



EUROPEAN COMMISSION

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

Horizontal policies
Retail financial services

CONSULTATION DOCUMENT

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

Disclaimer

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

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

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

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

https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review_en

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

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

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

Responses authorised for publication will be published on the following webpage:
https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review_en

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

INTRODUCTION

Purpose and structure of the consultation

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

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

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

Target group

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

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

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

In addition to answering to the questions raised in this online survey, you can add any useful documents and/or data (this can be done at the end of this questionnaire).

Please give concrete examples in your answers when possible. Where appropriate, please illustrate them with concrete examples and substantiate them numerically with supporting data and empirical evidence and make specific operational suggestions to the questions raised. This will support the review process.

Background for this consultation

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

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

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

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

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

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

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

The review will have two dimensions It will be backward-looking (evaluating the application and impact of the Directive, including enforcement by national authorities), and forward looking (assessing the need for possible legislative amendments ensuring

that the EU legal framework for retail payments remains fit for purpose and future-proof).

CONSULTATION QUESTIONS

PART 1: GENERAL QUESTIONS

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

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

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

Main objectives

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

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

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

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

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

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

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

The payments landscape has changed in the last years, with the entry into force of the PSD2 and developments in technology and FinTech introducing many new players and new payment solutions into the payments market. The PSD2 has led to the emergence of new players and business models in the Single Market offering seamless payment solutions to merchants and customers. This has led to innovation and competition in the payments market. EPIF believes the PSD2 has been successful to some extent. However, more progress is still needed on SCA and certain outstanding issues hamper innovation, such as IBAN discrimination, long registration periods for agents and redirect authentication requirements.

In some instances, EU legislation is not applied in a cohesive manner across Member States which presents potential issues for players in this new ecosystem. Take the example of Strong Customer Authentication. While EPIF welcomes the objective of reducing fraud in payments, the implementation of SCA has been suboptimal, limiting the incentives of companies to invest in better fraud prevention by for example locking in 3DS technology for cards payments. More thought should be given to avoiding reliance on one technology and we would encourage alternative pathways to be fostered to ensure true competition, for instance, by allowing a more risk-based and outcomes-driven approach to SCA. The deployment of authentication factors that introduces friction within 3DS for card payments has led to the abandonment of many online payments to the detriment of the merchant and consumer.

The PSD2 has created a “one-size-fits-all” approach to SCA based on practices in the traditional banking and card sector. Methodologies inspired by traditional practices in the card sector have been extended to scenarios where this is not the best fit. For instance, wallet service providers, merchant acquirers and other Payment Services Providers (PSPs) have good in-house customer-focused solutions based on risk management data-driven methodologies, which have had to be replaced with a “one-size fits all” approach that is substandard and create broken customer experiences that can be difficult to navigate, especially on mobile devices.

Other examples include the inconsistencies with regards to licensing and the reporting requirements.

- EPIF would highlight the challenge created by the different interpretations of Member States around how changes to framework agreements with customers are treated, i.e., the position taken by some Member States that changes need to be expressly agreed by customers, whereas PSD2 does not require this. EPIF would encourage harmonising this at Level 1.
- The extent of local variations of consumer protection rules means that it is still a patchwork of regulations which requires extensive, expensive and localised review across the EU. A harmonised approach would be more beneficial allowing the cross-border provision of services as well as a high level of consumer protection across all Member States.
- Some host Member States have required reporting, undermining the passporting principle. EPIF would urge the European Commission to further strengthen this passporting principle, as it is the linchpin of the PSD’s success in creating a single European area for payments.

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

EPIF observes that, while the PSD2 is in principle phrased in a technology agnostic manner, in practice definitions and rules primarily fit legacy payment instruments like credit transfer, direct debit and cards. The application of PSD2 provisions to innovative payment instruments is in some instances disproportionate and not-fit-for-purpose in an e-commerce and increasingly app-based digital world.

For example, the rules on Strong Customer Authentication (SCA) limit the number of options or technologies and is not future proof. New technologies since the introduction of the PSD 2 have proven to be very effective at authenticating customers and mitigating friction. The review of PSD2 needs to re-evaluate the authentication factors requirement, which limit innovation and customer ease of use. Some forms of SCA combine passwords (knowledge) with some form of device-based factor of possession (e.g. OTP, app-based notifications). This not only introduces friction and limits consumer choice but also limits accessibility for consumers less accustomed to digital solutions. It also has a negative impact on security, as it allows fraudsters to focus their efforts creating a single point of failure scenario.

We would therefore encourage the European Commission to consider amending the approach to SCA, so that it is truly risk-based and outcomes-oriented. These principles should be strengthened at the level of the PSD2 so that there are more appropriately balanced, while maintained high levels of security and ensuring customer convenience.

Payment user needs & Innovation

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

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

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

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

Payment user needs	1	2	3	4	5	6
Making electronic payments is easier than 5 years ago		X				
Making international payments between the EU and other jurisdictions is easier than 5 years ago		X				

There are more options available to make payment transactions than 5 years ago			X			
PDS2 has contributed to market players developing more convenient payment			X			

solutions						
PSD2 adequately addresses current payment needs			X			

b. Please explain your reasoning and provide arguments for your views. [open text box, including “don’t know”/”no opinion” option] [max. 250words]

The PSD2 has contributed to the facilitation of electronic payments, including cross border payments. However, with new SCA requirements implemented for online card transaction through 3DS, merchants are experiencing a significant drop in conversion for transactions stepped up for 3D Secure authentication and going through SCA. Due to the frictions in the consumer experience, especially in a mobile environment, a significant amount of transactions fail, with a large proportion of transactions still failing after customer retries.

Additionally, EPIF considers that Open Banking has brought more payment solutions and created more available options. EPIF believes that in other areas, such as SCA, the PSD2 has rather limited innovation with provisions that are not phrased in a technology agnostic manner and that are overly prescriptive, which hampers innovation and does not allow for the entrance of new players or the development of new solutions. EPIF calls therefore for the development of more future proof and proportionate provisions.

SCA requirements should be more flexible and allow for the development and adoption of innovative solutions by the companies, i.e. through the use of biometrics. To future proof SCA requirements the review of the PSD should consider looking at maintaining security and low fraud rates and encourage frictionless authentication solutions; for example the use of behavioural biometrics without physical factors would contribute significantly to increasing security without increasing unnecessary transaction declines.

See also EPIF’s response to 1b

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

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

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

INNOVATION	1	2	3	4	5	6
PSD2 supports the development of innovative payment services		X				
PSD2 supports the development of innovative payment solutions			X			

PSD2 has contributed to innovation within payments			X			
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- b. Please explain your reasoning and provide arguments for your views, in particular as regards the payment services offered by PISPs, AISPs and CBPII¹. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

EPIF stresses that the Level 1 text should not hamper innovation by being overly descriptive and creating burden for the industry.

Market integration & competition

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

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

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

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

¹ CBPII – Card Based Payment Instrument Issuers

MARKET INTEGRATION AND COMPETITION	1	2	3	4	5	6
PSD2 has improved the functioning of the internal payments market		X				
PSD2 has contributed to the development of cross-border payments within the EU		X				
There is a wider choice of payment service providers than 5 years ago		X				

The EU payment market is more competitive than it was 5 years ago X

PSD2 has contributed to lower fees for digital payments		x	X			
PSD2 has contributed to lowering the costs of remittances		X				

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

EPIF believes that PSD2 has increased competition and encouraged the creation of new (digital-) payment institutions entering the payment landscape thereby lowering fees and costs of payments and remittances. However, technological developments in recent years have also contributed to increased competition and thereby to the lowering of fees.

As the PSD2 is a Directive, the level of national discretion is creating major friction in what is in essence a network economy. EPIF has regularly raised examples of challenges in the implementation of the PSD2 related to different national practices and interpretations. For instance, we would urge the Commission to create a true level playing field between card and non-card payments by banning surcharging altogether under the PSD2. This would contribute to lowering fees for digital payments as a whole. We believe that surcharging is detrimental to consumer choice, consumer protection and to the efficient functioning of the payments sector.

IBAN discrimination: With regards to cross border payments, it is worth noting that while under the SEPA Regulation (Articles 3.1, 3.2, 3.3, & 9.1, 9.2), it is already illegal for PSPs to discriminate between domestic IBANs and IBANs in any other EU Member State when making payments, EPIF members find that the specific interpretations and practices vary greatly between Member States, especially in the field of salary and utility payments, in effect leading to IBAN discrimination. The non-compliance with the IBAN discrimination ban leads to (i) an adverse customer experience, (ii) a limited offering of cross border payment services, and (iii) hinders the further development of a true European payment services market.

