Breakout Session

Presentation:

Navigating PSD3 and PSR: Impact on stakeholders

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What is the status of PSD3 and PSR?

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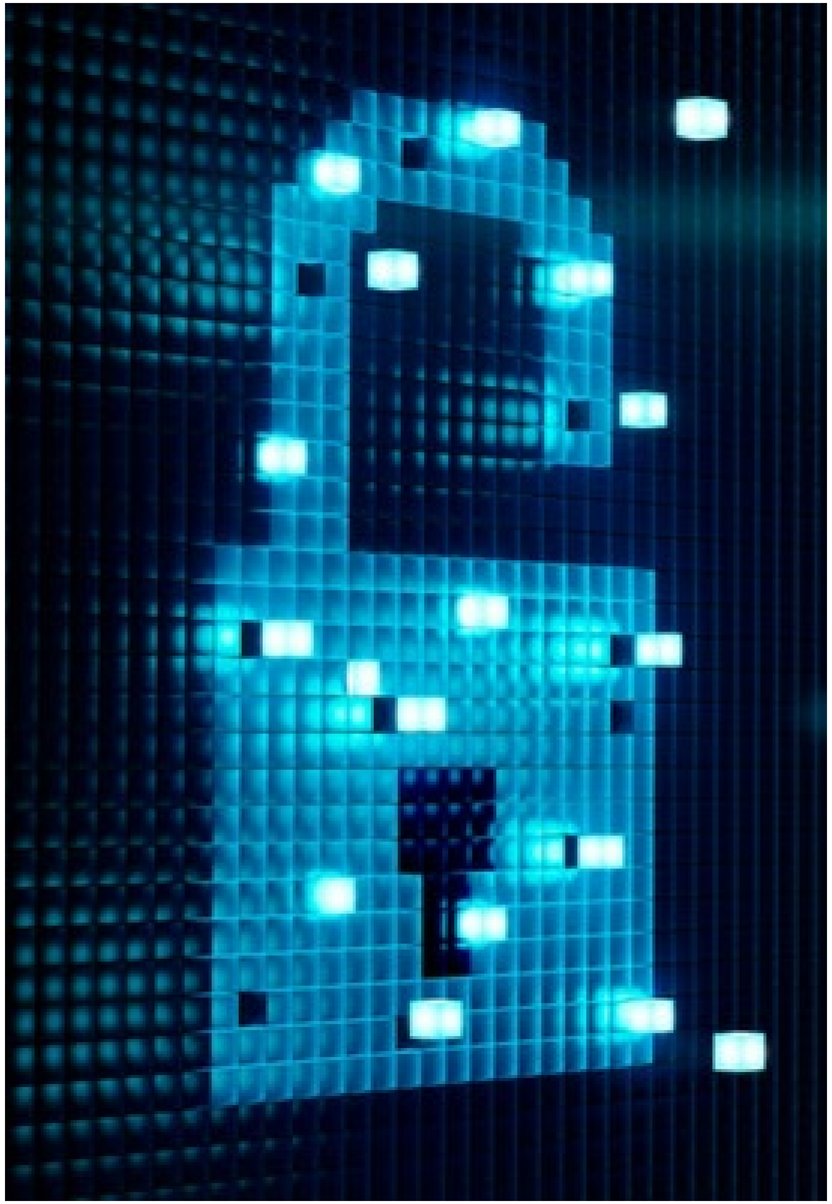
European Commission announced plans to modernise the Payment Services Directive.

Current day

Proposed changes are currently undergoing reviews and amendments in the European Parliament and the Council of the EU

End 2024 / Early 2025

Finalised version is expected to be published by late 2024 / early 2025. After publication, Member states have an 18 month transition period during which states will transpose the directive into national law and prepare compliance for newly introduced regulation.



Consumers are at risk of fraud and lack confidence in payments

OBJECTIVE 1: **Strengthen user protection and confidence in payments**

- Improvement to the application of SCA
- Legal basis for exchange of information on fraud and an obligation to educate customers about fraud
- Extension of IBAN verification to all credit transfers and on conditional reversal of liability for authorised push payment fraud;
- Obligation on PSPs to improve accessibility of SCA for users with disabilities, older people and other people facing challenges regarding the use of SCA;
- Measures to improve the availability of cash; and
- Improvements to user rights and information.

The open banking sector function imperfectly

OBJECTIVE 2: **Improve the competitiveness of open banking services**

- Requirement for account servicing PSPs to put in place a dedicated date access interface;
- "permissions dashboards" to allow users to manage their granted open banking access permissions; and
- More detailed specifications of minimum requirements for OB data interfaces.

