, PSD2 has benefited the evolution of the payments sector as a whole: whilst PSD2 was drafted with the ecosystem in mind in place at that time, which was solely focused on the competition between ASPSPs and TPPs, the market soon realised to leverage the value of partnerships and using each other’s advantages to establish new products and services for the benefit of the users. It is of upmost importance that this co-operation can evolve according to market-based mechanisms.
- It is positive that TPPs are now regulated. PSD2 has brought greater clarity regarding the role of each market player in the ecosystem. Also, by steering away from screen scraping, PSD2 has created a generally secure way for TPPs to access payment accounts and thus protect consumers.

As for aspects to be improved:

- The implementation of PSD2 has been a highly complicated and costly process for all the market and, in particular for ASPSPs, both in terms of IT and labour costs but also in terms of compliance, with some of its expected results yet to be seen. In particular, when it comes to the implementation of access by TPPs, the cost of implementation has been disproportionate, with benefits and returns on investments still to be reached

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with a fairer value distribution among all providers. Therefore, the whole premise of PSD2 – i.e., access by some market participants to data held by other market participants, free of charge – should be revisited, also considering the coming Data Acts to ensure a level playing field across the EU Digital Single Market. PSD2 review should seek to set a more balanced framework, with a fair distribution of value and risk and the possibility of new revenues streams by all providers.

- Some actors in the payment chain are out of scope of PSD2 e.g., technical service providers and we would like to see them brought into scope to further level the playing field.
- Although we see that the implementation of the PSD2 requirements enabling the access of TPPs has yielded some innovative infrastructures, going forward, regulation should rather focus on creating a general win-win framework under which market players develop their use cases based on market needs.
- It is true that PSUs have a wider choice among different types of PSPs, however the usage of the new payment services offered by TPPs are still somewhat limited.
- PSD2 has led to somewhat diverging application at country level, that has allowed some players to benefit from a competitive advantage vis-à-vis their counterparts. Such divergences arise in two concrete situations: first, in a level 1 stage with PSD2 being transposed into national legislation, which can add certain layers of specifications in its transposition despite it being a maximum harmonisation directive; and second, in a level 3 stage, where National Competent Authorities (NCAs) can take different stances on the same rules making them mandatory or not. Both combined create fragmentation and can place certain providers at a competitive advantage when operating in a host Member State, thus creating situations of unlevelled playing field for the home companies. Therefore, in case of PSD3, the overall timing of all regulatory acts should be carefully planned to avoid unsynchronized updates and high compliance costs for PSPs. In order to achieve consistency, an advance coordination is necessary among NCAs for correct and reliable interpretation of the rules as well as among EU institutions to avoid deviations from the provisions (RTS/Directive), proliferation of opinions and questions and answers (Q&As). In fact, the multiple clarifications issued over time by the authorities through numerous EBA opinions and Q&As have resulted in a constant instability of the regulatory requirements to be covered, with the need for further and continuous adjustments to be implemented according to different timelines.
- It should be assessed whether the prescriptive approach of PSD2 is the optimal one in all areas covered by PSD2 and whether it is compatible with the swift digital evolution related to the changing technologies, the speed of change in users' behaviour and the even quicker adaptation in fraudsters' modus operandi.

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- It is important that the payment service user (PSU) receives relevant and clear information and that there is a high level of transparency of conditions regarding payment services. However, today's requirements trigger a great deal of information to the PSUs especially in conjunction with adjacent and partly overlapping legislation (e.g., Payment Accounts Directive, Cross-border payments Regulation, etc.). The large amount of information can mean a difficulty for the customer to absorb it and get a picture of what is most important. We believe that an overall revision of transparency requirements is necessary with the aim of simplification and cost reduction for PSPs as well as harmonization with other regulatory acts. It should be considered for example that customers are becoming more digitally-savvy, more players emerge in the market, etc.
- Volumes of fraud attempts have increased, and the methods used by fraudsters have changed over time. Some of the new models seem to be connected to the introduction of SCA and its exemptions.

1.1 Do you consider that PSD2 favours specific technological solutions over others?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 1.1.

Regarding TPP access to accounts, although PSD2 does not favour specific technological solutions, we consider the provisions appropriate and welcome the steer towards the choice of the market to leverage on APIs as the proper technology for the time being.

Regarding SCA, the timing and requirements set out by PSD2 have led to the generalized adoption of certain mechanisms/technologies. While the rather prescriptive provisions on SCA are in general technology-neutral, their requirements favour solutions for mobile phones in the case of remote payments. This may coincide with the preferences and capabilities of a large and still growing share of the consumers, however the provisions can in some cases also lead to challenges for consumers without a mobile phone or living in areas with poor broadband and mobile signal coverage or for corporates & SMEs transactions.

Payment user needs & Innovation

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

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	1	2	3	4	5	Don't know/not applicable
Making electronic payments is easier than 5 years ago		X				
Making international payments between the EU and other jurisdictions is easier than before 5 years ago			X			
There are more options available to make payment transactions than before 5 years ago		X				
PSD2 has contributed to market players developing more convenient payment solutions		X				
PSD2 adequately addresses current payment needs		X				

Please explain your reasoning of your answers to question 2 and provide arguments for your views:

In principle, we believe that the complexity of payment services from a user perspective was low even before PSD2 came into force and payment users' needs were ensured. In this respect, we do not see that payment services had to be significantly simplified. We observe that in some cases, the gradual introduction of the SCA for card payments in particular added some friction into payments journeys for consumers in the short term, but at the same time contributed to strengthening security.

In general, the market has improved and there are new and better products/services that are more user-friendly for consumers. The development of attractive products belongs to the market sphere and should not be seen as the task of legislation. The latter should rather provide a harmonized and sound legal foundation without privileging certain products or business models. Although PSD2 addressed the current payment user needs, for a possible PSD2 revision we believe some more steps forward are needed with regards both to setting ex-ante requirements (e.g., common criteria among countries and providers to achieve standardization aimed at delivering well-functioning APIs as the basis

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to offer secure and user friendly payment services with full interoperability and reachability across countries) and ex-post requirements (e.g. fraud management, funds recovery processes, liabilities allocation, etc.) by considering the full end-to-end payment chain. The possibility for the users to concretely access a wider choice of new payment services (e.g., PIS) and find them usable compared to the existing ones is strictly dependent on the way these services are developed. Looking at existing payments instruments/methods it is evident how commonly accepted rules are fundamental to use them all over Europe.

One leg out international payments have become quicker and less costly. However, we believe this is rather due to advances in technology and industry initiatives rather than PSD2.

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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				

Please explain your reasoning of your answers to question 3 and provide arguments for your views, in particular as regards the payment services offered by PISPs, AISPs and Card Based Payment Instrument Issuers (CBPII):

PSD2 has spurred the development of innovative payment services and has the merit of being the frontrunner of the open and shared data market. Thanks to PSD2, not only we have new market players been regulated and now operating with more robust rules (e.g., SCA) in the payments industry, but other players have also emerged offering new potential solutions for doing business. We believe that a possible revision of PSD2 should leave the way open for these new entrants, while reconciling the right level of regulation for the benefit of the market and consumers. The regulatory framework should evolve towards

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achieving the right balance between the need for an adequate level of standardization, (e.g., through the definition of common and balanced criteria/rules at national/EU level), and flexibility in the development of market-based solutions that allow market actors to effectively leverage the PSD2 account access mechanism. Such a balance enables the exploitation of the innovative infrastructures developed in recent years, also opening the door to further opportunities and collaborations between ASPSPs and TPPs.

We note that a great part of the innovation has come from new market actors (e.g., payment HUBs, Aggregators, etc.) that emerged in the payment industry thanks to the fact that PSD2 did not impose a detailed technical standard. In some cases, these innovative market actors have been financed and also purchased by large incumbents, leading to greater concentration – but still efficient markets that benefit the consumers. There appears to have been less impact in the business/corporate space.

At the same time, with the mandatory opening of payment accounts to TPPs, PSD2 has regulated certain basic payment solutions and business models, thereby directing resources to a limited set of interventions and leaving much space for further innovation. The example of a Card-Based Payment Instrument Issuer (CBPII) shows that legally prescribed product solutions are likely to not taking off in real market conditions as there is little demand for CBPII models in the market. The feature has been developed in the interfaces, also in connection with PIS, but it is not much requested, hence the provisions of Article 65 should be reviewed. Maintaining this feature as it stands today costs money but does not benefit the payment service user.

Furthermore, a framework which obligates the ASPSP to offer all the same services that they are developing to their customers via the free APIs to the TPPs, makes it very costly for the ASPSPs to develop new payment methods. In the worst case, that could discourage the ASPSPs from introducing new services. Our suggestion is that there should be set some basic level / core data on the services that should be available via PIS services, if they are available to the customers via the ASPSP electronic channel. It should not be the rule that every new service introduced by the banks ASPSPs (e.g., paying with telephone number) is automatically incorporated to the PIS APIs. The same applies to new authentication methods developed by the ASPSPs for their own channels.

Market integration & competition

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

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	1	2	3	4	5	Don't know/not applicable
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			

Please explain your reasoning of your answers to question 4 and provide arguments for your views:

PSD1 had a strong effect on market harmonisation and integration with respect to payments in the EU. Set against this, PSD2 provided for a wider choice of payment services for final users (e.g., PIS) as well as increasing competition among market players, resulting in lower fees for customers and merchants. Indeed, the entrance of new players in the market has been welcomed by payment service users that are now able to use new payment methods at a minor cost. The new services helped to streamline payment processes, creating a cheaper and more efficient mechanism based on open APIs.

Moreover, PSPs obtained indirect benefits thanks to the smoothing of the end-to-end payment chain and to the availability of alternative payments methods to be offered to final users.

We believe there is still room for improvement regarding the harmonization and functioning of the internal payments market and the open APIs. Indeed, the complexity of PSD2 implementation and the uncertainties on what actually constitutes the regulatory requirements, mainly due to inhomogeneous interpretation/application among Member

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States, have resulted to continuous adjustments over time to be developed and deployed according to different timelines with unintended consequences on the concrete offering to final users. It would be desirable to ensure that rules on account access are concise, clear, and coherently applied and supervised.

With regard to competition, we believe that a further enhancement of competition could come from increased harmonisation of Member States' approaches.

4.1 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

No

Don't know / no opinion / not applicable

If yes, please elaborate on your answer to question 4.1 and include any suggestions for (legislative) amendments:

PSD2 has in effect brought to an uneven level-playing field: ASPSPs were forced to open up their data without a fair distribution of value and reciprocity. At the same time, the full economic opportunities are to the benefit of the TPPs. In our opinion, the competitive situation needs to be reviewed prior to future changes. The entire approach should be reconsidered and an appropriate compensation should be provided for this obligation. A revised directive, as well as any future open finance initiative, should strive for a more balance, with a fair distribution of value and risk and the possibility for all market participants to receive fair compensation for the services they provide. To this extent, a possible revision of PSD2 should consider the coming Data Act principles in relation to open access and data exchange in order to ensure a level playing field across the EU Digital Single Market and therefore the best outcomes for end-users also. Precisely because further Commission initiatives in the field of open data are emerging, we believe it might be wiser to reflect on a possible PSD2 revision in the light of these market developments. In this new environment, all parties involved should be subject to the principles of "same activity, same risks, same rules".