- c. Do you think the current PSD2 provisions on access to accounts lead to an un-level playing field between payment service providers offering

payment accounts, who have to be accessible to TPPs, and other players who do not offer payment accounts, and therefore are not obliged to share their users' data?

Yes	Don't know/no opinion
No	

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

EPIF notes that the definition of payment account as described in Article. 4 ('account held in the name of one or more payment service users which is used for the execution of payment transactions') is problematic and needs to be reviewed. Member States have taken different positions on what is a payment accounts. For example a credit card is in scope in one country but not in another. The definition of a payment account leads to many challenges. It is nearly impossible for companies operating in multiple European countries to develop APIs that can be deployed in multiple countries.

The main issue EPIF's members are facing with regards to competition relates to data access and sharing. Many PSPs have not fulfilled their obligation to implement the PSD2 rules on access to and use of payment account data. The PSD2 is drafted in a way that leaves a lot of room for individual interpretation. As a result, Account Information Providers (AIP) and Payment Initiation Services (PIS) service providers (TPPs) and Account Services Payment Services Providers (ASPSP) disagree on what data shall be accessible via the ASPSP's dedicated interfaces and what the requirements are to access the customer's data. Thus, ASPSPs have in instances de facto become gatekeepers and decide which data TPPs can have access to. The EBA has issued a number of documents to support common interpretation. Despite these clarifications, many ASPSP might either be unwilling to make the necessary changes to their interfaces or they implement changes slowly and only after EPIF's members have flagged that the respective ASPSP is not complying with PSD2 provisions and/or guidelines. National competent authorities (NCAs) should ensure that ASPSPs remove the obstacles to ensure compliance with PSD2 and the RTS. Often ASPSPs can be non-compliant for years without consequences that would penalise the ASPSP for their breach of regulatory obligations towards both TPPs and customers.

Consumer protection

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

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

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

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

CONSUMER PROTECTION	1	2	3	4	5	6
PSD2 has contributed to improving consumer protection		X				
PSD2 has led to a reduction in fraud in digital payments		X				

PSD2 has effectively removed surcharges for the use of a payment instrument X

With PSD2, payment service providers now provide clear information about payment services and their terms and conditions, for example about fees						X
PSD2 has improved complaint procedures			X			

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

Surcharging ban: EPIF believes that surcharging is detrimental to consumer choice, consumer protection and to the functioning of the payments sector. It also unfairly discriminates against non-card payments. EPIF therefore urges the Commission to create a true level playing field between card and non-card payments by banning the practice altogether. In practice, surcharging is fully banned in most Member States, which has fostered the emergence and success of alternative payment providers in those markets. The experience of our members shows that merchants have seen the benefits via increased sales. In Member States where the practice is not banned, EPIF members instead see that the national discretion creates confusion for merchants when they want to begin selling across borders to EU jurisdictions where the practice is banned.

Clear information on terms, condition and fees:

- PSD1 already had introduced requirements around information about payment services terms and conditions, including on fees, EPIF does not believe that PSD2 has had an impact, hence why we chose 6 ‘not relevant’. We believe that the current legal requirements around terms and condition including fees are sufficient and do not warrant further legislative change.
- Allowing surcharging for non-card payment methods creates an uneven playing field against card payments. EPIF would therefore urge the Commission to create a true level playing field between card and non-card payments by banning the practice altogether under the PSD2.

While EPIF believes that the PSD2 has improved complaints handling procedures, we think that in the context of passporting PSPs, there are opportunities for further harmonization and consistency in the approach to complaint handling by clarifying that home state ADR entities are responsible for reviewing complaints about alleged infringements of the PSD. This would ensure uniformity in the approach to reviewing complaints.

Secure payments

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

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

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

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

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

With regards to safety, EPIF Members implementing SCA provisions have experienced a significant drop in fraud rates for some of their use cases. However, fraudsters have adapted and fraud has shifted. We have seen shifts in the behaviour of some sophisticated fraud groups toward more advanced methods, often investing more time and resources per attack to either try to overcome SCA or scam the genuine customer (e.g., use social engineering to obtain payment credentials, deploy OTP bots, etc.).

Costs and benefits of PSD2

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

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

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

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

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

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

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

EPIF members experienced and continue to experience a series of problems with implementing PSD2: (1) national discretion in the transposition and implementation of PSD2 creates challenges due to the need for creating tailored approaches for certain countries, (2) the roles and responsibilities between home and host supervisors are not always clearly delineated in practice, especially in relation to reporting requirements. In practice, EPIF members are faced with an array of regulatory reporting requirements from host supervisors that in our view should fall within the remit of the home supervisor.

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

As an association EPIF cannot comment on specific cost of its members around the implementation of PSD2. However, EPIF would like to highlight that the short-term implementation costs (i.e. revised license applications, implementation costs), as well as the ongoing compliance burden (i.e. increasing volume of evolving RTS and regulatory guidance as well as considerably increased reporting requirements by home and host supervisors) are a challenge for the business all while ensuring customers satisfactions. With the adoption of 3D Secure 2.0, customer experience issues have resulted in increased friction for consumers and significant revenue loss due to abandoned transactions for merchants. This has also translated into new integration costs and additional fees for authentication

Enforcement

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

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

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

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

ENFORCEMENT PROVISIONS	1	2	3	4	5	6
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					
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- b. Please explain and provide arguments for your views, in particular whether you consider that the enforcement shortcomings identified are due to the PSD2 legal framework or to its application. [open text box, including “don’t know”/”no opinion” option] [max. 250 words]

EPIF members face a lack of harmonisation across Member States. This is detrimental to the functioning of the Single Market.

At times or in specific instances there does not seem to be an effective collaboration between the NCAs and the EBA. Therefore, there are significant differences in national markets which lead to serious inconsistencies in the implementation. Some NCAs keep an open dialogue with stakeholders and update the industry about the status of feedback. In other Member States, the NCAs are not transparent in their interpretation of the PSD2 or explain the reasons for their decisions.

In relation to account information and payment initiation services, NCAs may in some cases take a long time to determine whether a certain ASPSP has breached its obligations of the PSD2 and the RTS. The EBA has clarified that NCAs must ensure compliance and that ASPSPs must remove obstacles without undue delay.

EPIF observes that there is a lack of consistency in API supervision and data obligations.

Additionally, the roles and responsibilities between home and host supervisors are not always clearly delineated in practice, especially in relation to reporting requirements. In practice, EPIF members are faced with an array of regulatory reporting requirements from host supervisors that in EPIF’s view should fall within the remit of the home supervisor. Some host supervisors are not honouring the spirit of Article 29.6 and are treating agents as if they themselves were regulated entities instead of conducting payment services on behalf of a regulated financial service provider.

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

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

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

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

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

The PSD2 has helped to improve complaint handling procedures for consumers. However, national discretion in the implementation of complaint handling procedures has created major divergences between Member States and continues to be an on-going compliance cost for payment institutions operating within the single market. In certain jurisdictions national rules continue to conflict with the PSD2 requirements. Furthermore, the timeframe to handle complaint procedures varies between 10 and 15 days across Member States without reasonable justification. For payment institutions operating within the Single Market one set of EU wide harmonised standards would be greatly beneficial. Therefore, EPIF calls for the passporting principle to be strengthened and for the maximum harmonisation for Article 99 to 103 i.e. moving from a Directive to a Regulation.

In addition the PSD2 currently has a “one size fits all” complaints process, meaning on the payee side the same complaints process and obligations apply to both sole traders and large corporations. This results in cumbersome and inefficient processes. Consideration should be given to adjusting the complaints process to the size and commercial complexity of different sized complainants.

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

ADR-ODR procedures are helpful for consumers when making a complaint in another Member State, especially if they do not speak the local language.

General changes to the PSD2

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

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

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

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

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

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

EPIF calls for the creation of a Single Rule Book for payment services in the EU i.e. moving from a Directive to a Regulation. With the success of PSD1 and PSD2 and the creation of the Single European Payments Area, the Rule Book for payment services in the EU should be harmonised at European level to ensure one set of rules within the Single Market. Local transposition of the PSD2 hinders companies from making full use of the EU passport. For instance, Member States requirements for complaints handling (Article 101) vary greatly i.e. between 10 and 15 days without reasonable justification. Additionally, the different national requirements around central contact points create considerable divergences. For companies operating within the Single Market one set of EU-wide harmonised standards would be greatly beneficial.