Supervisors in EU Member States have inconsistent powers and obligations

OBJECTIVE 3: **Improve enforcement and implementation in Member States**

- Replacing the greater part of PSD 2 with a directly applicable Regulation;
- Strengthening of provisions on penalties;
- Clarifications of elements which are ambiguous; and
- Integrating the licensing regimes for PIs and EMIs.

There is an unlevel playing field between banks and non-bank PSPs

OBJECTIVE 4: **Improve (direct and indirect) access to payment systems and bank accounts for non bank PSPs**

- Strengthening of PI rights to bank account;
- Granting the possibility of direct participation of PIs to all payment services (including those designated by Member States pursuant to the Settlement Finality Directive) with additional clarifications on admission and risk assessment procedures.

Progression

PSD 1

Directive 2007/64

Contained rules on both:

i. the provision of payment services by PSPs; and

ii. rules on the licensing and supervision of one (1) category of PSPs i.e. Pis.

PSD 2

Directive 2015/2366

Contained rules on both:

i. the provision of payment services by PSPs; and

ii. rules on the licensing and supervision of one (1) category of PSPs i.e. PIs.

PSD 3 and PSR

Directive and Regulation

PSR	rules on provision of payment services by PSPs
PSD 3	rules on licensing and supervision of Pis (now including EMIs)

Choice of legislative instrument

"in various areas of EU financial services legislation (CRR and MAR by way of example), **it has been found appropriate to enact rules applicable to financial undertaking in a directly applicable Regulation**, in order to enhance the coherence of implementation in the Member States. The PSD2 review concluded that this approach would also be appropriate in payments legislation, which has led to the proposed amendments to PSD2 being contained in two distinct legislative acts:

- **PSR**, containing the rules for PSPs (including Pis and other categories of PSPs) providing payment and electronic money services.
- **PSD3**, containing in particular rules concerning licensing and supervision of payment institutions. **A directive is appropriate in the present case, given that licensing and supervision of financial institutions in general (including PIs and other categories of PSPs, such as credit institutions) remain a national competence of the Member States, and no EU-level licensing or supervision is proposed**.

Licensing and supervision of payment service providers

- Licensing / change in control of shareholding … mostly unchanged apart from requirement for a winding up plan to be submitted with an application
- List of payment services
- Acknowledged that PISPs and AISPs may hold initial capital rather than holding a PII cover at licensing stage
- Capital requirements updated for inflation since adoption of PSD2
- Safeguarding rules (possibility to safeguarding with central banks and obligation to endeavour to avoid concentration risk in safeguarded funds.
- Changes in definition (payment account, payment instrument, funds) and a new definition (distributor)
- ‘**Distributor**’ means a natural or legal person that distributes or redeems electronic money on behalf of a payment institution.

Article 3(3)(s)

(s) A winding-up plan in case of failure, which is adapted to the envisaged size and business model of the applicant.

Recital 17

… It is appropriate to add to the documentation required in support of any application for authorisation as a payment institution a winding-up plan for the eventuality of failure, proportionate to the business model of the future payment institution; that winding-up plan should be appropriate to support an orderly wind-up of activities under applicable national law, including continuity or recovery of any critical activities performed by outsourced service providers, agents or distributors.

List of services

1. Services enabling cash to be placed on and/or withdrawn from a payment account.
2. Execution of payment transactions, including transfers of funds from and to a payment account, including where the funds are covered by a credit line with the user's payment service provider or with another payment service provider.
3. Issuing of payment instruments.
4. Acquiring of payment transactions.
5. Money remittance.
6. Payment initiation services
7. Account information services

Initial share capital

Money remittance	Not less than EUR 25,000 (previously EUR 20,000)
Payment initiation	Not less than EUR 50,000 (unchanged since only introduced by PSD2)
Services 1 to 4	EUR 150,000 (previously EUR 125,000)
Electronic money	EUR 400,000 (previously EUR 350,000)

Existing position re: safeguarding under PSD 2

According to Article 10(1) of Directive (EU) 2015/2366 (PSD2) a payment institution is required to safeguard **"all funds"** in **"either"** of the two following ways: (a) using the segregation possibility or (b) applying the insurance / guarantee possibility.

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… the word **"either"** would in principle suggested that one of the two methods must be chosen … However, the directive does not explicitly prohibit that both methods be simultaneously applied. We consider therefore that it is up to the payment institution to decide whether it will fulfil the safeguarding requirement via one of the two methods or a combination of both.