Also, we are favourable to assessing how the playing field could be further levelled by expanding the definition of the accounts that need to be accessed by including any account, token or device that serves as storage of electronic money or crypto assets that are dedicated to providing payment services.

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Consumer protection

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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			

Please explain your reasoning of your answers to question 5 and provide arguments for your views:

The level of consumer protection was good before the implementation of PSD2. The further improvements introduced through PSD2 have yielded some further positive effects, leading to a complete and adequate consumer protection regime. PSD2 has contributed to raising the level of consumer protection in line with the needs existing at the date of its enactment.

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However, PSD2 lacks measures to fight fraud more effectively. The legal framework should allow PSPs to take a risk-based approach to better manage and mitigate fraud. Measures should allow:

- Not having to make funds immediately available or to execute the payment when there is suspicions or evidence of fraud.
- Recovering or at least blocking funds from the payee's account (when available) for transactions under fraud suspicion with the necessary caution, and in particular if there is a formal complaint of fraud by any of the parties involved.

Moreover, a legal basis that allows PSPs to share specific information of attempted and realised fraud (i.e., mule accounts) would improve the ability of PSPs to develop tools to further reduce fraud. It should be allowed to share information between public and private actors involved in the fight against fraud and cooperation of all parties involved should be required, including non-PSP actors (i.e., telecom operators or technical services providers should be mandated to cooperate in fraud investigation and fraud fight). That would contribute to increasing trust and security in the payments market as a whole. Consumer protection measures cannot be the tool for fraudsters to take refuge under the PSD2.

Further, concerning particularly the case where a PSU uses the services of a TPP, there is a challenge where the ASPSPs do not have an understanding on what information was provided to the PSU by the TPP when for instance the PSU contacts the ASPSP for a complaint. Therefore, the information asymmetry now lies between the ASPSP and the PSU. It is also difficult for the PSU to understand if an entity is regulated or not.

With PSD2, PSPs informed their clients of changes, regarding specifically TPPs open access to accounts and application of SCA, via multiple channels. Many PSPs have also dedicated webpages on PSD2 where clients can find more info (e.g., FAQ, tutorials, explaining potential risks, suggesting ways to share data safely, etc.).

In any case, we strongly see the need to better clarify some provisions, e.g., to introduce more specifications in relation to the rights and obligations of the interested parties, clarifications on liabilities (also in consideration of all the actors involved in the end-to-end payment chain), funds recovery processes (Articles 73 and 74) and related information inside customer contracts (e.g., Article 52).

Again, it is important that the payment service user receives relevant information but there is always a trade-off between total transparency and too much information to handle. Too much information can make it more difficult for customers to understand and discern relevant information.

The overall level of fraud appears to be declining, however new patterns of fraud are emerging. The SCA rules as such are not sufficient; customers should also be aware of how to recognize the reliable service providers and what they are giving their consent to. It is important that EU and other initiatives promote consumer awareness.

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Finally, for what concerns surcharges for the use of payment instruments, we think the ban on surcharging has promoted digital means of payments (e.g., cards), with positive effects for customers.

Secure payments

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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				

Please explain your reasoning of your answers to question 6 and provide arguments for your views:

The harmonisation of provisions on strong customer authentication and secure communication had a positive effect on the security of electronic payments and the protection of financial payment data in the single market. We note that in some cases, in particular when adapting to changes brought about by SCA implementation, customers had to face some technical changes and friction which in the short term may have decreased consumer satisfaction.

Also, we observe that payment fraud patterns also evolve. Since the implementation of SCA, fraud is increasingly done by exploiting human vulnerabilities through social engineering techniques and/or processes involving other actors. Greater level of education and consumer awareness would help alleviate this issue. As explained in answer to question 5, the SCA rules as such are not sufficient; customers should also be aware of

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how to recognize reliable service providers and of what they are giving their consent to. Greater harmonization among countries has to be achieved also in order to avoid that fraudster take advantage from regulatory arbitrage.

It is positive that TPPs are now regulated, but consequences such as sharing of data is a cause of concern if the data is processed and shared with other parties without the PSU understanding it. In fact, due to the extension of both the payment chain and the handling of data to new un/regulated players and scenarios of customer interaction, legislation and supervisory efforts should be envisaged to further to ensure that consumers' data are protected.

Finally, PSD2 succeeded to some extent in steering away from less secure and efficient means of accessing data (screen scraping and reverse engineering). Supervisory actions to make sure that these methods are not used any more would be welcome.

Costs and benefits of PSD2

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.

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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				
The implementation of PSD2 has led to higher costs for corporates			X			
The implementation of PSD2 has led to higher costs for individual consumers			X			

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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	

7.1 If available, could you provide an estimate of the investments your institution has made to implement the PSD2? In your response, please explain the most significant cost components:

n/a

7.2 Did your business experience any problems due to the implementation of PSD2?

Yes

No

Don't know / no opinion / not applicable

Please explain your reasoning of your answer to question 7.2 and provide arguments for your views:

The substantial implementation efforts for the access-to-account infrastructure and strong customer authentication procedures tied up significant resources (monetary, IT capacities, communication etc.). The complexity of the regulation has led to much being open to interpretation, and the need for EBA to clarify the legal requirements through guidelines, opinions and Q&As, particularly as these were issued inflight during the migration period. It is difficult to give concrete figures, but every time the conditions have changed, implementation has carried substantial and unexpected costs. Developing APIs was budgeted for by the banks, but the changing of circumstances had not been anticipated by the market, which led to changes / difficulties of interpretation / clarifications from authorities, etc. becoming a significant part of the final total expense.

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In other terms, unclear and changing regulatory requirements combined with the absence of common criteria brought to system integration issues, long timeline for APIs adjustments (from rules analysis and understanding to delivery), extended testing activities and customer complaints directed to ASPSPs. This is even more true in case of banking groups operating across Europe, which need a homogenous approach by the different NCAs in EU Member States to supervise and enforce PSD2. We believe that a clear framework will allow the market to develop technical standards of implementations.

The prescriptive nature of the SCA provisions made it incompatible with other market solutions with similar success levels, namely regarding fraud rates, which made SCA implementation more demanding in some cases. It should be assessed whether the prescriptive approach of PSD2 has led to the best market and consumer outcomes and whether it is compatible with the swift evolution in the digital world, not only related to the changing technologies but due to the speed of change in users' behaviours and even quicker in fraudsters' modus operandi. For instance, PSD2 prescribed measures has obliged PSPs to replace or add certain security measures to those previously in place, often more friendly and evenly effective, increasing friction during the authentication process, only for compliance purpose. For instance, a two-factor authentication should be possible making use of two factors from the same category if this is proved to provide the same level of security and avoid new fraud scenarios.

In particular for SCA implementation, PSD2 introduces obligations that are either directly applicable to parties that are however not in the scope of the legislation or rely on the active participation of such parties for the implementation of certain obligations. This can lead to additional complexity and delays in implementation. There should be a reflection on how to remedy this. In this respect we support the suggestion made by the European Banking Authority (EBA) in its response to the Commission call for advice on PSD2 implementation (in point 16) to introduce specific requirements for payment card schemes, payment gateways and merchants in relation to the implementation of key security requirements, such as SCA, where these actors play an important role, but without requiring them to be authorised under the Directive.

Further, defining the edge of applicability for PSD2 when considering exemptions (as detailed in Article 3) is complex when considering emerging asset classes and the complexity/variety of business activity that could be captured. With specific reference to the asset servicing exemption (Article 3 (i)) further clarity would bring benefits to avoid activities inadvertently being brought within scope. This point is further expanded upon in the response to question 11.2 and 11.3.

On a broader note, the increased regulatory reporting requirements have added to the regulatory burden.

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7.3 Overall, from your own stakeholder perspective, would you say the aggregated benefits stemming from the implementation of PSD2 outweigh its implementation costs?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 7.3:

At this point costs outweigh benefits as the investments required for the implementation of access interfaces has been high for the whole market and especially for ASPSPs.

For example, with respect to requirements to the API interfaces, a higher degree of reliability for ASPSPs and TPPs planning should be ensured: currently, divergent interpretations by national supervisors and unclear time horizons for the implementation upon issuance of supervisory clarifications or new requirements cause inconveniences, unnecessary costs, and market disruptions. Another example is the current parallel review of level 1 and level 2 texts (RTS amendment for 90-day SCA re-authentication represents an example of the further difficulties PSPs have to deal with), together with the ongoing EBA Q&As, which makes the overall picture very complex. The regulatory framework should be defined in a clear manner that allows for predictability and consistency.

Despite an ever-improving quality of the APIs and an upward trend, we see that an excessive proportion of TPPs still use screen scraping. We observe that the volumes for API usage are higher in those countries where the NCA has explicitly banned screen scraping (e.g., Finland).

Having said this, we do see the potential that over time the growth of open finance and data sharing could bring benefits to all market players and the wider economy, if the framework was amended to provide a fair distribution of value amongst all market players and if a cross sectoral data sharing framework is introduced, based on the principle of a level playing field.

We appreciate that SCA exemptions remain voluntary and the decision to apply an exemption always rests with the payer's PSP.

Enforcement

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

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	1	2	3	4	5	Don't know/not applicable
NCA's are sufficiently empowered by national law to ensure that PSD2 rules are correctly applied (Art. 100)	X					
NCA's are sufficiently empowered by national law to impose sanctions where needed (Art. 100, 103)	X					
The types and severity of sanctions available to NCA's 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				

Please explain your answer to question 8 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:

Looking at the overall PSD2 framework, consistency has been maintained mainly in terms of the topics covered in depth along the chain of acts from the primary level (directive) to the secondary level (RTS and guidelines), third level (opinions and recommendation) and Q&As; vice versa some asymmetries and deviations can be observed in their application, i.e., as regards regulatory requirements in each topic and country, e.g. with reference to the various EBA opinions that have followed one another over time as well as national implementations.

Specifically, as far as SCA & CSC is concerned, different and sometimes divergent requirements have been introduced, thus creating operational difficulties and fragmentation in the stage and timing of implementation across countries and among providers. In fact, the timeline for adoption/updating of EBA mandates is sometimes overlapping with PSD review needs (e.g. Guidelines on security measures replaced by GL on ICT and security risk management, Fraud Reporting consolidated version and limited network, Guidelines on Fallback exemption that have been adopted differently by countries as well as Opinions on SCA & CSC that have been treated/interpreted differently by each **European Banking Federation aisbl**

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country/ provider and finally, the proposal to change 90-days SCA exemption under Art. 10 of Delegated regulation 389/2018). This created a lot of operational, technical and functional misalignments thus introducing barriers on APIs cross-country expansion.

Therefore, in the event of a revision of PSD2, the overall framework timeline should be carefully planned to avoid non-synchronized updates of requirements and thus major compliance costs for providers. In order to reach consistency, an upfront high level of coordination between NCAs for the correct and reliable reading of the rules as well as between the EU institutions (such as EBA and the European Commission) would be needed, with the aim to avoid deviation from the RTS/Directive and a proliferation of opinions/Q&As generating uncertainty and high costs for providers. A mandatory peer review analysis of the supervisory activities of all competent authorities could be a welcome proposal.

We assume that the provisions of PSD2 are sufficient to give the supervisors the power to tackle the possible breaches, but we have no visibility as to whether some supervisory activities are taking place.