This would need to be subject to a careful impact assessment. Any new regulatory measures would need to be future-proof, outcome-based, facilitate harmonisation, risk-based and technology neutral. The regulatory framework would need to be reviewed regularly to respond to new market and technological developments. It must also support financial technology solution providers to operate across the EU.

EPIF supports the approach to have a principles-based Level 1 text, while leaving further details to delegated regulation but would call for the development and drafting process to be timelier to provide better legal certainty, as well as be more inclusive of the entire payments industry, considering the variety of players, business models and payment solutions that exist today, without foreclosing future innovation in this space.

EPIF believes that delegated regulation should remain flexible and be focused on desired outcomes rather than providing prescriptive solutions, especially when it comes to the implementation of SCA. Prescriptive technological guidelines tend to bring the level of security and customer experience down to a lower common denominator.

In addition, a revision of EU legislation could provide the opportunity to enable direct access to payment systems for non-bank PSPs via a revision of the Settlement Finality Directive. The PSD2 stipulates that Member States shall ensure that the rules on access to payment systems by authorised or registered payment service providers that are legal persons are objective, non-discriminatory and proportionate and that they do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system. (Article 35). This currently does not apply to payment systems designated under

the Settlement Finality Directive, therefore undoing the intention of the PSD2 to enable access by payment service providers to payment systems and help address the de-risking issue.

Lastly, any new requirements introduced under a potential review must include reasonable timeframes for implementation by impacted parties.

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

EPIF would highlight the fact that the new DORA legislation also applies to PSD2 regulated entities. EPIF members are therefore concerned that this might lead to duplication of incident reporting requirements.

In addition, EPIF would also draw attention to the reference to the GDPR made in the PSD2. Payment providers have to abide by the GDPR even without a specific reference. Hence the reference in Article 94 creates confusion, as to whether additional measures are required (PSD2 Article 94 (3)). EPIF calls on the EBA to draft guidelines jointly with the EDPB (1) for supervisory authorities on information requests and (2) for payment institutions on how to deal with information requests from supervisory authorities to balance compliance with the GDPR alongside PSD2 requirements. Joint guidance by the EBA and the EDPB to supervisory authorities and payment institutions would help address this legal uncertainty and provide an EU framework for information requests while ensuring data protection.

EPIF calls to end the requirement to have consumer rights leaflets in paper on-site (Art. 106.3). Consumer rights information should continue to be displayed on-site and be made available in an easily accessible manner and be able to provide to the customer on paper upon request. The current requirement is outdated. Paper leaflets are de-facto no longer being used by consumers. The requirement should be reviewed to ensure consumers can be effectively and appropriately informed about their rights while taking into consideration evolving consumer habits towards more digital/online interactions and considering the environmental impact of paper leaflets.

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

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

https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en

PART 2: MEASURES AND PROCEDURES

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

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

Title I: Subject matter, scope and definitions

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

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

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

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

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

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

EPIF is supportive of the existing exclusion from the scope of operators of payment systems, card schemes or other payment schemes or payment processors when not providing the list of services in the PSD2 Annex I. Schemes are subject to oversight of payment systems, schemes and instruments. However, EPIF would encourage the European Commission to consider specific requirements for payment schemes, as well as merchants, in relation to SCA where these actors play a significant role, in line with the EBA’s Opinion of June 2022.

For AIS there is no movement of funds. Payments are not initiated nor executed, as the account information service providers (AISPs) only access the account information. Thus, the risk of fraud from AIS is minimal if any at all. Still, access to account information requires that the user performs an SCA,. Sometimes, the account-based payment service provider (ASPSPs) may even require the customer to perform two SCAs procedures to give an AISP access to their account information. In short, whilst AIS should remain in the scope of PSD2 a more proportionate and tailored regime should apply to these providers.

Lastly, in order to meet PSD2 requirements, increasing expectations have been placed on acquirers to force behavioural changes on other unregulated parties in the payments value chain e.g. on gateway and merchants. Acquirers often have limited power to compel these parties to introduce the changes required. This should be considered as part of any changes to requirements under the PSD2 review.

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

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

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

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

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

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

Term defined	Proposal

Account information services	We believe that the definition of AIS should be as broad as possible, allowing new use cases. The way it is currently drafted, it is eschewed towards personal finance management/aggregation tools. However, AIS could be used for other use cases, for example account or identity verification.

EPIF would like to work alongside the Commission to define adequate taxonomy for the following terms:

- Payment account
- CASPs
- Durable Minimum
 - c. Are there definitions missing from art. 4? Please provide a proposal.

Term to be defined	Proposal
Electronic payment transaction	Electronic payment transaction – means a payment transaction, which is initiated by means of an electronic payment instrument, where no manual intervention is needed to initiate the payment transaction.
Payment account information	We believe that, in relation to the provision of AIS, the nature of the data that can be accessed by AISP should be made clear, for example by including a definition of what constitutes payment account information.

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

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

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

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

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

Annex I	No change	Change description of service
(1) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account	X	

(2) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account	X	
(3) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:	X	

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

- c. Cash-in-shops is being offered in various Members States across the EU and falls under service (2). The current authorisation regime for this particular service, however, might not be proportionate to the risk involved. Should a specific authorisation regime be considered for cash-in-shops, as a distinct service enabling cash to be withdrawn in shops, from a payment account³? [open text box, including “don’t know”/”no opinion” option]

Cash in shop services present less risk than use of cash alone because they are invariably linked to the payment account of an identified individual and transactions on such account are monitored. Under the current authorisation regime, the providers of such services are required to have effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed. The current regime enables a proportionate response to address such risks as may arise. No change is warranted.

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

ANNEX I	Y	N	Don't know/ no opinion	Other [for last two options]
Issuance of e-money		X		
Payment transactions using crypto assets (incl. stable coins)	X			

Digital wallet services (e.g. mobile apps for payments) ⁴		X		
Payment processing			X	

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

⁴ Both pass-through wallets and digital wallets.

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

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

Existing payment services: Adopting specific payment service types in relation to payments services that are already being provided and supervised will give rise to the need to amend existing authorisations for purely technical reasons without any benefit.

Future payment services: Any additional payment service types should not be fixed by reference to specific existing services and should allow for innovation and new products entering in the market, The inclusion of any new categories should aim to capture core aspects of a service in a neutral manner that is flexible and future proof. For example, it is important to permit payment institutions and e-money institutions to provide payments services relating to payment transaction involving ‘crypto-assets’ as defined under MiCA. Under the current MiCA proposal the notion of execution of a “payment transaction using crypto assets” is not defined. Accordingly, payment institutions might not be allowed to provide services related to any crypto-assets pursuant to MiCA. EPIF strongly advocates to permit payment institutions the sort of activities which result in the transfer of a crypto asset. Particularly when electronic money tokens are deemed to be funds by MiCA, payment institutions should be permitted to execute payment transactions using electronic money tokens.

Maintaining the E-Money Directive: The E-Money Directive has worked well and that the e-money regime includes some specific characterises not shared by all payment institutions. EPIF therefore believe the distinction between the EMD and the PSD should be maintained.

E-money has its own distinct definition and characteristics, which are distinguishable from, for example, deposits in that it is modelled on cash, being a claim on the issuer and is intended to function in many instances where an electronic equivalent of cash is required. We would therefore urge for the definition of e-money not to be overhauled. It is a carefully crafted concept on which an innovative sector has developed.

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

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

Title II: Payment Service Providers

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

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

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

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

TITLE II						
GENERAL RULES: AUTHORISATION	1	2	3	4	5	6
PSD2 is sufficiently clear in determining		X				

whether a service must be authorised or not						
The requirements to apply for an authorisation (Art. 5) are still adequate	X					
The exemption of small payment service providers (Art. 32) is adequate			X			
The dedicated regime for AIS-only providers is adequate		X				
The authorisation regime for PIS providers is adequate		X				
The authorisation regime for payment institutions that are part of a group of entities is adequate		X				
The minimum initial capital a payment institution needs to hold at the time of authorisation is adequate, taking into account the type of payment service provided (Art. 7)				X		
Provisions on the own funds for payment institutions are required to hold at all times are adequate, taking into account the type of payment service provided taking into account the type of payment service provided (Art. 8 and 9)					x	
The provision on own funds for payment institutions with a hybrid character (Art. 8) are adequate			X			
The methods to calculate the own funds are adequate (Art. 9)					X	
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 authorisation regime? In your response, please consider the following two principles:

- (i) Can the application for authorisation be simplified without undermining the integrity of the authorisation process, e.g. by reducing the amount of required information payment service providers have to submit with their application (Art. 5.1)?
- (ii) Should the application for authorisation be accompanied by more information from the payment service provider than required in article 5.1?