Article 9 Safeguarding requirements (as proposed in PSD3)

Article 9(1)

… deposit those funds either in a separate account in a credit institution authorised in a Member State, or ***at a central bank*** *at the discretion of that central bank.*

Article 9(2)

Payment institutions shall avoid concentration risk in safeguarded customer funds by ensuring that the same safeguarding method is not used for the totality of their safeguarded **customer** *funds. In particular, they shall endeavour not to safeguard all* **consumer** *funds with one credit institution.*

Article 9(7)

The EBA shall develop regulatory technical standards on safeguarding requirements, laying down in particular safeguarding risk management frameworks for payment institutions to ensure protection of users' funds, and including requirements on segregation, designation, reconciliation and calculation of safeguarding funds requirements.

EBA to submit draft RTS to Commission 1 year after date of entry into force of PS3.

Scope of PSR

PSD lays down uniform requirements on the provision of payment services and electronic money services, as regards:

a) the transparency of conditions and information requirements for payment services and electronic money services; and

b) the respective rights and obligations of payment and electronic money service users, and of payment and electronic money service providers in relation to the provision of payment services and electronic money services.

No material amendments to exemptions.

Article 50

Discrepancies between name and unique identifier of a payee in case of credit transfers (IBAN verification)

1. In the case of credit transfers, PSP of payee, shall, free of charge, at the request of the PSP of the payer, verify whether IBAN and name of payee match and communicate the outcome. Where there is any discrepancy, this is to be notified to the payer together with degree of discrepancy.
2. Information about discrepancy to be provided to payer before authorisation of credit transfer.
3. Detection of discrepancy is not an absolute block from authorising credit transfer. “If the payer, after being notified about a detected discrepancy, authorises the credit transfer and the transaction is executed in accordance with the unique identifier given by the payer, that transaction shall be deemed to have been executed correctly.”
4. Right of opt-out from service.
5. This obligation shall not apply to instant credit transfers denominated in euro falling within scope of IPR.

Article 57

PSP's liability for incorrect application of matching verification service

1. Payer shall not bear any financial losses for authorised credit transfer where the PSP of payer filed to notify of a detected discrepancy.
2. Within 10 business days after noting or being notified of such a credit transfer, PSP shall (a) **refund full amount to payer**, or (b) **provide justification for refusing the refund and indicating bodies** to which payer may refer the matter.
3. Where PSP of payee is responsible – PSP of payee shall refund the financial damage incurred by the PSP of payer.
4. This remedy does not apply if payer has acted fraudulently or if payer opted out from receiving verification service.
5. This Article shall not apply to instant credit transfers denominated in euro falling within scope of IPR.

Article 82
Fraud reporting

1. PSPs to report to competent authorities fraud statistical data on at least an annual basis relating to different means of payment. Competent authorities to communicate such information to EBA and ECB.

2. EBA and ECB to develop regulatory technical standards on statistical data. EBA to submit draft RTS within one year after date of entry of PSR.

3. EBA to also develop draft implementing technical standards establishing standards forms and templates. One year after date of entry into force of PSR.

Article 84
Payment fraud risk and trends

1. PSPs to alert customers via all appropriate means and media when new forms of payment fraud emerge, **taking into account the needs of their most vulnerable group of customers**.
2. PSPs to organise at least yearly training for employees on payment fraud risk and trends for their employees.
3. EBA to issue guidelines 18 months after date of entry into force of this Regulation.

Electronic communications services providers

Cross-reference to Directive 2002/58/EC (ePrivacy Directive)

Article 59	***Payment service providers' liability for impersonification fraud.***
	Where informed by a PSP of the occurrence of impersonification fraud, **electronic communications services providers shall cooperate closely with PSPs** and act swiftly to ensure that **appropriate organisational and technical measures are in place to safeguard security and confidentiality**. (including with regards to calling line identification and electronic mail address).
Article 91	***Competent authorities and investigatory powers.***
	Powers are now extended to require all information necessary to carry out an investigation from electronic communications services providers.

FOR BANKS

Benefits:
Access to an expanded payment ecosystem

Challenges:
Addressing competition from new entrants, adapting legacy systems to new requirements

FOR PSPs

Benefits:
Enhanced competition and innovation opportunities, expansion opportunities through harmonised regulations

Challenges:
Adapting to evolving regulations and TS, balancing innovation with compliance

FOR CONSUMERS

Benefits:
Improved consumer protection and better fraud mitigation, financial inclusion, personalised financial services

Challenges:
Adapting to new security measures, navigating changes in payment processes

FOR MERCHANTS

Benefits:
Increased attention to fraud, wider choice of payment instruments and increased transparency, wider choice of service providers

Challenges:
Cost of adapting to new activities, compliance with transparency requirements

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Thank You