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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					

Please explain the reasoning of your answer to question 9 and provide arguments for your views, including possible suggestions for changes to the provision (if any).

National complaint procedures were implemented pre-PSD2 and PSPs that were regulated pre PSD2 had complaint procedures in place already before.

9.1 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?

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1- Strongly agree

2- Somewhat agree

3 - Neutral

4 - Somewhat disagree

5 - Strongly disagree

Don't know / no opinion / not applicable

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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^[1] 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			

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Please explain the reasoning of your answer to question 10, in particular if you are of the opinion that PSD2 should be (partly or fully) transformed into a Regulation:

It is too early to review PSD2, since its possible market effects have not been able to fully unfold. However, were the PSD to be amended, these aspects require reviewing (all these aspects are further detailed elsewhere in this document):

- All level of the legislation should be more harmonized and clearer, with a predictable process.
- PSD2 should be aligned with adjacent pieces of legislation, such as GDPR (e.g., a revision of Article 94(2) that overcomes the difficulties of interpretation that have emerged to date, consent/data management/processing in general), PAD for transparency requirements, etc.
- One-sided burden for ASPSPs in terms of account access and adverse incentives should be overhauled to allow for a fair value distribution.
- Some provisions for corporate clients should be dedicated (e.g., transparency requirements, SCA).
- Transparency requirements should be streamlined.
- The scope should be reviewed in light of market developments.

As to the question of whether the legislative instrument should be a Directive or a Regulation, although we acknowledge the issue of national fragmentations, we do not necessarily see that a Regulation would solve these. PSD2 is a substantial and complex piece of legislation, requiring a degree of interpretation. It also is strongly interwoven with Member States' civil law, therefore we do not see the practical possibility of a transformation into a Regulation. However, we do see the need for more coordination and coherence for instance between different NCAs.

10.1 Is there any PSD2 provision that is, in your view, no longer relevant?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 10.1, being as specific as possible (e.g. include articles, paragraphs), and elaborate:

The following provisions are no longer relevant in our view and should be reviewed:

- The provisions of Article 65 on CBPII should be reviewed in line with implementations made under Article 36 of the RTS on SCA&CSC, as they have no market relevance as they stand today but result in compliance costs for ASPSPs. See in this respect also the EBA response to Commission's Call for Advice. It should be assessed whether the clarification provided by the EBA in its Opinion of June 2018 (paragraph 25) could be

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included in level 1.

- Article 75 – requiring card issuers to inform the cardholder about the amount of a reservation resulting from an authorisation request from a merchant in a situation when the final amount is not known and the authorisation request is for a maximum amount chosen by the merchant. For example, this article should be amended to clarify that the collection of the consent should be done by the merchant.
- It is questionable whether the current provisions of the PSD2, especially with respect to SCA requirements, are fit for the emergence of automated and M2M payments scenarios for corporate clients. This is accompanied by current uncertainties regarding the regulatory assessment/classification of dedicated communication protocols for corporate clients. A possible PSD2 review should assess these aspects and give adequate leeway for such solutions and protocols, taking into consideration that they are not offered to consumers and therefore entail both technologies and risk profiles which are not fit for the very rigid SCA requirements.
- Some exemptions should be reviewed, in line with our response to question 11
- It would be beneficial to review all reporting requirements, and only retain those that really benefit the regulator. For example, consider revisiting the reporting requirement under Article 73.
- The way that PSD2 is currently drafted does not seem to have envisaged the scenario of an ASPSP also being a PISP (or indeed an AISP), resulting in potential duplication of the information requirements – there is no carve out for that scenario for some of the info requirements which may be duplication, e.g. contact information for the PISP.

Part 2: Measures and procedures

Title I: Subject matter, scope and definitions

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
The PSD2 scope (Art. 2) is adequate and does not need to be modified	X					

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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(I) 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(I) of PSD2 are still appropriate			X			

Please explain your answer to question 11:

It is very important to ensure that the scope of a possible PSD2 review reflects the actual market developments and the different market actors that are active in the payments market. In particular, taking as given the current scope in terms of geographies and currencies, we believe it is important to consider the emerging role in the overall payment chain of market actors that are now outside the scope of PSD2, but that provide support to the provision of payment services. For example, end users can enrol their digital payment instruments issued by their PSP and execute payments from the platform/aggregator without being currently subject to PSD2 provisions. Moreover, technical service providers and providers of electronic communications networks or services, e.g., telecom services providers (now excluded under Article 3(j) and 3(l)), are increasingly part of the payment chain and thus are also involved in fraudulent transactions. It would therefore be appropriate that a possible review of PSD2 considers also these providers in a way that they be subject to the appropriate provisions (e.g., security measures and liabilities mechanism) to the benefit of customers and to ensure that all parts of the payment chain are as secure as possible.

In addition, as the payments landscape is constantly evolving, a possible PSD2 review should holistically consider the payments market and how to establish the legal framework for a payments market with crypto-assets, stable coins, digital euro, increasing role of Bigtechs and Fintechs and other developments. We believe that full coherence and alignment should be guaranteed among different regulations (e.g. MiCAR, FTR). A possible revision of PSD2 should consider the application of ad hoc rules to payments initiated/executed with new digital assets such as the ones defined in MiCAR, taking into account the specificities of these new instruments.

11.1 In your view, should changes be made to PSD2’s scope (as in Art. 2)?

Yes

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No

Don't know / no opinion / not applicable

11.2 Article 3 lists the exclusions to PSD2. Do you believe there are exclusions in PSD2 that should be changed or deleted?

Yes

No

Don't know / no opinion / not applicable

11.3 Should there be more exclusions?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 11.2 and 11.3:

It is very important to ensure that the scope of a possible PSD2 review reflects the actual market developments and the different market actors that are active in the payments market. The payments landscape is constantly evolving, and PSD2 review should holistically consider the payments market and how to establish the legal framework for a payments market with cryptoassets, stablecoins, digital euro, increasing role of Bigtechs and Fintechs and other developments.

The following exemptions should be reviewed:

- Article 3(b) (commercial agent exemption) should be removed in order to ensure that the payer is properly aware of the ultimate beneficiary - the product or service provider - of the payment order. Furthermore, provided this exemption is removed, the ultimate beneficiaries of the payment transaction will be better protected, as they would have their funds available immediately after they are received by their agent and the risk of losing those funds in case of the agent undergoes financial problems, as those funds would be subject to the safeguarding obligations in PSD.
- Article 3(i) (securities asset servicing exemption) should be enlarged as under the current rules do not encompass all transactions or all relevant asset classes that should likely have been part of the exemption. Looking outside of the EU, in other markets the concept of "regular occupation or business activity" test exists, and a similar approach should be considered in the EU.

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- Article 3(j) (technical service provider exemption) should be narrowed, as in light of market developments, the full exclusion of technical service providers no longer seems adequate. Technical service providers can be excluded as far as they only support PSPs on the provision of services but not when they are an isolated or required part of any of the steps of the payment transactions. Some technical providers process large volumes of transactions and/or provide services to a significant number of PSPs. As a consequence, a disturbance in their operations could have a relevant impact in the functioning of the whole payment market. We note that this exemption covers a variety of market actors that provide support to the provision of payment services (e.g., aggregators of payment services, mobile wallet solutions, etc.) which sometimes interact directly with end users and allow payment services providers the possibility to integrate their payment solutions on a single interface, so that end users can enrol their digital payment instruments issued by the PSP and execute payment from the platform/aggregator. However, such providers of payment aggregation services are increasingly interwoven with the provision of payment services themselves and should therefore be subject to the appropriate regulation. It is necessary that wallet providers are subject to PSD at least with respect to security requirements and liability provisions to the benefit of customers and of the security of the market.
For certain scenarios, where the liability of a payment service provider is attributable to an intermediary (including technical service providers), whether it has participated directly or indirectly in the transaction, it should actively cooperate with the PSP to the investigation, and in those cases where it is liable, it shall compensate the PSP for any losses incurred (as stated in Article 92). This mandated cooperation is particularly relevant for fighting fraud, regardless of any attributable liability. Technical service providers are part of the payment chain, and all participants are needed to fight against growing fraud attempts in order to protect payments services and make the European payments market even safer. The lack of cooperation makes it sometimes impossible for a PSP to complete the burden of proof.
- Art. 3(l) (telecom exemption) should be assessed to ensure that it does not create insufficient transparency and consumer protection. Such purchases are not always consciously performed nor requested by the user since they do not require information, authentication and other measures prior to execution. Electronic communications networks are quite often available for users that are not the PSU. However, we also note that this exemption is often used for charitable payments, so a full deletion would not be desirable. Also, telecom providers are increasingly part of the payment chain sometimes leading to payment fraud. It would therefore be appropriate to include them in the scope of PSD, at least in order to ensure that they cooperate in the fraud fight and prevention so that all parts of the chain are as secure as possible.
- Art. 3(o) (independent ATM providers) should be deleted, since Annex I, point 2 considers services enabling cash withdrawals from (and point 1 cash to be placed to) a payment account as a payment service, all services enabling cash withdrawals should be subject to the same legal framework for the provision of such services, regardless

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the type of actor providing the service. The current situation is leading to an unbalanced level playing field and a fragmented provision of services to final users that are not always given the same information nor have an equivalent level of protection for what they perceive as the same service.

In addition to the above, we suggest that the way in which SCA is enforced for charities, hospitality and transport sectors should be considered in order to find a more appropriate and balanced solution that allows easy, fast and user-friendly payments while ensuring security for operators and customers and to reinforce the concept currently expressed in the recitals 13, 14 and 16.

12. Do you consider that the definitions in PSD2 are still adequate and do not need to be modified?

- 1- Strongly agree
- 2- Somewhat agree**
- 3 - Neutral
- 4 - Somewhat disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

12.1 Do you consider the definitions under Article 4 of PSD2 are still adequate and do not need to be modified?

- Yes
- No**
- Don't know / no opinion / not applicable

Please specify what PSD2 definition(s) should be modified (Art. 4) and provide a proposal:

	Term defined	Proposal
Term No. 1	Article 4(12) payment account	The definition should be aligned with the CJEU ruling in Case C-191/17 on the concept of payment accounts.

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Term No. 2	Article 4(32) - sensitive payment data	The definition of sensitive payment data should be clarified (list of data that constitutes sensitive payment data).
Term No. 3	Payment transaction (art. 4 (5))	The definition should be clearer to help distinguish the payment transaction from the payment initiation (see suggestion in 12.2)
Term No. 4	Account information service, "provide consolidated information"	The services provided under this category seem broader than the definition indicates (e.g. providing a bank account selector in an AIS journey; or offering analysis of the data collected). We propose to reflect this in the definition.
Term No.5	Acquiring of payment transactions	The definition of acquiring does not currently include the aggregation of payment transactions which could be defined as <i>a payment service provided by a payment service provider contracting with one or more payees the provision of technical solutions that allow to accept and process payment transactions and collect funds through a transfer of funds to the provider of the service.</i> This should be included in the definition of acquiring.