Payment institutions already authorised under the PSD2 should not be required to undergo a full re-authorisation if any changes are to be made to the existing PSD2 authorisation regime. PSD2 authorised payment institutions should only be required to provide new information relating to any new requirements.

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

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

- a. Should any method be changed, or deleted?

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

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

Capital requirements Method B links capital held to overall payment volume. There is no correlation between the risk management actions that payment institutions take and their level of capital requirement. Nor does it take into account the protections provided through safeguarding. In the PSD2 review, EPIF believes capital requirements should be adapted to reflect residual risk, after safeguarding and risk mitigation and management rather than be solely linked to volume. Requirements should be as harmonised as possible leaving less room for Member States to gold plate the rules. This will deliver more certainty for firms thanks to a Single Rulebook.

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

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

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

There are significant discrepancies across Member States in the transposition of this provision. EPIF prefers a harmonised rule regarding segregated accounts, which are insolvency proof by law.

- It should be made mandatory for Member States to provide that payments institutions may elect to invest safeguarded funds in low-risk assets. The principles of secure, liquid, low risk assets are very well covered within existing EU regulation.
- There is a need for certainty for firms with cross-border business models that they are able to safeguard customer funds in non-EEA domiciled entities - as long as the regulatory regime under which they operate offers comparable protections as the PSD2 safeguarding regime and prudential standards.
- The rules should allow firms to safeguard customer funds at central banks via a revision of the Settlement Finality Directive. This will mitigate the effects of de-risking,. Extending direct access to central bank balance sheets would help improve the situation that non-bank PSPs face to find a suitable provider to place their safeguarded funds in the form of increased competition. Operational models and considerations are of particular importance - as direct payment scheme members have varying types of funds settle through clearing schemes - not just customer funds

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

No. To enable ancillary services to keep pace with innovation in the market, this should remain non-specific.

21. Other requirements

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

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

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

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

EPIF supports the concept of provision of services via agents.

This said, the current agent registration times are prohibitive for business growth. Therefore, EPIF calls for a shortening of the registration period for agents; from 2 months to 1 month for home country agents (Article 19 (2)) and from 3 months to 6 weeks for host country agent registrations (Article 28 (3)). The current registration periods for agents are too lengthy and create real obstacles to the use of the agent model for the provision of financial services in the Single Market. Where EPIF's remittance members use agents this allows them to offer remittance services also in remote areas, which otherwise would not be provided.

Another challenge is the distinction between distributors (as provided for under EMD) and agents is one that must be preserved as part of the PSD2 review because in the European Commission's own words, “*an obligation to register and notify them [distributors] would impose disproportionate burdens, including meeting AML requirements (CDD, reporting etc.) which may in practice be extremely difficult to satisfy and costly - especially in a recognised low-risk AML environment... The purpose of this set of rules is to keep accountability, responsibility and control over the issuance of electronic money with the e-money institution as authorised under Title II EMD.*” A revision to PSD2 should clarify that agents and distributors (under EMD) are different in nature and accordingly should not be subject to the same requirements.

c. Should “triangular passporting” be regulated? If yes, how? Triangular passporting occurs where an authorised service provider in a Member

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

No further provision is needed in the Level 1 text, since it is already captured through existing requirements. However, EPIF calls to harmonise the notification regime around the uses of agents in Article 19 and Article 28 at EU-Level (i.e. moving from a Directive to a Regulation). Having one notification regime for the whole EU’s Single Market will facilitate the use of the EU passport and provide regulatory and legal certainty for payments institutions operating within it.

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

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

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

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

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

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

- (i) If, in your view, there is anything in PSD2 that is not consistent with other EU regulation, please be as specific as possible (e.g. include articles, paragraphs, names of regulations).

EPIF has identified the following inconsistencies of PSD2 with other EU legislation that can lead to confusion;

MiCA: On MiCA, more clarifications are required, to avoid the possibility to require a second duplicative license and to ‘overstretch’ the use of e-money license. The planned revision of the PSD2 should remove any possible overlaps or inconsistencies between the two licensing regimes. Notably, MiCA should only cover the issuance of crypto-assets & tokens. The execution of payment transactions using crypto assets/tokens should be covered by the existing payment services listed in the Annex to PSD2 without requiring a new form of authorisation.

The revision of the PSD2 should make it clear that payment transactions and payment initiation, as well as the conversion of fiat money into crypto & vice versa (seen as de facto foreign exchange transactions are already covered by the Payment Services and do not require a second duplicative MiCA licence. This approach would ensure a level playing field and ensure the EU regulation is technology neutral. The introduction of crypto assets means PSPs would provide the same services in a new technological ecosystem. Importantly, the crypto environment does not per se change the responsibilities, functions and associated risks of the respective payment institutions. Licensed payment institutions are already subject to requirements, including authorisation, risk management, AML,

consumer protection, system integrity.

Providing crypto-based payment services would still be subject to the necessary supervisory scrutiny and approval either as part of the initial licensing process under the PSD or in response to any requested amendments to an existing licence in relation to the provision of crypto services.

With regard to the question as to whether additional provisions complementing the PSD2 or the EMD2 should be introduced regarding issuers of so-called “e-money-tokens”, EPIF believes that the necessity for such complementing provisions depends on the implementation of MiCA.

DORA: EPIF welcomes the clarifications in the text on incident reporting but remains concerned about the use of third party providers, especially in the light of Brexit and the duplication of requirements in relation to incident reporting and outsourcing.

GDPR: The explicit reference to the GDPR in Article 94 (3) creates confusion as to whether additional measures should be adopted.

EPIF found there is a general lack of clarity on the intersection of PSD2 and GDPR obligations in the context of data collection and sharing with payments partners and service providers.

PSD2 Article 94 (3): EPIF would support for the EBA to draft guidelines jointly with the EDPB (1) for supervisory authorities on information requests and (2) for payment institutions on how to deal with information requests from supervisory authorities to balance compliance with the GDPR alongside PSD2 requirements. Supervised entities are faced with information requests by competent authorities, which may conflict with data protection rules that may lead to legal uncertainty. Additionally, joint guidance by the EBA and the EDPB to supervisory authorities and payment institutions would help address this legal uncertainty and provide an EU framework for information requests while ensuring data protection.

EID: There is a need for more clarity with regards to the payment use cases and the use of the wallet for SCA, KYC and CDD purposes. More specifically, EPIF would like to raise the issue of the definition of ‘personalised security credentials’ (PSC). The definition of PSC is “personalised features provided by the payment service provider to a payment service user for the purposes of authentication”. So far the practice indeed has been that user’s credentials are provided by PSP. There are known issues with credentials originating from elsewhere (e.g. how to apply Article 24 of the RTS regarding association of such credentials to the user including using another mechanism of SCA). However the usage of credentials other than received from PSP has been very limited. Now that eIDAS will require PSPs to accept EID wallets many users (if not majority) will have credentials other than those provided by PSP. A revised PSD2 should state that:

- By the fact that such credentials have to be associated with user they are still “provided” by PSP (recognized, acknowledged) to user, or

- Change the definition of PSC, or
- Address this issue otherwise.

AML legislation: There is continued ambiguity around the obligations of PISPs with respect to AML/KYC procedures of payers using PISP services. A review of the PSD2 provides the opportunity to clarify these ambiguities.

EPIF calls for a clarification on the interaction between the PSD2 and the AML legislation when it comes to the supervision of payments institutions in context of agents.

Article 29 (2) of the PSD2 states that: *“The competent authorities of the host Member States may require that payment institutions having agents or branches within their territories to report to them periodically on the activities carried out in their territories. Such reports shall be required for information or statistical purposes and, as far as the agents and branches conduct the payment service business under the right of establishment, to monitor compliance with the provisions of national law transposing Titles III and IV. Such agents and branches shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 24.”*

Article 4(38)) of the PSD2 defines an agent as *“a natural or legal person, who acts on behalf of a payment institution, in providing payment services”*.

These provisions mean that where a payment institution appoints an agent for the provision of payment services, that agent is acting on behalf of the payment institution and should be viewed as an extension of the payment institution rather than as a third-party service provider.

Further the EBA’s Final Report on the draft RTS on Home-Host Co-Operation under PSD2 published in response to Article 29.6 of the PSD2 (on cooperation between competent authorities in home and host Member States in the supervision of payment institutions operating on a cross-border basis) specifies the means and details of any reporting requested by host Competent Authorities from payment institutions on the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting.

However, in the experience of EPIF’s members some NCAs are not honouring the spirit of these Articles and the respective RTS and are treating agents (many of whom are sole traders) as if they themselves were regulated entities instead of conducting payment services on behalf of a regulated financial service provider. This also goes against the EU’s benefits of the freedom to passport to host Member States.

Importantly, Member States should be mandated to limit the establishment of one central contact point (CCP) per country to permit compliance with the AML requirements and PSD2 requirements via the same CCP (Article 29(4)).

Currently, both the AML legislation and PSD2 permit national discretion in implementing the central contact point requirements, leading to great divergence in CCP requirements between Member States. That creates administrative and compliance burdens for companies that conduct business within the single market without creating supervisory efficiencies. Therefore, EPIF would urge the European Commission to consider a more harmonised EU level approach, at least within its review of PSD2. At a minimum, Member States that require the appointment of a CCP for AML purposes should be obliged to permit companies to appoint the same CCP for both AML and PSD2 purposes. Generally speaking,

EPIF would urge the European Commission to re-consider Member States discretion to require a local CCP within their jurisdictions as that seems to go against the idea of passporting within the single market.

- (ii) Should the Directive’s requirements related to home/host competent authorities be clarified or amended? If yes, please specify.
[open text box, including “don’t know”/”no opinion” option] [max. 500 words]

EPIF calls to move the relevant articles around supervision and regulatory reporting into a Regulation to ensure legal and supervisory clarity on the roles and responsibilities for home and host supervisors as well as payment institutions. Additionally, EPIF calls for the EBA peer review analysis, especially on home-host cooperation and regulatory reporting requirements.

The roles and responsibilities between home and host supervisors are not always clearly delineated in practice, especially in context of reporting requirements. In practice, EPIF members are faced with an array of regulatory reporting requirements from host regulatory supervisors that in our view should fall within the remit of the home supervisor.

Concretely in relation to PSD2 Supervision of payments institutions (Article 29 (2)) in the context of agents (Article 4 (38)). The EBA Final report on Art 29.6 PSD2 (on cooperation between competent authorities in home and host Member States in the supervision of payment institutions operating on a cross-border basis) specify the means and details of any reporting requested by host supervisors from payment institutions on the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting.

However, in our experience some host supervisors are not honouring the spirit of these articles and the RTS and are treating agents (many of whom are sole traders) as if they themselves were regulated entities instead of conducting payment services on behalf of a regulated financial service provider. This goes against the ethos of the European Union and the benefits of the freedom to passport to host Members States.

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

Increase (to [amount])	Decrease (to [amount])	Don’t change it
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- 24. Participation in payment systems** - Article 35 provides for non-discriminatory access for payment service providers to payment systems. Article 2(a) provides for an exemption regarding payment systems designated under Directive 98/26/EC (Settlement Finality Directive, SFD). Between 12 February and 7 May 2021, the

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

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

A revision of the Settlement Finality Directive could provide the opportunity to enable direct access to payment systems for non-bank PSPs. The PSD2 stipulates that Member States shall ensure that the rules on access to payment systems by authorised or registered payment service providers that are legal persons are objective, non-discriminatory and proportionate and that they do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system. (Article 35). This currently does not apply to payment systems designated under the Settlement Finality Directive, therefore undoing the intention of the PSD2 to enable access by payment service providers to payment systems and help address the de-risking issue.

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

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

EPIF would highlight the need for legal certainty and clarity. Therefore, EPIF calls for the establishment of objective criteria that will truly take into accounts the specificities of payment institutions.

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

25. Access to accounts maintained with a credit institution - Article 36 of PSD2 provides for a right for payment institutions⁶ to access to credit institutions’ payment accounts services on an objective, non-discriminatory and proportionate basis.

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

Yes. Article 36 limits the notification process to the on-boarding stage. EPIF supports

expanding the requirement to also include decisions made by credit institutions to off-board payment institutions in existing business relationships.

Many of EPIF members are severely affected by the practise of de-risking on behalf of credit institutions. This can be detrimental to their everyday activities, that require access to credit institutions accounts.

Although PSPs should be protected from blanket de-risking under Article 36 of PSD2, this is in practice not being enforced. Payment Services Providers (PSPs) are struggling to obtain and maintain banking services across Europe and around the world.

Few efforts have been made at the level of the EU and the national level to mitigate this. The exception is Denmark, which issued guidance for banks off-boarding non-banks and placing further requirements and processes on the banks in relation to their transparency about why they have denied access to their services.

Currently the entire PSP sector depends on the banking sector for its existence. More specifically, de-risking disproportionately affects money remittance providers who are often considered high-risk and therefore less likely to secure banking services.

The EU must work to make it more palatable for banks to on-board non-banks or the EU must open up the intra-bank payment infrastructure so non-banks can have direct access and do not have to rely on banks. EPIF cannot stress enough the urgency of opening direct access to the payments systems to non-banks.

- b. Should the European Banking Authority (EBA) be mandated to developing technical standards or guidance further specifying PSD2 rules and/or ensuring the consistent application of Article 36? Please specify what could ensure more consistency (e.g. a common reporting template for credit institutions rejecting an application to open an account) [open text box, including “don’t know”/”no opinion” option] [max 250 words]

EPIF supports giving the EBA a mandate to develop RTS to clarify the interactions between anti-money launders and anti-terrorism financing (AML/CFT) requirements and the application of Article 36 of PSD2.

EPIF calls for stronger wording within the PSD. e.g:

- The EBA and Member States shall ensure that all payment services providers have access to credit institutions’ payment accounts services on an objective, non-discriminatory and proportionate basis (POND basis).
- Such access shall be sufficiently extensive to allow payment institutions to provide payment services in an unhindered and efficient manner. Member States competent authorities should publish clear guidance to firms outlining their expectations of access via the POND principle.
- Credit institutions should:
 - Provide PSPs that enquire about access to banking services with the criteria that the credit institution applies when considering requests for such access;
 - Consider applications from PSP’s and withdrawal of service provision individually and on their own merits and ensure that arrangements are maintained

- to allow for access to banking services is granted on a POND basis;
- Ensure that, where access is provided, it is sufficiently extensive to allow the PSP to provide payment services in an unhindered and efficient manner;
- Where access is restricted and a PSP's application is rejected or access is withdrawn, the credit institution must provide a clear rationale to the PSP against the assessment criteria.
- The credit institution shall notify their competent authority of all instances.
- Competent authorities should investigate rejections and withdrawals of PSP access to banking services.

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

⁶ And mutatis mutandis e-money institutions

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

The 2 month waiting period in relation to proposed changes to the framework conditions under Article 54 should be shortened to 4 weeks as it impedes business agility, takes no account of the immediate receipt of the notification of a change in an online environment and provides no meaningful protection to Payment Service Users who have the right to reject the change and terminate the contract if they wish.

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

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

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

27. In your view, are the requirements regarding the transparency of conditions and information requirements of PSD2 still adequate?
 a. To which extent do you (dis)agree with the following statements:

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

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

The information and transparency requirements have improved PSUs' understanding of their rights when using payment services			X			
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The transparency and information requirements have contributed to making cross-border payments within the EU as easy, efficient and secure as 'national' payments within a Member State	X					

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

EPIF would also argue that the PSD2 should better address how contractual terms are displayed in remote contracting situations, especially in relation to what constitutes a durable medium, allowing firms and customers to benefit from technological developments and new consumer habits:

- Providing a link to the contractual terms as part of the on-boarding process should be considered as providing information through a durable medium. Customers can access the link if and when they wish.
- This, in our view, is more in line with digital habits today: scrolling down T&Cs and requiring firm acceptance does not guarantee that the consumer has read or understood the T&Cs. EPIF believes that the approach suggested in the EBA’s Opinion on disclosure to consumers of banking services through digital means under Directive 2002/65/EC, does not achieve a higher level of consumer protection and on the contrary creates unnecessary confusion and customer friction.
- Regarding the ability to store contractual information, EPIF believes customers can easily do so if they wish, through existing functionalities in mobile phones or computers. We do not believe that requiring firms to send a PDF via e-mail adds value to customers. A link to easily readable T&Cs, with a table of content and links to clearly set-out sections, allows consumers to jump to the part that is most relevant to their situation. It also allows PSPs to update the T&Cs and disseminate those updates in real-time.