12.2 Are there definitions missing from Art. 4?

Yes

No

Don't know / no opinion / not applicable

Please specify what PSD2 definition(s) is/are missing from Art. 4 and provide a proposal:

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	Term defined	Proposal
Term No. 1	Electronic remote payment transaction	This should be clarified in line with EBA Q&A 2019_4594
Term No. 2	Technical service Providers	Please refer to article 3(j) <i>services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;</i>
Term No. 3	Payment wallets	This term is currently not defined, and the possibility to include a definition should be considered in order to bring clarity.
Term No. 4	Payment wallet providers	Same as above
Term No. 5	Payment services using crypto-assets (incl. stable coins)	Please refer to Markets in Crypto-asset Regulation. <i>Payment services using crypto-assets means a payment service offered by any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis, an authorized crypto-asset service provider according to Markets in crypto-assets Regulation (MiCAR). Among the services identified by the MiCAR, only</i>

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		<i>those that are deemed equivalent to the payment services listed in Annex I of PSD2 are to be considered as payment services.</i>
Term No. 6	Independent ATM	<p>Please refer to Article 3(o)</p> <p><i>Cash withdrawal services offered by means of ATM by providers, acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that those providers do not conduct other payment services as referred to in Annex I. Nevertheless, the customer shall be provided with the information on any withdrawal charges referred to in Articles 45, 48, 49 and 59 before carrying out the withdrawal as well as on receipt of the cash at the end of the transaction after withdrawal.</i></p> <p>This definition should include also independent ATM that provides cash withdrawal services directly to end users, without acting on behalf of card issuers.</p> <p>We believe that it is necessary to extend to providers of independent ATMs at least transparency obligations towards users in relation to charges applicable</p> <p>It should be considered which specific requirements in addition to the transparency requirements should apply.</p>
Term No. 7	Payment in-app	This definition should be included, referring to the Data Act.
Term No. 8	Asset Servicing Account	Introduction of an "Asset Servicing Account" in addition to "payment accounts" (as defined within PSD2) as a means of distinctly housing exempted activity under the asset servicing exemption based on clear communication to the customer that the activity within the

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		account will not be covered by PSD2. To ensure that the use of asset servicing accounts does not include retail consumers who may benefit from PSD2 protections, this approach would only be available to “Professional Institutions” or “Eligible Counterparties” as defined under MiFID.
Term No. 9	Payment initiation	For us this is the process leading up to the ASPSP receiving the payment order from the TPP. The term should also be aligned with the wording of article 36 (1b) of the RTS on SCA and CSC. This refers to, that the ASPSP shall “immediately after receipt of the payment order, provide payment initiation service providers with the same information on the initiation and execution of the payment transaction provided or made available to the payment service user when the transaction is initiated directly by the latter”.
Term No. 10	Financial Instruments	The addition of “Financial Instruments” as used in Article 3(i) to recognise that these could be non-financial instruments. Alternatively, Article 3(i) could be updated directly to cover non-financial instruments.
Term No. 11	‘Payment card scheme’	Payment card schemes should include obligations for payment card schemes for some specific aspects such as SCA implementation, so they should be defined, as defined in art. 2 (16) of the Interchange Fee Regulation.

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13. In view of market developments, do you consider that the list of services included in Annex I of PSD2 is still adequate?

- 1- Strongly agree
- 2- Somewhat agree
- 3 - Neutral
- 4 - Somewhat disagree**
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

13.1 Please indicate whether services in the following list need to be maintained or modified.

See question 13.3 in case you believe services should be added to the list that are currently not included:

	No change needed	Change needed	Don't know - No opinion - Not applicable
(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		We support the comments made in the EBA response to Call for Advice on PSD2 implementation	
(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	X		

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provider: 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			
(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 Split of issuing and acquiring into separate payment services supported	
(6) Money remittance	X		
(7) Payment initiation services	X		
(8) Account information services	X		

13.2 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?

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(Please note that “cash-in-shops” is not the same as “cash-back”. Cash-in- shops allows withdrawing money without making a purchase.)

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 13.2:

Cash-in-shop should be considered as part of the payment services provided by a PSP to a merchant and as such be subject to the same conditions and transparency requirements. Also, in those cases the cash-in-shop is to be considered as a payment transaction, that is “an act initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee”. The underlying obligation between a merchant and a consumer could respond to the provision of goods, services or “cash” in form of banknotes or coins. The latter is only for merchants when agreed and allowed by its PSP to do so. No additional authorisation should be required.

Therefore, it is not to be considered as direct cash withdrawals, or cash to be placed from/to the consumers payment account through a PSP. Rather, this should be seen as a payment transaction in which the underlying mutual obligation between the payer and the payee is the exchange of cash to be placed in the other’s account through their respective PSPs, which are already authorized institutions.

13.3 Should any of the services listed below be added to the list of payment services in Annex I?

	Yes	No	Don't know- no opinion- not applicable
Issuance of e-money	X		
Payment transactions using crypto assets (incl. stable coins)	X		

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Digital wallet services (e.g. mobile apps for payments)	X		
Payment processing services	X		
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	X		
Other	X		

Please specify to what other specific services in the payment chain provided by a technical service provider you refer in your answer to question 13.3:

Please specify to what other service(s) you refer in your answer to question 13.3:

In case a digital euro (retail CBDC) was to be introduced, it is recommended to align the rules for its intermediation to a great extent with existing payments law.

Please explain your reasoning of your answer to question 13.3 and provide arguments for your views:

Due to the extension of both the payment chain and the handling of data by new players and scenarios of customer interaction, legislation and supervisory efforts should be made to further try to mitigate risks.

In general, companies involved in payments should be included in PSD2, e.g. payment gateways and e-money providers. With specific reference to e-money services, these should be included in the PSD by merging EMD and PSD. Today, many e-money account holders may not be sufficiently informed about the difference between a bank account and

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an e-money account. It is also necessary to ensure the protection of client funds in this regard.

In addition, initial reflections suggest that it might be appropriate to include crypto-asset transactions in Annex I. However, it should be kept in mind that if inclusion were to result in a homogenous application of all PSD2 measures also to payments involving crypto-assets and to crypto-asset service providers (CASPs), some of the measures would need to be adapted in order to make them compatible with the way in which crypto-assets transfers take place. When trying to adapt current provisions to the crypto-asset sector, alternative and different measures are often necessary to achieve the same objective and a level playing field.

Conversely, with regard to BNPL when it comes to the underlying consumer credit, we believe that CCD should be the right vehicle to treat this topic, the payments part of BNPL already being covered by PSD2.

13.4 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)?

Title II for CASP/other providers for licensing, title III for contracts management to include provision for new players, title IV for rights and obligations including security measures, etc.

14. Should any other changes be made to the provisions and/or topics dealt with under Title I of PSD2?

Yes

No

Don't know / no opinion / not applicable

Title II: Payment service providers

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

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	1	2	3	4	5	Don't know/not applicable
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

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The methods to calculate the own funds are adequate (Art. 9)					X
The possibility for PSPs to choose a method to calculate their own funds is adequate					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			X		

16. In your view, should changes be made to PSD2’s authorization 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?

Yes

No

Don’t know / no opinion / not applicable

Please explain your reasoning of your answer to question 16 and provide arguments for your views:

As a general comment we do consider that the authorization process is adequate. In the level 1 text we see no major issues to amend, however the issues arise at level 2 where different NCAs impose diverging requirements and sometimes additional obligations. This explains why there are some MS with a significantly higher number of licenses than others. The information amount is appropriate and should not be further elaborated. EU guidance in order to have a level playing field in the assessment process would be welcome.

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17. PSD2 offers 4 different calculation methods (Art. 9) to a payment services provider's own funds. Should any method be changed, or deleted?

	No change needed	Method should be changed	Method should be deleted	Don't know - No opinion - Not applicable
Method A				X
Method B				X
Method C				X
Method D				X

17.1 Should any method be added?

Yes

No

Don't know / no opinion / not applicable

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?

Yes

No

Don't know / no opinion / not applicable

19. Article 10 of PSD2 describes the requirements around safeguarding. Should these requirements be further adjusted?

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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 questions 11.2 and 11.3):

Yes

No

Don't know / no opinion / not applicable

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?

Yes

No

Don't know / no opinion / not applicable

Other requirements

21. Other requirements: please indicate to which extent you (dis) agree with the following statements:

	1	2	3	4	5	Don't know/not applicable
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				

Please explain your answer to question 21:

In our opinion, provisions detailed in Article 19 are well defined and consider all different cases in terms of possibilities of controls about an agent affiliated by a PI, while provisions detailed in Article 20 could be differently applied considering a generic provision like

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“reasonable measures” that can be interpreted differently with a potential damage on the market.

21.1 Should Article 19 be amended?

Yes

No

Don't know / no opinion / not applicable

21.2 Should “triangular passporting” be regulated?

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.

Yes

No

Don't know / no opinion / not applicable

If you think “triangular passporting” be regulated, please explain how:

It should be explicitly noted that triangular passporting is allowed and the directive should outline the requirements and it should be defined whether triangular passporting would be part of the existing passporting regime, limited to branches/agents.

Please explain your answer to question 21.2:

Triangular passporting should be communicated to all host NCAs.

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable

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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:

	1	2	3	4	5	Don't know/not applicable
<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

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<u>Digital Operational Resilience Act (Commission proposal)</u>			X			
Other act(s)				X		

Please specify to what other act(s) you refer in your answer to question 22:

We think it is necessary to maintain full alignment between PSD and other possible further regulatory acts, as for example:

- Instant payments framework
- Potential issuance of Digital Euro
- EBA GLs on remote customer onboarding
- Outsourcing arrangements
- Funds Transfer Regulation
- Cross-Border Payments Regulation
- E-Identity framework
- MIF Regulation
- Cybersecurity Act
- Payment Accounts Directive
- A possible Open Finance Framework
- AML Package

Please explain your answer to question 22:

In general, we consider that an *ex ante* alignment of any PSD2 review with all relevant and adjacent pieces of legislation is essential. Considering the compatibility of different legislations *after* the legislation has been agreed, or even after implementation, will lead to inconsistent outcomes, legal uncertainty and potentially increased costs for market participants.

Regarding GDPR, we see the need for harmonisation in relation to consent/data management/processing with GDPR, thereby strengthening the status of PSD2 as *lex specialis* in relation to GDPR, e.g., in the context of data sharing with TPPs. Here, the EDPB Guidelines on the interplay between PSD2 and GDPR have not been helpful for the industry, as parts of the Guidelines go against PSD2 provisions in our view¹. Also, in some areas regarding SCA, such as the use of behavioural biometrics as an inherence factor, further clarity would be required. In this respect, we believe that it could not be considered as an inherence factor unless there is the possibility of demonstrating (for the bank, which

¹ <https://www.ebf.eu/innovation-cybersecurity/joint-payments-industry-letter-on-final-edpb-guidelines-psd2-gdpr-interplay/>
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bears the burden of proof) that the customer has effectively authorized the transaction. In particular, the corresponding liabilities should be clarified in case of frauds perpetrated with the use of behavioural biometrics since for the current market developments of this solution no interaction with the payer is envisaged to effectively consider the transaction as authorised by the payer.