EPIF supports transparency in fees in cross-border payments to the benefit of consumers and works closely with the FSB on the G20 Roadmap for Enhanced Cross-Border Payments. In this regard, fee structures should also not disincentivise customers from using AIS and PIS services. AIS and PIS services providers need to recover the costs of providing these services, and as such, the cost model is skewed in favour of other payment mechanisms.

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

EPIF would like to recall that from a business and commercial, as well as legal perspective a one-leg transaction (i.e. EU Non-EU payment transaction) is not the same as a two-leg transaction (i.e. an intra EU payment transaction). Therefore, the two cannot and should not be treated in the same way.

EPIF continues to engage in international fora such as the CPMI to further improve cross-border payments. To that end, EPIF would be keen to engage with the European Commission in further detail on how to improve the customer experience for one-leg transactions. However, legally mandating the treatment of one-leg transactions as two-leg transactions will not help to achieve that policy aim and might be counterproductive.

When processing a one-leg transaction payments institutions do not only have to comply with European Union laws and regulation but also with 3rd country jurisdictions' laws and regulations. Applying EU payment legislations extraterritorially to non-EU residents/citizen in 3rd countries will create unintended consequences from a commercial and compliance perspective for payment institutions and customers alike.

Financial inclusion and improvement of technology penetration is key in order to facilitate cross border payments. We believe that providing senders and receivers with options if different payment channels is key to advancing financial inclusion. The reality is that in many parts of the world, the landscape is not yet ready for one-channel-fits-all corridors. To build a sustainable fully serviced financial system that reaches every corner of the world, care and consideration must be paid to the realities on the ground.

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

As already mentioned, mandating additional hard legal requirements for one-leg transaction that do not enjoy the full benefit of the legal framework as well as the financial and institutional infrastructure of the European Union is not possible. The implementation challenges and on-going compliance cost for any new requirements would be significant and will likely impact services offering as well as the pricing structure for customers going forward.

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

EPIF calls for a clearer distinction for the conditions and requirements for single payment transactions vs. the conditions and requirements for framework agreements in Title III. EPIF members provide services by way of single payment transactions as well as under framework agreements. The current drafting of the PSD2 leads to ambiguity about the conditions and information requirements and the different treatment of these distinct services. Service providers

and competent authorities would benefit from having the conditions and requirements set out clearly and separately from each other in Title III during the PSD2 review.

We would also highlight the challenge created by the different interpretations by Member States around how changes to framework agreements are implemented, i.e., the position taken by some Member States that changes need to be expressly agreed by customers, whereas PSD2 does not require this. We would encourage harmonizing this so that Member States cannot deviate from the Level 1 text.

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

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

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

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

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

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

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

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

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

See also EPIF's answers to Questions 10, 17, 19, and 38.

EPIF would like to highlight the following issues with regards to rights and obligations:

- **Secure corporate payment processes and protocols:** The requirement of Article 17 of the relevant RTS under the PSD2 to seek approval of this exemption by the relevant competent authorities creates the risk of fragmentation in the Single Market, when such payments processes and protocols are available to and offered by different PSPs in different jurisdictions.
- **Calculation of fraud rates:** EPIF can confirm this is still an issue. The current divergent regulatory interpretations are an issue. European jurisdictions have taken divergent views on the interpretation of the calculation methodology.

The EBA has provided comment on the calculation methodology through both the publication of its June 2018 Opinion and the EBA Q&A 2019_4702. (So-called ‘net’ calculation vs ‘gross’ calculation). Nonetheless, the divergence in regulatory interpretations of the calculation methodology across jurisdictions persists and is unhelpful..EPIF has a clear preference for one clear method of calculation to be used across EU jurisdictions.

- **Registration in the home Member State:** EPIF's members agree that registers should be

machine readable and updated real-time (or close to real time) so that if an authorization is withdrawn this is known to the market immediately. This is in particular important in relation to instant payments.

Common provisions

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

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

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

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

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

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

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

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

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

Open banking and beyond

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

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

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

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

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

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

you believe provisions on access to accounts should be changed, please explain why, refer to specific articles to be changed and include suggestions. If your remark is about a particular type of service which depends on access to payment accounts (CAF⁷, PIS or AIS), indicate to which service(s) your argument(s) relate. [open text box, including “don’t know”/“no opinion” option] [max. 500 words]

The PSD2 introduced open banking within the EU and EPIF very much welcomes this initiatives. Open banking is expected to bring greater connectivity between FinTech products, benefiting consumer protection and businesses simultaneously.

EPIF would urge the European Commission to consider a more principles-based framework to allow further innovation. For instance, this would enable the market to develop AIS-based solutions beyond personal finance management (PFM) tools, such as innovative eKYC or on-boarding tools. We believe specifically that the definition of payment data should be as broad as possible, allowing new use cases. The way it is currently drafted, it is eschewed towards personal finance management and aggregation tools. However, AIS could be used for other use cases, for example account or identity verification.

EPIF would also welcome if the European Commission were to explore the wider use of open banking initiatives within the EU’s Single Market. Fragmentation still remains, especially when it comes to APIs, leading to a variety of user experiences. EPIF would welcome measures to facilitate harmonisation beyond PSD2 that could be provided in the context of Open Finance. This could involve removing the reference to the use of customer interfaces and to rely alone on APIs. EPIF is also in general supportive of the work of the ERPB SEPA API access scheme.

The PSD2 and open banking are well balanced by the new GDPR that sets clear expectations on how customer data is handled, although certain aspects of these overlapping Directives will require conciliation.

For any data sharing the main determining factor for consumers is control over their data and whom to share it with. Consumer consent is key. The data holding party should not be allowed to hold back any user data and the data accessing party should not be allowed to access any data without the customer’s consent.

In principle, all personal and non-personal data can be relevant. Customers should be allowed to retrieve and repurpose all data belonging to them.. At a minimum, this includes all data made available via a customer interface and which is therefore in the possession of the customer, if such an interface is available.

In addition, there are different consent models available for AIS services. The Berlin Group standard has determined them as the following: global consent, bank offered consent, detailed consent.

EPIF prefers global consent over bank-offered and detailed consent. This is due to issues experienced with opt-in consent to specific use cases (accounts, account details, balances, transactions).

In addition, the 90 days re-authentication rule tends to be ineffective and further flexibility should be given. The consent management is clear and specific but does not provide for the best customer experience. The issue does not lie with customer awareness but rather customer experience. For instance, in the UK, third party providers are not required to re-authenticate every 90 days but have to reconfirm the customer’s consent.

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

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

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

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

There is currently a lot of fragmentation in the market, especially when it comes to APIs, leading to a variety of user experiences. EPIF would welcome measures to facilitate the provision of efficient, integrated and harmonised PIS/AIS services beyond PSD2 that could be provided in the context of open banking. This could involve removing the reference to the use of customer interfaces and to rely alone on APIs. In general, EPIF supports the work on the ERPB SEPA API access scheme that would address some of the issues that are either requested by some market participants and/or could provide additional added value.

The main issue EPIF's members are facing relates to data access and sharing. The PSD2 is drafted in a way that leaves a lot of room for interpretation. As a result, there can be disagreement between AIP and PIS service providers (TPPs) and ASPSPs on what data shall be accessible via the ASPSPs dedicated interfaces and what the requirements are to access the customer's data. ASPSPs have the power to decide which data TPPs can have access to even though the EBA issued a common interpretation,

Many ASPSPs have implemented their API in accordance with a standard. The most commonly used one is the Berlin Group PSD2 API standard. The availability of standards made it easier for TPPs to implement ASPSPs' PSD2 APIs. TPPs know what to expect when they start to implement an ASPSP's PSD2 API that is based on a certain PSD2 API standard. On the other hand, further standardisation could hamper and slow down innovation. This may be because ASPSPs may decide not to include new functionalities, features or data even if TPPs may request it. ASPSPs may instead require that a certain use case must first be included in the API standard in order for it to be implemented in their

interface.

Moreover, redirect authentication approaches can potentially confuse customers about whom they are initiating the payment with. The customer is directed to the ASPSP's web page or application to complete the authorisation process, before being redirected back to the PISP. EPIF's members would like to be able to clarify to their customers beforehand that the redirection to the ASPSP is part of the payment initiation process.