Concerning the Commission proposal for a revised eIDAS, we have some concerns when it comes in particular to the payments aspects, the use of the e-ID wallet for SCA and the compatibility with such provisions with PSD2:

- The proposal does not sufficiently address the issue of liability. From a customer's perspective, understanding who is liable for a certain breach is of crucial importance in all sectors and products, particularly when personal data is concerned. Identity thefts are a fact and that is why reliable trusted onboarding is a key factor in the EU27+ setup. In a scenario where the ASPSP/issuer (or a delegated third party based on a mutual agreement) loses control of a large part of the value chain, unclarity would lead to liability issues. It should be better articulated how the liability between providers and users of EDIWs would be distributed in the new actors' chain. Such rules or common set of rules should be decided at the EU level, as setting them up at national level could result in potentially having 27 different procedures.
- From a credit institution's perspective, the proposed obligation to accept the EDIW for the purposes of carrying out SCA is one of the key concern areas of the proposal. Until now, the acceptance by relying parties has been based on the freedom of choice, meaning the freedom to choose what electronic means of identification are acceptable to access online services, e.g. financial services. This principle should be maintained and hence the use of the E-ID wallet for SCA should be voluntary. This also raises questions about the scope and liabilities of the proposed regulation and its relation to other already applicable regulations within the financial services industry. Further, we strongly recommend not to confuse identification (included the verification of identity) and authentication. Identification is needed to confirm the identity of a certain subject in order to enter into a business relationship. Authentication is needed to confirm the identity of a certain subject within an existing business relationship, i.e. prove who you claim to be.
- Synergies could also be useful with Cybersecurity topics when it comes to fraud mitigation and security countermeasures and with Outsourcing arrangement given the use of external Tech providers for APIs implementations.
- AML-monitoring rules defined for AISP are duplicative to ASPSP monitoring. ASPSP can have more data on the individual transaction compared to the AISP. When there are multiple AISPs operating across different ASPSP's, it basically multiplies the amount of monitoring done across different AISPs. This would in the worst case lead to many AML notifications on the same cases. We also observed that AISP providers do not have any preventive measures (payments blocking) at their disposal. The current rules (see EBA's new ML / TF risk factors Guidelines for AISPs and PISPs), especially when it comes to monitoring obligations when AIS operations are provided by an ASPSP, are ineffective. Example: Bank A's customer has linked an account from Bank B and C to

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the multi-banking service view via Bank A AIS service. According to GL Bank A now has to build control over its AIS operations, even though all payment transactions are already monitored by banks B and C. In addition, these events are beyond Bank A's control, the only thing that can in practice be done is to make a statement of suspicion to relevant/competent authorities.

22.1 Should the directive's requirements related to competent authorities and supervision be changed?

Yes

No

Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 22.1 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)**

It is difficult to align all the durable format requirements in PSD2, Distance Marketing Directive and E-commerce Regulations as they are all worded slightly differently.

- ii. should the Directive's requirements related to home/host competent authorities be clarified or amended? If yes, please specify**

The interaction host / home supervision is rather complex. The directive's requirements are supervised by the home country competent authorities - but not for branches. Furthermore, the requirements in the RTS on SCA and CSC are supervised by competent authorities in the home country. This creates significant complexity in the cross-border application.

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

It should be increased

It should be decreased

It should not be changed

Don't know / no opinion / not applicable

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To what amount should the limit be increased?

..... euros

To what amount should the limit be decreased?

.... euros

Participation in payment systems

24. 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?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 24:

A removal of the exclusion in Article 35(2)(a) would not be reasonable since the inclusion of payment institutions and e-money institutions in the scope of Directive 98/26/EC would be a precondition to allow for their access to SFD-designated payment systems.

Also, a different capital requirements regime for PIs and EMIs should be considered if they were to be allowed to directly access SFD-designated systems for risk and level playing field reasons.

24.1 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.

Yes

No

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Don't know / no opinion / not applicable

Please explain your answer to question 24.1:

If non-bank PSPs were granted access to payment infrastructures, any possible additional systemic risks on the CSMs and the payments sector in general has to be taken into account. Payment and e-money institutions are not subject to the same stringent regulations as credit institutions, with the effect of possible differences in risk governance and depth.

Therefore, objective measures, including the instruments of providing adequate guarantees or collateral, should be in place and applied to ensure that any broader direct access does not create systemic impacts in terms of risk and resilience of payment systems (therefore high minimum standards addressing IT risk and operational risks as well as credit risks and liquidity risks have to be prescribed). Otherwise, higher risks could be carried into the system, eventually posing costs on CSM providers and their participants.

The legal basis for this should be two-fold: the Eurosystem PISA framework should foresee risk mitigating provisions addressing the payment systems, whereas PSD should impose respective obligations on those payment institutions that wish to directly participate in SFD-designated payment systems.

Maintenance and development of payments infrastructure is costly. It should therefore always be a principle, that everyone who on equal terms has access to the payment's infrastructures should also contribute equally towards covering these costs of both previous investments and the running costs of the infrastructure.

24.2 Please specify which conditions could be included in EU legislation:

Access to accounts maintained with a credit institution

25. 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?

Yes

No

Don't know / no opinion / not applicable

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25.1 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?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 25.1, specifying what could ensure more consistency (e.g. a common reporting template for credit institutions rejecting an application to open an account):

In many cases, the application of Article 36 has given rise to several issues, and there is a need to provide guidance on the interplay between Article 36 and other legislation, mainly AMLD's requirements. It is key for credit institutions to balance this requirement with the right to effectively combat money laundering, terrorist financing and financial crime. Clarification is needed both when it comes to assessing the payment institutions application for a payment account and the possibility for the credit institution to deny or terminate the business relationship. It is also important to not only address requirements for credit institutions, but to also clarify what can be required from the payment institution (e.g., documentation) when they apply for a payment account.

In terms of access to bank accounts as per Article 36, it should be noted – as highlighted in last January EBA opinion (EBA/Op/2022/01) - that the challenges in meeting the obligations under Article 36 of the PSD2 stem from the different risk exposure of banks. In fact, the main issue is still the risk that banks must bear in the event of a liability implied by an issue connected with the AML/CTF requirements' compliance - i.e., that of incurring sanctions for unlawful behaviours attributable to the PIs, with which the banks would be "obliged" to maintain relations. In other words, while the authority's goals for granting access to PIs accounts are clear, a proper balance of liabilities for AML/CTF compliance should be met at the same time. Legislative or supervisory clarification on that issue could be helpful.

Question 26. Should any other changes be made to the provisions and/or topics dealt with under Title II of PSD2?

Yes

No

Don't know / no opinion / not applicable

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

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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			

Please explain your reasoning of your answer to question 27, providing 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:

A comprehensive review of transparency requirements in terms of simplification and harmonisation is necessary, also in view of the fact that customers are becoming increasingly digitally savvy, with the aim of reducing compliance burdens as well. In fact, the transparency requirements of PSD2 have resulted in information overload, both for

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consumers and PSPs (in managing compliance related to different regulations, e.g., Payment Accounts Directive, Cross-Border Payments Regulation, GDPR, etc.). Corporates too are keen to avoid being inundated with too much information. In addition, a reconsideration of the two-month notification period seems necessary to allow PSPs to implement changes or offer new services more in line with the digital context (e.g., where changes do not result in increased service risks or adverse effects for the customers, they could be deemed feasible without the two-month notice).

27.1 Conversely, do you consider any of the currently required information irrelevant, and better be removed?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 27.1:

Please refer to our response to the previous question.

27.2 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?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 27.2:

Extending these rules to non-EEA payments or currencies would not be justified due to their different characteristics in terms of complexity and global regulatory heterogeneity. Collaborative industry initiatives (such as work being done by SWIFT) could promote greater transparency.

27.3 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?

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Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 27.3:

Customers are mostly interested in the total execution time, i.e., when the beneficiary will have the funds on her/his disposal. As there are no global agreements for the execution times of the incoming payments from other jurisdictions, this information is impossible to give. Basing the execution times on individual agreements between banks would be a very heavy set-up which most probably would lead to diminishing reachability of the payments, as it is not possible for one bank to have such agreements negotiated with thousands of banks. The EU should be active in prompting the global organizations in having frame agreements on this issue. Without binding global agreements, information could be given for only a part of the execution time, and that could easily be misinterpreted by the customer.

28. Should any other changes be made to the provisions and/or topics dealt with under Title III?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 28, being specific and if possible, offering textual proposals:

A revision of the transparency requirement should be pursued for the purpose of simplification and harmonisation as already said in previous answers. In particular, a reconsideration of the two-month notification period is needed to allow PSPs in implementing changes or offering new services more in line with the digital context. In fact, this is no longer in line with modern technology and customer expectations. For example, where changes do not imply a higher level of riskiness of the service or negative effects for the client, they may be considered feasible without the two months' notice. This may be the case where the terms and conditions of the contract are amended following the introduction of new services with their own economic conditions and where such introduction results from a technological innovation and the use of the service is in any case discretionary on the part of the customer. Therefore, we deem it possible to go beyond the principle according to which it is not possible to introduce new services by unilateral amendment of the contract and some basic requirements on this could be helpful.

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The other rules regarding changes seem adequate since the PSU, in the event it rejects the changes, has the right to terminate the framework contract free of charge and with effect at any time until the date when the changes would have applied.

In addition, when several service providers are involved, we see the need to better clarify roles and responsibilities of the different actors.

Finally, extending these rules to non-EEA payments or currencies would not be justified due to their different characteristics in terms of complexity and global regulatory heterogeneity.

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

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

29.1 The rights and obligations as described in PSD2 are clear

	1	2	3	4	5	Don't know/not applicable
for PSUs				X		
for PSPs	X					

29.2 The rights and obligations included in PSD2 are adequate

	1	2	3	4	5	Don't know/not applicable

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for PSUs				X		
for PSPs				X		

Please explain the reasoning of your answer to question 29.1 and 29.2 and provide arguments for your views:

We believe that rights and obligations for PSPs are clear but should be revisited and at a minimum integrated in the following provisions:

- Consent and withdrawal of consent art. 64 and art.94: consumer trust is a key factor for a successful 'PSD2' or 'open banking' or 'open finance' framework and a meaningful consent framework is essential in this. To support consumers with regards to services consent management, rules on providing and withdrawing consent should be better defined. In particular, we believe it is necessary to align art 94.2 of PSD2 to the clarifications provided by the EDPB regarding the legal ground for data processing. More details are in questions 33/35.
- Open API infrastructure and its functioning (art. 65-67): the cost of implementation of open access has been very high for all PSPs, especially for ASPSPs, in terms of financial costs and efforts. More details on questions 33/35.
- Processes & Procedures:
 - Fall-back exemption and contingency measures across EEA have to be better handled in terms of authorization in order to ensure proper alignment of requirements and timeframes among countries, especially when it comes to Banking Groups operating at EU level and/or in case of unique dedicated interface across national boundaries. In this context, it is important to remember the principles expressed in Article 98 where it states that "*EBA shall in close cooperation with the EC..... develop RTS in order to: (c) secure and maintain fair competition among all payment service providers; (d) ensure technology and business-model neutrality;...*". More details are provided in the answers to questions 33/34.
 - Need to review general measures to facilitate fraud mitigation and management, for instance the possibility for banks to recover funds that have been wrongly credited, especially by clarifying what the PSP's rights and obligations are when it identifies a fraudster among its customers. In some Member States such a possibility already exists but rules should be set to facilitate the blocking and retrieving of money transferred fraudulently to address legal and operational issues that are slowing down the process of retrieving the money fraudulently transferred cross-border. In general, it would

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be advisable to envisage more stringent interventions/penalties for those countries that record a very high rate of fraud, forcing PSPs to increase/exploit a lot of effort to manage/mitigate it. More details are provided in the answers to questions 42/44.