In addition, customers are still being discouraged by the ASPSP to start using TPPs' services, especially consumers that are using TPPs' services for the first time. Even if an ASPSP offers a redirect authentication approach in their PSD2 API, where the customer is redirected to the ASPSP to perform the authorisation procedure, the customer may be hesitant to enter their data. The reasoning behind this is that the ASPSP's redirection pages for the PSD2 API could look very different from the pages that the ASPSPs presents in its other customer-facing interfaces (e.g. online banking portal or mobile banking app) and the customer may believe that someone is attempting to defraud them by impersonating to be their ASPSP.

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

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

Yes	Don't know
No	

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

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

With the PSD2, ASPSPs are required to allow PISPs and AISPs to rely on the authentication procedures provided by the ASPSP to the customer in accordance with Article 97(5). Additionally, AISPs and PISPs can access the customer's personalised security credentials but have the obligation to ensure that the credentials are transmitted through safe and effective channels and are not accessible to anyone else but the customer and the customer's ASPSP in accordance with Article 66 and 67 of the PSD2. This comes into play in case there is an embedded authentication approach available, which means that the customer performs the authentication procedure with the TPP. Thus, ASPSP cannot prohibit the customer from entering their personalised security credentials with anyone else than their ASPSP. The European Commission and co-legislators should make this requirement a reality on the ground.

EPIF would also welcome if the European Commission were to explore the wider use of Open Banking and Open Finance initiatives within the EU's Single Market. The question now is how the enormous possibilities for innovation, already facilitated by the introduction of the PSD2 and with a strong foundation in the market can be best build upon for the benefit of merchants, consumers and the EU as

a whole. EPIF would recommend the Commission to consider stipulating minimum customer experience guidelines to ensure an acceptable level in the quality of authentication and authorisation experience.

We would urge the Commission to consider a more principles-based framework, to allow further innovation. For instance, this would enable the market to develop AIS-based solutions beyond personal finance management (PFM) tools, such as innovative eKYC or on-boarding tools. We believe specifically that the definition of payment data should be as broad as possible, allowing new use cases. The way the PSD2 is currently drafted, it is eschewed towards personal finance management/aggregation tools. However, AIS could be used for other use cases, for example account or identity verification.

⁷ Confirmation on the availability of funds.

Liability and refunds

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

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

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

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

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

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

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

Article 74(2) refers to liability of payees who “fail to accept SCA”. Since the RTS to Article 98 currently does not comprise an exemption which permit merchants to decline SCA on their own risk, the RTS should be amended to reflect Article 74(2).

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

EPIF does not see any need to have a minimum amount as a legal requirement.

Execution of payment transactions

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

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

- b. Should the current maximum execution time allowed for payments (Art. 83) within the EU (“two leg”) be adjusted? If yes, please indicate why and include a suggestion. [open text box, including “don’t know”/“no opinion” option] [max. 250 words]
- c. For payments to and from countries outside of the EU (“one-leg”), should action be taken at EU level with a view to limiting the maximum amount of time (execution time) for the payment (or transfer) to reach its recipient? If yes, please indicate why and include a suggestion. [open text box, including “don’t know”/“no opinion” option] [max. 250 words]
See Question 27

EPIF would like to recall that from a business/commercial as well as legal perspective a one-leg transaction (i.e. EU Non-EU payment transaction) is not the same as a two-leg transaction (i.e. an intra EU payment transaction). Therefore, the two cannot and should not be treated in the same way.

When processing a one-leg transaction payments institutions do not only have to comply with European Union laws and regulation but also with 3rd country jurisdictions’ laws and regulations. Applying EU payment legislations extraterritorially to non-EU residents/citizen in 3rd countries for remittance will create unintended consequences from a commercial and compliance perspective for payment institutions and customers alike.

As mentioned before, financial inclusion and improvement of technology penetration is a key in order to facilitate cross border payments. We believe that providing senders and receivers with options of different payment channels is key to advancing financial inclusion. The reality is that in many parts of the world, the payment landscape is not yet ready for one-channel-fits-all corridors. To build a sustainable fully serviced financial system that reaches every corner of the world, care and consideration must be paid to market realities.

EPIF continues to engage in international fora such as the CPMI to further improve cross-border payments. EPIF would be keen to engage with the European Commission on how to improve the customer experience for one-leg transactions. However, legally mandating the treatment of one-leg transactions as two-leg transactions will not help to achieve that policy goal and might be counterproductive.

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

[max. 250 words]

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	Other (please specify) [max. 100 words]
	Don't know
The unique identifier must be combined with something else (namely):	

Operational and security risk

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

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

OPERATIONAL AND SECURITY RISK	1	2	3	4	5	6
The provisions requiring PSPs to implement						

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

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

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

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

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

The provision allowing ASPSPs to deny TPPs access to a PSU's payment account on the suspicion of unauthorised access or fraud (Art. 68(5)) is sufficiently clear					X	
--	--	--	--	--	---	--

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

Noting that DORA will replace the EBA Guidelines as regards major incidents, any revision of PSD2 should focus on ensuring alignment and consistency with the requirements under DORA. As a general comment, the criteria for determining a major incident should be set by reference to national and supra-national thresholds rather than by reference to entity-specific thresholds to capture incidents that truly have the potential to negatively impact the financial stability of a Member State or the EU. Only those incidents should be reported immediately to the national competent authority. All other incidents should be captured as part of regular supervisory reporting.

a. Are the current provisions future-proof?

Yes	Don't know/no opinion
No	

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

EPIF supports the approach and a principles-based Level 1 text, while leaving further details to delegated regulations but would call for the development and drafting process to be timelier to provide better legal clarity, as well as be more inclusive of the entire payments industry, considering the variety of players, business models and payment solutions that exist today without foreclosing future innovation in this space. In this sense, EPIF believes that delegated regulation should remain flexible and focus on desired outcomes rather than providing prescriptive solutions, especially when it comes to the implementation of SCA. Prescriptive technological guidelines tend to reduce the level of security and customer experience to a lower common denominator.

EPIF notes that the PSD2 should not duplicate the requirements introduced in DORA.

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

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

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

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

As a trade association EPIF cannot comment on the specific numbers. Nonetheless, EPIF would like to draw attention to the need to make Transaction Risk Analysis effective and usable. Transactional Risk Analysis (TRA) was intended to allow companies to prove that they present low-risk levels and, if so, they could be exempt from SCA requirements. TRA would incentivise companies to invest in better technology but it has not worked in practice because of the broad definition of risks adopted by the EBA and the refusal of the banking institutions.

Some jurisdictions, such as the UK, only include relevant transaction in one or other of the issuer and acquirer's TRA calculation, following suit with fraud-liability (paragraph 18.36 of the [UK Finance SCA Guidance Document - December 2020.pdf](#)).

According to EPIF the use of that methodology for fraud calculation would also be beneficial in an EU context

If the calculation methodology in the EU were to shift to the same liability approach we should see a decrease in fraud through an effective split of responsibility. This shift may lead to an increased focus on specific areas where a PSP sits in the payment cycle and reduce friction in the payment chain.

The liability approach also eliminates the unfair effects of *'friendly fraud'*.

It would ensure a level playing field for cardholders, acquirers and issuers. It would also eliminate the reliance on third parties. i.e., if an issuer suffered a security breach, all acquirers will be unfairly and negatively impacted.

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

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

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

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

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

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

EPIF believes it is possible to ensure both security and seamless payment experiences. Fraud risk can be appropriately managed and mitigated to ensure both high levels of security and frictionless, cross-border e-commerce and digital growth. The current framework is too prescriptive to achieve this balance and is overly skewed towards eradicating fraud. EPIF would however contend that fraud eradication is the wrong objective. The focus should be on mitigation the impact of fraud on the PSP, the customer and the ecosystem.

There is a need to tweak the approach to security and SCA in the PSD2 to achieve this. EPIF would recommend amending the approach to authentication so that it is based on a true risk-based and outcomes-based approach. Such an approach would recognize that multiple dimensions of risk management (not limited to SCA) have to work together for effective protection and to enable the appropriate trade-offs.