- Third party providers' registration processes are sometimes too cumbersome and not aligned due to the absence of specific requirements and a clear legal validity of the EBA register. This creates friction in the access to APIs documentation and development.
- Security mechanism to check/monitor/register accesses and transactions along the E2E payment chain should be foreseen to increase safety adoption of services (e.g., accesses and transactions log tracking) both real time and/or batch. More details are provided in the answer to question 41.
- As a consequence, also outsourcing arrangements would be better clarified as well as liability allocation among providers (also referring to SCA application and best effort rules for one-leg out transactions). More details are provided in the answers to questions 37/38.

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?

Yes

No

Don't know / no opinion / not applicable

Please explain why you think the current rules should be changed or clarified, referring to specific articles to be changed and including suggestions:

In general, the personal scope of specific PSD2 requirements (e.g. SCA) should clearly distinguish between their respective meaningfulness for consumers on the one hand, and the unnecessary implications for corporate clients products on the other side: where a specific requirement is intended for the consumer sphere, the legal provision should make clear that it does not apply to payment services contracts for corporate clients instead of giving provisions to agree on respective waivers. This would drastically simplify relationships with corporate clients, enable individual and innovative solutions and may be justified by this customer segment's high degree of professionalism.

31. In your view, are the provisions on applicable charges as laid down in Article 62 are adequate?

1- Strongly agree

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- 2- Somewhat agree
- 3 - Neutral
- 4 - Somewhat disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

31.1 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?

- Yes
- No**
- Don't know / no opinion / not applicable

32. In your view, are rules on the derogation for low value payment instruments and electronic money in PSD2 (Art. 63) still adequate?

- Yes
- No**
- Don't know / no opinion / not applicable

Open banking and beyond

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable

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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		

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 (confirmation on the availability of funds), PIS or AIS), indicate to which service(s) your argument(s) relate:

The still limited use of the new PSD2 payment services in terms of customers involved and transactions executed reinforces the impression that the Open Banking paradigm is still in its infancy at least in some countries, and that its potential benefits could further materialise.

One of the main drawbacks of the open banking regime prescribed in PSD2 is related with the lack of a fair distribution of value and risk between the parties involved. This led to a disproportionate investment burden by the ASPSP with expected benefits yet to be seen. The free of charge nature does not provide the right incentives for all the entities involved to develop the open banking related features and ecosystem beyond what is strictly mandated by law and therefore constitutes a detriment to innovation.

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Therefore, Articles 66 and 67 and the related provisions should be amended in the following way:

- There should be a reflection on what kind of data ASPSPs should expose through the API. For example, limit the material scope of the data to “core” data which are inherently part of the payment transaction and strictly necessary to provide an account information service in an efficient manner and not mandate access to processed or enriched payment account data. It cannot be the rule that every [new] value-added service introduced by the banks (for example paying with telephone number) is has to be automatically incorporated also to the PIS APIs. Broad application of free-of-charge access to account rules might lead into a situation where it is not commercially profitable for ASPSPs to introduce new functionalities for their customers, as implementing the functionality to the API makes the building costs double. This can have a detrimental impact on the innovations on the payments area and enters into the competitive space where PSPs provide their services.
- Provide for the possibility for ASPSPs and TPPs to agree on remuneration in order to enable a fair share of costs and opportunities.
- Liability should be reviewed. The initial approach whereby PSUs turn initially to the ASPSPs for refunds etc., provided a simple start point. However, as PIP payments grow in volume and value this model may not be sustainable. There needs to be much clearer visibility of parties in the chain of liability. There should be recognition that ASPSPs are incurring costs turning away invalid claims which never reach the TPP or merchant.

In addition, we believe that the following should be revisited:

- Consent and withdrawal of consent (art. 64) and art.94: rules on providing and withdrawing consent should be revised as follows:
 - When referring to “consent”, it is first important to better specify the different types of consent currently mentioned in the PSD2. The following types of consent should be distinguished:
 - 1) Consent for the provision of services under articles 65, 66 and 67 (to the TPP and the CISP);
 - 2) Consent to execute a payment under article 64 of the PSD2 (through a TPP or not); in a possible PSD2 review it would be wise to consider a clarification of the points above as well as to align art 94.2 to the clarifications provided by the EDPB regarding the legal ground for data processing;
 - Consent management should offer PSPs a higher degree of flexibility to match their respective and even more demanding customers’ needs meanwhile bearing in mind GDPR rules that we wish to become consistent with the aim of PSD2/Open Banking rules;
 - PSPs could be allowed to develop or continue to use mechanisms/interfaces to help the consumer’s management of this process.

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- **Open API infrastructure and its functioning (art. 65-67 and RTS on SCA&CSC):** we believe it is of utmost importance that the principle of access to accounts be maintained within PSD2 with the basic rules already provided in legislation to avoid the risk of undermining the foundation around which all the implementation has been made, and efforts deployed. In addition, we believe that the following factors should be carefully considered in a possible revision of PSD2:
 - o Main barriers, especially for banking groups, for a fully implemented PSD2 were the divergences of the APIs implementations due to diverging rules across Member States (e.g., each NCA has carried out APIs analysis leveraging on different levels of detail and requirements and following a different process/timeframe to grant fallback exemptions). Consequently, more difficulties have emerged in promoting and developing European solutions instead of national ones.
 - o Unclear and changing regulatory requirements combined with the absence of common criteria that could allow the market to develop technical standards of implementations brought to system integration issues, long timeline for APIs adjustments (from rules analysis and understanding to delivery), extended testing activities, customer complaints directed to ASPSPs
 - o Processes for APIs development, testing, widely usage before production delivery should be more consistent to ensure smooth adoption of services
- Due to the payment chain fragmentations that have emerged over time, general coordination mechanisms among providers would be helpful to guarantee promptly resolution of issues and customer adoption of services.

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).

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

	Yes	No	Don't know/not applicable
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		

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The provision on ASPSPs denying AIS-and/or PIS providers' access to payment accounts should be further facilitated 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	

Please explain your answer to question 34:

Regarding the question of a common API standard, standardisation is important as it allows for more interoperability and higher levels of adoption. However, we do not see the need to fundamentally change this set-up or to further standardise APIs within the legal framework. Setting up the API specifications based on the legal framework should be left to the market. We note that the market already converges to a high degree. Furthermore, changing the current principle from market-based standards to one mandatory standard would require significant investment efforts for ASPSPs and TPPs that outweigh potential benefits.

As regards to the regulatory framework, it should define in clear manner the requirements for standard and common criteria that could allow the market to develop technical standards of implementations. There is a need for clearer and more stable regulatory requirements that can facilitate the identification of common criteria and the development of technical implementation standards.

As already reported in previous responses, we are in favour of clear and basic requirements for APIs and common criteria among countries that could allow the market to develop more detailed standards of technical implementations and guarantee a more uniform behaviour of the involved players leaving rooms for competition and innovation. To this extent, it is of course very important to further clarify the concepts of "obstacles" (especially in relation to SCA) and "objectively justified and duly evidenced reasons" as well as possible interrelations also in accordance with the recently published EBA Opinion.

35. Access to payments data via interfaces is currently provided for free to third party providers. Should access to payment data continue to be provided for free?

Yes

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No

Don't know / no opinion / not applicable

Please explain your answer to question 35:

This is considered one of the main drawbacks of the PSD2 regime. The lack of a fair distribution of value and risk between the parties involved leads to a disproportionate investment burden mainly by the ASPSP. The free of charge nature does not provide the right incentives for all the entities involved to further develop the open banking related features and ecosystem beyond what is strictly mandated by law. The legislation should acknowledge this basic market principle.

36. What is your overall assessment about open banking in the EU? Would you say that it should be further extended?

We are of the view that PSD3 should retain its focus on payment services. Any provisions concerning possible extension of open banking into open finance should be addressed via separate data-centric legislation that also ensures clear alignment with both GDPR etc. We see the potential that over time the growth of open finance and data sharing could bring benefits to all market players and the wider economy. Any proposal for open finance should therefore focus on how data should be shared (taking for granted the data access rules already established with PSD2), addressing issues such as a fair distribution of value, liability, consumer protection and the level playing field. Under this, data would be shared voluntarily, which would help to determine for which use cases the customer demand exists. The introduction of a cross sectoral data sharing framework is also crucial, as the greatest potential benefits come from the ability to combine data from across sectors to develop new services or improve existing ones.

Liability and refunds

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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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	

37.1 In your view, should changes be made to the PSD2 provisions on liability and refunds?

Please consider the following suggestions:

	Yes	No	Don't know/not applicable
The provisions on refunds should be amended to cover all SEPA credit transfers		X	
The provisions on refunds should be amended to cover only SEPA instant credit transfers		X	

Please explain your answer to question 37.1 and 37.2

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:

Above all, we consider important to achieve a more balanced allocation of liability especially between ASPSPs and TPPs (also in consideration of all the actors involved in the end-to-end payment chain) and adjacent obligations (e.g. funds recovery processes under art. 73 and 74 of PSD2) between the ASPSP, currently seen as the primary liability holder, and PISP especially with regard to unauthorised payment transactions:

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- According to Art. 73 (2) ASPSPs have to reimburse the customer until the end of the next business day after the customer submitted the complaint. However, when a TPP is involved in the payment, the investigation and resolution of such complaints is more complex and often requires more time. The initial approach whereby PSUs turn initially to the ASPSPs for refunds etc., provided a simple start point. However, as PISP payments grow in volume and value this model may not be sustainable. There needs to be much clearer visibility of parties in the chain of liability. There should be recognition that ASPSPs are incurring costs turning away invalid claims which never reach the TPP or merchant.
- Therefore, an extension of the reimbursement period would be appropriate. We would propose to align the delays with the procedure for complaints handling. This could be workable as follows: by the end of the following business day the payer's payment service provider gives a first indication non-authorized/authorized transaction. If the transaction was authorised, no reimbursement will follow. If the transaction was unauthorised, the payer's payment service provider shall have 15 business days to investigate (please refer to the procedure for complaints handling). If the PSP concludes that the transaction was unauthorised, the payer's PSP refunds the payer the amount of the unauthorised payment transaction. The payer's payment account shall be restored to the state in which it would have been had the unauthorised payment transaction not taken place (this also with regard to the value date). There will be no disadvantage for the payer but would allow the ASPSP to properly assess the information presented by the PSU and their technical circumstances. This would also mitigate the fact that the ASPSP bears the (default) risk until the case has been solved and final liability issues clarified. This is true also regardless of the underlying payment instrument and a possible involvement of a PISP: it is questionable whether the requirement to refund an authorised payment immediately is always in line with a PSP's requirement to duly examine the incident as the assessment of the information presented by the PSU and their technical circumstances in a proper manner requires at least several business days. This is particularly true in ambiguous cases, where the ASPSP would have to bring forward allegations of fraud against their customer in order to gain time for a sufficient examination and safeguarding their rights.
- ASPSPs should be able to limit access to certain TPPs when fraud rates are significantly higher.
- Furthermore, a harmonised resolution framework for the handling of customer complaints related to unauthorised payments between ASPSPs and PISPs, including minimum response deadlines and standard communication channels, might support the efficient solution of cases and reduce risks for all parties involved.

Also, it would be appropriate to clarify the notions of "negligence" and "manipulation of the payer". As for the first concept, clarifying its meaning (even by providing a wider range of examples, than those available as of today) would harmonize rules across the European Union, and reduce uncertainty when it comes to customers' refunds. The definition of (gross) negligence becomes increasingly challenging with the development of innovative payment methods and solutions.

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With regards to the “manipulation of the payer by the fraudster”, we point out that, given the rise in social engineering-based fraud), it would be opportune to distinguish circumstances in which the fraud is perpetrated through technical elements (e.g., malware) and the instances in which the enabling factor is social engineering (e.g. vishing, in which case customers make the payment themselves following, for instance, the fraudsters’ directions). The distinction would serve to allow a correct distribution of responsibility, in case of fraud, between financial institutions and customers: that is, in case of exploitation of social engineering techniques, customers’ due diligence would allow them to identify fraudulent communication attempts (e.g., if during a phone call a bank operator asks the customer for their social credentials, they should know not to give them).

PSD2 should also include a revocability right of a credit transfer transaction to recover (and or block) funds from the payees’ account for the fraudulent (instant) credit transfers in order to more effectively fight against fraud both in the case of unauthorised transactions and authorised push payment fraud. Consumer protection measures should not provide a refuge for criminals.

For this purpose and considering that Article 87 states that the payee’s PSP shall ensure that the amount of the payment transaction is at the payee’s disposal immediately after that amount is credited to the payee’s payment service provider’s account unless where certain conditions are met, a new condition - point (c) – should be added in article 87 concerning availability of funds as follows: the transaction is not under fraud suspicion. This obligation shall also apply to payments within one payment service provider. A new paragraph should be inserted for transactions that were previously credited to clarify that PSPs, in order to fight fraud, should be able debit or withdraw the amount of a transaction, previously made available to the payee’s account whenever a transaction has been identified as fraudulent or suspicious of fraud.

Finally, some good practices at national level in this respect are already in place and they could represent a good source of inspiration to greatly reduce the effectiveness of the fraudulent attempts and the impact of frauds on EEA payments, thus creating simpler and faster processes on which financial institutions could rely on in order to facilitate reporting and sharing data of fraudulent transactions blocking and retrieving of the money transferred across countries and stolen by fraudsters.

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?

Yes

No

Don’t know / no opinion / not applicable

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Please explain your answer to question 38:

Article 75 describes an obligation for the card issuer (payers PSP) for a part of the payment transaction that they de facto cannot control. Information from the payees PSP is needed to fulfil the obligation. The article should therefore be amended to also impose requirements for the payees PSP.

We see the need to revisit the current scope of Article 75 which is limited to card payments and to make the provisions payment instrument neutral. Similar mechanisms are being developed using regular credit transfers. Article 75 should reflect this market development. However, a legal maximum limit would not be adequate.

Execution of payment transactions

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

	1	2	3	4	5	Don't know/not applicable
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		

39.1 Should the current maximum execution time allowed for payments (Art. 83) within the EU ("two leg") be adjusted?

Yes

No

Don't know / no opinion / not applicable

Please explain why you think the current maximum execution time allowed for payments should be adjusted and include a suggestion:

Please explain your answer to question 39.1:

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The current maximum execution time reflects market needs. It is possible for certain schemes or communities to agree on more ambitious time limits depending on certain market needs of product offerings.

39.2 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?

Yes

No

Don't know / no opinion / not applicable

If you think action should be taken at EU level, please indicate why and include a suggestion:

Please explain your answer to question 39.2:

Although we share the aim of an enhanced harmonization of international payment systems, at this stage we do not see the need or the feasibility to extend PSD also to "One-leg" services. Firstly, the PSD itself is a directive that applies within the EEA and is further voluntarily extended in the whole of the SEPA area; its extension outside of this perimeter could generate regulatory and integration problems for countries that are currently outside the SEPA area. Including such obligations would require that first a coherent global approach broadly harmonising regulatory requirements and oversight is achieved. Any legislative limit to the execution time will not be feasible to implement for EU PSPs without this. Only if regulation of one-leg out is done at an international level and with full reciprocity, it would be appropriate to include legal provisions on the “leg-out” part on EU PSPs.

Secondly, setting in primary (EU and national) legislation the operational details of complex transactions, which, moreover, operate under different schemes and under different laws, would risk making the pursuit of a market-based approach less effective. Furthermore, the complexity of one-leg transactions is both considerably higher and more heterogenous compared to SEPA or intra-EEA payments. This is due to the fact that a multitude of intermediary banks, different technical standards and currency conversions may be needed along the payment chain. One-leg payments are not comparable to mass payments within a single market which is characterized by a single currency, uniform regulatory rules and efficient market infrastructures that can leverage on these premises

However, taking advantage of the impetus provided by the G20 Roadmap and the FSB, an attempt to streamline aspects such as transparency of costs and execution times for such transactions, etc. could be undertaken, so as to avoid different regulations being applicable

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(e.g. Regulation 518, which imposes transparency rules concerning the conversion of European currencies). The current proliferation of regulatory references is indeed difficult for operators to manage and for the end customer to understand. The political task should be to work towards the targets laid out by the G20 roadmap while at the same time follow reasonable assumptions regarding costs and benefits.

The issue of SHA charges for payments originating outside the EU should be clarified where an intermediary is involved. It should be possible for a payment sent OUR from outside the EU to reach the ultimate beneficiary as OUR and not be converted to SHA. This is simple and in the ultimate beneficiary's interest.

39.4 If you have any suggestions for changes (other than those under question 39.1 and 39.2), please include these in your answer:

Frauds in remote payments with counterparts located outside of the EEA confirmed the need to reflect upon the "best-effort" rule for one-leg out transactions in order to reinforce security for providers located inside EEA. In particular, the "best effort" rule might need reconsideration to limit the impact for EU PSPs and therefore for merchants and users, especially where the payer's bank is located within EEA and the beneficiary's bank is outside the EEA and concerns countries with a major risk exposure to frauds. We would suggest for example, to require "always SCA" on the EEA issuer side where the merchant relies on non-EEA acquirers, especially for countries with higher fraud rates (because this would benefit European merchants/acquirers vs non-EU merchants/acquirers and will pursue a higher level of security for EEA PSPs). This could be an incentive for the development of European business.

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 too before a payment is executed?

The unique identifier is sufficient

The unique identifier must be combined with the name of the payee

The unique identifier must be combined with something else (namely) Other

Don't know / no opinion / not applicable

Please explain your answer to question 40:

The IBAN only rule is considered to be sufficient and there is no need to change it.

However, Article 88 does not distinguish between the cases in which the user provided the incorrect unique identifier (a problem easily solved, as the illegitimate beneficiary usually agrees to the restitution of the wrongly accredited sums), and the case in which a fraudster

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manipulated the customer into indicating the wrong unique identifier (e.g., through malware or social engineering), which is a more difficult situation. Indeed, the current rules do not consider this to be wrong use of the user’s credentials or the payment instrument, for which there are specific provisions applicable to financial institutions (determining their full responsibility towards the customer). It is essential for the regulator to contemplate such fraud dynamics, in order to allow a correct distribution of responsibility among the parties involved in the payment process and to avoid letting the user to unjustly suffer losses, pushing customers to lose trust in financial instruments.

In addition, we believe that an in-depth reflection should be made on the need to identify common rules/procedures to make effective and efficient the regulatory provision introduced by PSD2 in Article 88 (Incorrect unique identifiers) and relating to the cooperation required from PSPs in order to recover the user's funds, making reasonable efforts also regarding the communication of all relevant information and personal data, especially in case of frauds. The problem encountered to date is that while the customer interacts only with his or her ASPSP and cannot advance a complaint with a different institution, it is clear that the ASPSP itself is in a situation of active legitimacy vis-à-vis the customer, but not in the same way vis-à-vis the other reference institution, namely the payee’s ASPSP. Hence the ineffectiveness of this rule in fulfilling its purpose of protecting the consumer and providing PSPs with a valid tool to counter ex post fraud. In particular, the article should be revisited considering the following aspects:

- It should be guaranteed that the customer can continue to rely on a clear entry point according to his/her complaints. In a scenario where more market actors are involved with different roles/liabilities, it is of utmost importance to have a single point of contact for the customer to ensure the correct flow of information, and a clear mandate for ASPSPs to manage the complaints
- The meaning of “all relevant information for the collection of funds” should be better clarified. A list of such information could be provided in order to have a standardization of the available and useful information that should be exchanged.

Operational and security risk

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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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' personalised security credentials		X				
The provision on major incident reporting (Art. 96) is adequate	X					

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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				

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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			

43. With regard to the provisions on operational-and security risk, including those on fraud prevention: should any changes be made to these provisions?

Yes

No

Don't know / no opinion / not applicable

Some changes that have been taken effect since PSD2 was adopted are not clearly reflected in the Article 95 text e.g., the EBA Guidelines on ICT and security risk management have since replaced the EBA Guidelines on security measures for operational and security risks.

43.1 Are the current provisions future-proof?

Yes

No

Don't know / no opinion / not applicable

Please explain your reasoning of question 43.1 and provide arguments for your views (e.g. refer to your responses to questions 41 and 42).

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Overall, the data available shows a very low level of incidence of frauds and shows that the safety measures adopted by European PSPs are adequate. The huge efforts by PSPs to fight fraud is bearing fruit and a lot is being done to manage the fraud despite the constant growth of the attacks.

In terms of the fraud reporting obligations, The EBA GL 2020/01 Guidelines on fraud reporting under PSD2 apply to the reporting of payment transactions initiated and executed from 1st July 2020. These amending Guidelines have been drafted according to Article 16 of the EBA Regulation and in fulfilment of the EBA mandate under Article 96(6) of PSD2. In addition, since January 1, 2022, Regulation (EU) No 1409/2013 on payment statistics ECB/2020/59 has been in force, replacing ECB/2013/43. Therefore, even if we realize that the EBA has its own responsibility as one of the European Supervisory Authorities and the desire to continue to closely monitor developments in the fraud domain, this approach is not in line with the objective of creating a single flow for industry and achieve efficient use of industry resources. Indeed, although the fraud statistics based on ECB/2020/59 cannot be compared on a one-to-one basis with the current EBA fraud reporting, in our view ECB reporting does provide sufficient insight into fraud developments and trends. An alignment of these reporting obligations should be considered to alleviate the reporting burden on the industry.

For what concerns operational and security risk, security mechanisms to check/monitor/register accesses and transactions along the end-to-end chain should be foreseen to increase safety adoption of services for the whole market and the customers (e.g., accesses and transactions log tracking and monitoring). As a consequence, also liability should be clarified with specific reference to access to account features.

Furthermore, there is the need to reconcile the article 64 of PSD2 with the article 21 of the RTS on SCA & SCS in order to ensure that the same concept of un/authorized transactions is foreseen and is clear for all providers.

Finally, the review should consider measures to facilitate fraud mitigation and management, for instance the possibility for ASPSPs to recover funds that have been wrongly credited. In some Member States such a possibility already exists.

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:

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%.