The rules on SCA currently limit the number of options or technologies which essentially means most forms of SCA combine passwords (knowledge) with some form of device-based factor of possession (e.g., OTP, app-based notifications). This not only introduces frictions and limits consumer choice but also limits accessibility for consumers less accustomed to digital solutions. It also has a negative impact on security, as it allows fraudsters to focus their efforts creating a single point of failure scenario. To address these weaknesses, PSPs have begun to look at opportunities of biometrics, both data-based (behavioural biometrics) and device-based.

EPIF believes the framework should encourage the adoption of a wider range of tools to implement SCA, including more digital measures, such as biometrics and behavioural data, to ensure that convenient and varied solutions can be adopted. The limited definition of behavioural biometrics does not consider the extensive experience of the payment sector in data-driven authentication.

EU legislation should also facilitate the delegation and outsourcing of SCA. EPIF members find that the use of external SCA capabilities is limited. The use of external SCA capabilities would make the customer experience more seamless and convenient, for example the use of external Authenticators Apps, eID schemes or open standards.

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

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

EPIF would recommend amending the framework so that it is truly technology-neutral, risk-based and outcomes-based, emphasizing these core principles at the level of the PSD2 more strongly. Concretely, this would mean amending Articles 97 and 98 to establish an outcomes-based and risk-based approach as the high level principles.

- Make it clear that the objectives that are to be achieved should be fairly balanced and that all the objectives should be considered e.g. convenient customer experiences, consumer trust, cost, usability, innovation, competitiveness, etc.. The way Article 98 is currently drafted is too heavily slanted towards security.
- Enshrine technology neutrality much more strongly in the PSD2. As the authentication and security landscape rapidly evolves, this restricts innovation and disables market participants to adopt alternative solutions that may appear in the future and that have at least equivalent, or more, strength. See for example the US FFIEC Authentication Guidance.
- Amend the EBA’s mandate so that the RTS is outcomes-based and risk-based. This could involve:
 - a typical holistic & risk-based authentication framework distinguishes the strength of authentication required for each type of activity. Such a framework can include risk score(s) as part of the authentication mechanism to reduce friction, e.g. instead of requiring two factor authentication, it could require one factor plus a low risk score implying the real-time risk assessment shows no / low quantifiable risk. If the risk score is high, that would trigger the second factor (=SCA). This could be a recommended template for the future revision of the RTS.

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

EPIF does not believe that SCA requirement should be extended to payee initiated transactions. The payee is often not present when the transaction occurs and is protected by providing consent.

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

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

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

The 50 EUR limit should remain	The limit should be higher than 50 EUR
The limit should be lower than 50 EUR	PSUs should be able to fix their own limit

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

Value in EUR	Number of consecutive transactions
The limit of 150 EUR should remain	The limit to consecutive transactions (5 times) should remain
The limit should be lower than 150 EUR	The limit to transactions should be lower than 5 consecutive transactions.
The limit should be higher than 150 EUR	The limit to transactions should be higher than 5 consecutive transactions
Other, please specify [max 100 words]	Other, please specify [max 100 words]

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

On the contactless exemption, EPIF would propose removal of the cumulative amount and cumulative transactions requirements and PSPs should be allowed to apply a requirement for SCA that is appropriate for the particular Payment Services User by reference to the particular behaviour pattern and inherent risk. Counters for contactless card transaction are currently being implemented in different ways, largely controlled by payment device application. Most application support offline authorization limits, not CVM limits that may trigger SCA. Meeting the rules as currently drafted could have significant technical implications for European cardholders and payees. It will be very difficult for the industry to comply in absolute terms with the final draft RTS without significant costs, such as the re-issuance of all European EMV cards or updating or replacing existing contactless terminals.

Moreover, static, uniform and publicly known limits are not effective against sophisticated actors. They limit PSP innovation and do not align with customer usage patterns. Enforcing such specific requirements hinders the flexibility of a risk-based approach. This can have a negative impact on customers where SCA may not be warranted when other account behaviours are taken into consideration. It limits PSPs innovative capacity to tailor security to customer behaviour and thereby reduce unnecessary frictions. EPIF would favour taking a customer-centric approach, enabling the customer to set their own limits, whilst indicating that the PSP would require SCA should the risk analysis determine a risk of fraud.

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

EPIF does not believe that additional measures are needed or would contribute to more safety whilst preserving reasonable use cases.

ADR procedures for the settlement of disputes and penalties

48. Article 57(7)b requires that, for framework contracts, Member States ensure that information on ADR procedures is provided to the payment service user. Should this information also be made available for single payment transactions?

Yes	Don't know/no opinion
No	

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

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

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

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

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

Title V: Delegated acts and regulatory technical standards

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

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

While EPIF welcomes the role of the European Commission and EBA in seeking more harmonised approaches across the EU, the experience of the EBA drafting of delegated regulations and the Q&A tool in the PSD2 process has been mixed.

EPIF believes that delegated regulation should remain flexible and be focused on desired outcomes rather than providing prescriptive solutions, especially when it comes to the implementation of SCA. Prescriptive technological guidelines tend to reduce the level of security and customer experience down

to a lower common denominator. In addition, EBA responses take long to draft and the process under which EBA's position and Q&A answers are prepared is opaque, with no opportunity for industry input before publication. Consideration should be given to how the provision of regulatory guidance can be streamlined and improved and to allow for stakeholder input in its development.

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

EPIF does not see a need for any additional Delegated Acts.

PSD2 Article 94 (3): EPIF would supports for the EBA to draft guidelines jointly with the EDPB (1) for supervisory authorities on information requests and (2) for payment institutions on how to deal with information requests from supervisory authorities to balance compliance with the GDPR alongside PSD2 requirements. Supervised entities are faced with information requests by competent authorities, which may conflict with data protection rules that may lead to legal uncertainty. Additionally, joint guidance by the EBA and the EDPB to supervisory authorities and payment institutions would help address this legal uncertainty and provide an EU framework for information requests while ensuring data protection.

EPIF calls for the EBA to draft guidelines for agent off-sites visits (Article 23 (1) and Article 29 (1)). The COVID pandemic be shown the need for more clarity around the oversight of agents in an off-site capacity. Companies that use an agent network for offering their services have not received any guidance from the EBA on how to conduct off-site visits during the COVID pandemic. The EBA guidance would help to create an EU-wide framework and standards of how agent off-site visits can and should be conducted, which would create a more unified and comparable supervisory framework in the EU.

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

Consumer rights are already provided for in the PSD2. EPIF therefore believes that no additional guidance specific to payment services is required.

The EU is a world leader in terms of consumer rights and EPIF welcomes and supports these high level of consumer protection. National discretion on the implementation of consumer rights leads to different levels of consumer protection across the EU. Local variations of consumer protection rules mean that there is a patchwork of regulations. As a result our members have to conduct an extensive, expensive, and localized review across the EU. A harmonized approach would be more beneficial allowing the cross-border provision of services as well as a high level of consumer protection across all member states. Therefore, EPIF calls for transferring Article 99 to 103 from a Directive to a Regulation.

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

Title VI: Final provisions

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

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

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

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

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

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

There is considerable fragmentation in the adoption of PSD2 across the EU today which significantly increases the cost and complexity of compliance for passporting payment institutions and erodes the benefits intended by free movement of services.

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

Any other issues

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

Framework contracts

EPIF would highlight the challenge created by the different interpretations by Member States around how changes to framework agreements with customers are implemented, i.e., the position taken by some Member States that changes need to be expressly agreed by customers, whereas PSD2 does not require this. EPIF would encourage harmonising this such that Member States cannot deviate from the Level 1 requirements in the PSD.

In addition, EPIF's members have experienced a fragmented approach by national regulators and courts when it comes to the interpretation of changes in conditions of framework contracts. In some markets, such as Germany, courts have interpreted Art. 54.1 PSD2, in light of other consumer protection Directives, to only allow the "non-objection" mechanism provided under the said Article in case of amendments necessary to comply with law. For the avoidance of doubt, any other changes require the active and expressed consent of the customer. Consequently, it would be very beneficial if it could be clarified that the "non-objection" mechanism offered under PSD2 for contractual amendments supersedes any general customer protection rules in this respect as part of *lex specialis* for payment services.

EPIF also calls for a clearer distinction for the conditions and requirements for single payment transactions vs. the conditions and requirements for framework agreements in Title III. EPIF members provide services by way of single payment transactions as well as under framework agreements. The current drafting of the PSD2 leads to ambiguity about the conditions and information requirements and the different treatment of these distinct services. Service providers and competent authorities would benefit from having the conditions and requirements set out clearly and separately from each other in Title III during the PSD2 review.