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	Card present	Card 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		

44.1 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:

A clear sign of the criminals’ behaviour is the shift from security breach methods to social engineering techniques, as they now target customers instead of remote systems’ transactions. Following the introduction of PSD2, it became more difficult to perform fraud due to SCA and dynamic linking required for authorisation. For example, in the past a simple SIM swap would have been enough to retrieve an OTP and authorize a payment. Therefore, against these developments, fraudsters are now moving to social engineering, phishing and smishing patterns. In these cases, it is the client who is authorising the transaction being induced by the fraudster, so typically a manipulation of the payer by the fraudster takes place. Unfortunately, this category is very difficult to be detected and cannot be prevented by the security safeguards of the payment systems. Fraudsters focus more on SCA credit transfers because they are – on average – more profitable due to the higher amounts involved. Moreover, it seems to be easier for fraudsters to deceive customers and obtain the complete credentials than to break through the banks' systems.

In order to prevent these types of fraud, some operators consider appropriate to promote some form of coordinated action at European level, also directly involving telco operators and smartphone operating system manufacturers.

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

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
The requirements for SCA (Art. 97) are still adequate	X					
SCA has made electronic payments safer		X				
The provision 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 (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)				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		

Please explain the reasoning of your answer to question 45 and provide arguments for your views, including possible suggestions for changes to the provision (if any).

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If your business experienced any problems due to the implementation of SCA, please include these in your answer:

In general, we believe that SCA is an adequate security measure, although sometimes introducing complex implementation features, but worthy for the market and the final user. In fact, even if we could agree that SCA led to obstacles in providing payment services towards PSUs, in our opinion security must remain a basic principle even in the context of access to accounts. Final users are now getting used to SCA and so they would expect that SCA will be maintained as a good measure against payment frauds. However, the wide usage of exemptions might undermine this positive influence and also the investments made into the SCA techniques.

We consider the current requirements overall appropriate. However the SCA framework in general would benefit from more a reconsideration on how the security requirements for remote payments are currently defined and flexibility in the provisions should be considered, where appropriate. The constant evolving nature of fraud must be taken into consideration, with legislation focusing more in defining principles and outcomes.

Fraudsters have since adapted their modus operandi to explore new fragilities, which has led to fraud massively migrated to authorized push payments, scamming, social engineering and other methods that circumvent SCA as it is defined. The constant evolving nature of fraud must be taken into consideration, with legislation focusing more in defining principles and outcomes instead of describing specific solutions.

With the introduction of SCA, there is a need for payment service providers to continue to recognise the wide variety of consumers and the ways in which they access goods and services. Whilst the move to digital continues to make advancements and increased significantly because of the global pandemic on Covid-19, there is a need for the regulation to take account of all customer segments, including those less digitally enabled. Whilst card issuers offer a proportionate range of authentication options, in some cases it is challenging to meet the needs of all consumers. To drive a culture which recognises all customer segments, provision should be made which ensures that vulnerable customers are not excluded from performing e-commerce transactions.

Further, the following areas would require amendments in our view:

- TRA Exemptions are applied at legal entity level which is extremely inflexible with a wide spectrum of merchants with differing fraud levels. Essentially proactive merchants who are minimizing their fraud rates may not be rewarded with a higher exemption given the general fraud rate level across the legal entity.
- Delegated authentication rules are very heavy and complex. The idea of every delegator regularly auditing the company the authentication was delegated to (for example Apple Pay), is impossible. There should be defined a new role and licensing criteria for delegated payment authenticator service providers, which could then be audited and supervised by the NCAs.

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45.1 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?

Yes

No

Don't know / no opinion / not applicable

If you think changes should be made to the current SCA regime, please explain your answer, and if you have specific design or application suggestions for SCA, please include these:

The SCA regime should be oriented by the policy objectives and not be too inflexible thus not allowing different approaches to be implemented, considering they reach the intended goals (e.g., customer protection and fraud minimization). Furthermore, more authentication factors should be introduced, for instance it should be possible to use behavioural biometrics and analytics as a distinct factor in scenarios where there is the possibility to prove that the transaction has been effectively authorised by the payer.

It is also questionable whether the strict SCA requirements are fit for the emergence of automated and M2M payments scenarios for corporate clients. This is accompanied by current uncertainties regarding the regulatory assessment/classification of dedicated communication protocols for corporate clients. The PSD review should assess these aspects and give adequate leeway for such solutions and protocols, taking in mind that they are not offered to consumers and therefore entail both technologies and risk profiles which are not fit for the very rigid SCA requirements.

The implementation of SCA and the use of 2 factor authentication that meets the requirement of inherence, knowledge and possession has been more difficult for certain types of PSUs due to having additional needs or vulnerable characteristics. To ensure that these PSUs are not excluded, a variety of authentication methods have been developed, however, there is always likely to be some PSUs who are unable to use those methods but have previously successfully made digital payments. Consideration needs to be given on how we can ensure that these cohorts can make payments safely where the authentication factors are unavailable.

Finally, the RTS Art 4(3)(d) 'time out' requirement which generates unnecessary friction within a corporate online session.

45.2 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?

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Yes

No

Don't know / no opinion / not applicable

Contactless payments

46. 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

The limit should be lower than 50 EUR The limit should be higher than 50 EUR

PSUs should be able to fix their own limit

Don't know / no opinion / not applicable

There is also a limit to the cumulative value of contactless payments. These limits differ per country or per PSP.

46.1 What is your opinion about this cumulative EUR-limit for contactless payments (without SCA)?

Overall, we do not consider that there is a need to review the PSD2 RTS to increase the limits on contactless payments as the current limits are adequate. Also, it is important to keep a close eye on fraud developments of contactless payments. They should not overshadow the benefits.

As a general remark, we would add that the distinction between contactless and remote is not always clear. Payments in a POS based primarily on NFC technology are considered contactless. When using other technologies (e.g., scanning a QR code) this is not considered contactless but remote.

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.

The limit of 150 EUR should remain

The limit should be lower than 150 EUR

The limit should be higher than 150 EUR

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Other/Don't know / no opinion / not applicable

46.2 What is your opinion about this cumulative payments-limit for contactless payments (without SCA)?

Our view is that the cumulative limits are also adequate and these is no need for change.

The limit to consecutive transactions (5 times) should remain

The limit to transactions should be lower than 5 consecutive transactions

The limit to transactions should be higher than 5 consecutive transactions

Other

Don't know / no opinion / not applicable

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?

Yes

No

Don't know / no opinion / not applicable

If yes, please explain your answer to question 47 and include drafting proposals for measures:

The payments system itself is well protected and there is an incentive for PSPs to respond to evolving fraud threats. However, our customers continue to experience fraud which is perceived as payments related, when the reality is that the threat lies outside the ability of PSPs to counter it. It should be considered how this can be addressed.

ADR procedures for the settlement of disputes and penalties

48. Should this information also be made available for single payment transactions?

Yes

No

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Don't know / no opinion / not applicable

Please explain your answer to question 48:

Question 49. Should the PSD2 be amended with regard to sanctioning powers and penalties?

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

	1	2	Don't know/not applicable
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

49.1 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:

50. Should any other changes be made to the provisions and/or topics dealt with under Title IV?

Yes

No

Don't know / no opinion / not applicable

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Please explain your answer to question 50, being specific and if possible, offering textual proposals:

Under Article 2(3) via-a-vis Article 62(2), SHA applies to intra-EEA payments in non-EEA currencies. This restricts PSPs in being able to respond to requests from their corporate customers who want to accept all charges themselves (i.e., apply charge code 'OUR') as a way to help, although not guarantee, that payees receive the full amount. This is important in certain types of transaction such as pension payments.

To allow for this, Article 61 could envisage an additional derogation for transactions where the payer (payment service user) is not a consumer, including a reference to Article 62(2) for payments transactions in a currency of a non-Member State provided within the Union, where both the payer's and the payee's payment service providers are, or the sole payment service provider in the payment transaction is, located therein.

Title V: Delegated acts and regulatory technical standards

51. In your view, are the PSD2 requirements on delegated acts and regulatory technical standards adequate?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 51, being specific and if possible, offering textual proposals:

The PSD2 review should take into consideration the significant fragmentation created, at different levels, by the different pieces of legislation, clarifications, EBA opinions and NCA clarifications and initiatives that in the end have brought uncertainty and led to a lengthy implementation process, in particular in what concerns open banking access to accounts and the effective scope of PSD2 in that regard.

We would like to remark the importance of ensuring coherence of the whole process for level 1 and level 2 requirements, which has been rather lengthy and complex for PSD2. This has not only created issues for market participants by creating uncertainty on the requirements but has in our view also contributed to diverging approaches at national level.

That's why we believe that a possible revision of PSD2 should carefully consider the right distribution of rules according to the level of compulsoriness for the market and consequently the right regulatory vehicle to use.

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Finally, in terms of information to the citizens, we deem of utmost importance that also the Commission carries out appropriate awareness campaigns against frauds and cyber-attacks.

52. Do you see it as appropriate to empower the European Commission in further fields to adopt delegated acts?

Yes

No

Don't know / no opinion / not applicable

If you do not see it as appropriate to empower the European Commission in further fields to adopt delegated acts, please explain why:

We believe it would be appropriate that all EBA Opinions/Guidelines/Q&A stemming from RTS on SCA&CSC be carefully analysed and incorporated, where needed, in a future PSD3 following a holistic assessment of the best repartition of the rules to avoid deviating from the original spirit of PSD2. Also timing for adoption is extremely relevant to avoid continuous, consistent, and costly adjustments for the market.

We strongly suggest not to add further delegated acts exactly to avoid the same approach as the one followed with the above-mentioned deliverables.

53. Do you see a need for the European Commission to provide further guidance related to the rights of consumers?

Yes

No

Don't know / no opinion / not applicable

54. Should any other changes be made to the provisions and/or topics dealt with under Title V?

Yes

No

Don't know / no opinion / not applicable

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Title VI: Final provisions

55. In your view, are the final provisions listed in Title VI still adequate?

Please indicate to which extent you (dis)agree with the following statements, 1 standing for 'strongly agree', 2 for 'somewhat agree', 3 for 'neutral', 4 for 'somewhat disagree' and 5 for 'strongly disagree'.

	1	2	3	4	5	Don't know/not applicable
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) were adequate		X				

Please explain the reasoning of your answer to question 55 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:

We believe there is the need to foster harmonisation rules and to better envisage the review clause to avoid respectively a different adoption of provision (with additional costs for providers) and to ensure proper forecasting of the overall framework timeline in a way that updates are synchronized and overlaps avoided (e.g. EBA Guidelines on security measures replaced by GL on ICT and security risk management, Fraud Reporting consolidated version and limited network, RTS proposal to change 90-days SCA).

55.1 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?

Yes

No

Don't know / no opinion / not applicable

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55.2 Do you see any other issues to be considered in a possible revision of PSD2 related to the final provisions?

Yes

No

Don't know / no opinion / not applicable

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?

Yes

No

Don't know / no opinion / not applicable

Please explain what are these other issues that have not been raised in this questionnaire. If these are specifically relevant for particular stakeholder(s), please make this known in your answer:

We are cognisant that although PSD2 recognises the concept of one leg out payments, PSD2 does not currently contain an equivalence regime. With countries increasingly considering the adoption of a regulatory framework similar to PSD2, this would provide the EU with the flexibility going forward of determining if the regulatory regime of the third country has a close comparison to the intent and outcomes of the EU's system. This would help to future proof the legislation in the event that such equivalence decisions are appropriate but ensures that the EU retains its discretion as to whether such decisions are appropriate. We have seen a number of other financial services legislation introduce equivalence regimes and would suggest that this could be considered when reviewing PSD2.

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