

## EPIF recommendations for the PSD2 Review

Representing the non-bank payment sector at the European level and counting over 190 authorised payment institutions and other non-bank payment providers as members, EPIF has always been supportive of the European Commission's actions to further deepen the EU's single market for payments. Our members believe that the introduction of the revised payment services directive (PSD2) was a milestone in the European payments' framework, bringing about **further competition** into the European market and **new business models** that offer more seamless payment solutions to both merchants and customers. The European payments market is today more competitive, has more players in its ecosystem and allows for more innovation than ten years ago.

We also recognize that the PSD2 did not fulfil some of its promises in targeted areas and, in others, it has materialized at the great cost to private entities mandated to implement the requirements. The initiative of the European Commission to revise the PSD2 this year is therefore very much welcomed.

Before exploring further our recommendations for the review, we would like to stress our support for an **ambitious review**. EPIF members consistently welcomed the PSD2's goal of being a "maximum harmonization Directive" and would even go a step further to encourage the move towards a single Rulebook for payment services. A potential Payment Services Regulation (PSR) would help address some of the issues caused by divergent national implementation, which currently hinders payment service providers making full use of the EU's Single Market. This is particularly prominent in issues relating to complaint handling, central contact points (CPPs) and the treatment of agents.

With this in mind, we would like to focus on the areas that we believe warrant a closer and more urgent look during the review exercise by the European Commission. These relate to access to payment infrastructure, the scope of the Directive, authorization and licensing regime, fraud prevention and Strong Customer Authentication (SCA), and Open Banking rules. EPIF's more detailed views on the overall PSD2 and its effects can be found in our consultation response to the June 2022 targeted consultation on the PSD2 review.<sup>1</sup>

### Non-discriminatory access to payment infrastructure

EPIF members have long been highlighting the consequences of a lack of direct access by non-bank payment service providers to the payment infrastructure. This lack of access derives from the 2002 **Settlement Finality Directive (SFD)** and is recognized in the PSD2 under Articles 35 and 36. A true pan-European, innovative and competitive market can only be achieved through open, fair and non-discriminatory access to intrabank payment infrastructure based on reasonable terms and conditions.

Within the scope of the PSD2, relying on a sponsor bank not only increases operational costs and risks but also limits the ability of PSPs to innovate in an agile way, leading to poorer customer outcomes. Additionally, payment and e-money institutions also find themselves dependent on the banking sector due to this lack of access, in many instances being prevented from accessing bank accounts and being subjected to unwarranted de-risking practices. This is a fundamental barrier to competition within the

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<sup>1</sup> Our consultation response to the targeted consultation can be found here: <https://paymentinstitutions.eu/wp-content/uploads/2022/07/EPIF-response-to-the-PSD2-Consultation.pdf>

payment market. Although PSPs should be protected from blanket de-risking under PSD2, this is in practice not being enforced.

In this context, EPIF's recommendations for the PSD2 review on this matter are two-fold:

- **The SFD should be amended in a way to grant direct access for non-banks to the TARGET Instant Payment Settlement (TIPS)** clearing arrangements, which should create benefits for SEPA Instant Credit Transfer (SCT Inst) as well.

This targeted amendment to the SFD should be made in advance of the PSD2 review proposal. This would be important not only from a legal certainty perspective vis-à-vis the requirements for instant payments but also within a limited timeframe to have this in place in advance of the expected entry into force of the proposal. This targeted revision becomes even more urgent when taking into consideration the developments with the proposal mandating instant payments and the evolution of the Digital Euro project.

- **The wording of Article 36 of the PSD2 should be strengthened.** Article 36 provides for payment service providers (PSPs) to be protected from blanket de-risking under the PSD2. In practice, this is not being enforced. In addition to granting direct access to payment infrastructure, there should also be a strengthening of the wording, as well as further guidance on how to ensure the consistent application of the provisions under this Article.

EPIF also notes that despite the fact that there are already requirements for PSPs not to **discriminate between domestic and non-domestic IBANs** when making payments, the experiences across Member States varies greatly. Different interpretations of the rules, especially in the field of salary and utility payments, are leading to a *de facto* IBAN discrimination resulting in adverse customer experiences, a limited offer of payment services cross-border and hampering the further development of the EU payments services' market. We therefore support, in the short-term, to give the EBA a mandate to develop draft regulatory technical standards to ensure a consistent interpretation and application of the IBAN non-discrimination obligations across the EU. For the medium-term, EPIF members call on the European Commission to consider reviewing the IBAN structure by removing the country delineation, enabling regulated institutions to offer a locally accepted product across markets and creating a truly single payments area for the benefit of consumers.

## Scope

Despite the evolution in the payments market, EPIF considers the scope of the PSD2 still to be appropriate, as well as the exemptions envisaged under Article 3 of the PSD2, including the appropriateness of the list of services under Annex I. We would therefore urge the European Commission to focus the scope revision on aligning the PSD2 with other EU legislation that was introduced after the PSD2. Specifically this would be:

- **On the exemptions under Article 3**, EPIF is particularly supportive of maintaining the scope exclusions for operators of payment systems, card schemes, technical service providers and other payment schemes or payment processors, when these are not providing a payment service described in Annex I of the PSD2. Payment and card schemes are already subject to oversight of payment systems, schemes and arrangements under the European Central Bank PISA Framework and are subject to dedicated legislation for example the Interchange Fee Regulation for card schemes.
- **On the list of services under Annex I**, and for the purpose of aligning with the EU regulatory framework for crypto-assets (MiCA), we deem it necessary to include payment transactions using crypto-assets including Stablecoins. Payment institutions should also be allowed under the PSD2 to carry out activities which result in the transfer of crypto-assets. Particularly when

electronic money tokens are considered to be funds by MiCA, payment institutions should be permitted to execute payment transactions using e-money tokens.

We nonetheless stress that any extension of the scope of the PSD2 must be treated as a maximum harmonization issue in order to avoid Member States “gold-plating” beyond the defined scope. Additionally, any additional payment service types should not be fixed by referencing existing services in order to allow new and innovative products to enter the market. The introduction of any new categories should aim to capture the core aspects of a service in a neutral way, ensuring the legislative framework is flexible and future-proof.

## Authorization, licensing regime and supervision

The EPIF membership includes both payment and e-money institutions. While both these institutions are often associated in the public debate, we stress that e-money products are very vast and have their own closely distinct definitions and characteristics. We would urge the European Commission not to overhaul the definition of e-money, as this would risk crippling a very innovative sector that has been built in Europe. We note that the Electronic Money Directive (EMD2) has worked well and has been crucial in recognizing the specific characteristics of e-money institutions that are not shared by all payment institutions.

EPIF therefore very much **opposes the merger of the PSD2 and the EMD2**, bringing both types of institutions under the same authorization and licensing regime. While we understand the potential synergies between the two Directives and recognize why the European Commission might be looking into such a possibility, we question the hypothesis put forward by the study on the PSD2 review<sup>2</sup> that the merger of the two Directives would reduce the overall complexity of the legal framework. Including e-money *products* into a Directive designed to provide the legal framework for payment *services* would, in our view, generate further confusion and legal uncertainty on the applicable requirements.

It is worth bearing in mind that the issuance of e-money is not a payment service, but rather the creation of electronic value that represents a claim against the issuer, as defined by the EMD2. The execution of payment transactions, as listed in Annex 1 of the PSD2, enables a transfer of “funds”, which are “banknotes and coins, scriptural money or electronic money” (PSD2 Art.4(25)).

We would also reiterate that any changes to the **authorization regime** during the PSD2 review should not require already authorized payment institutions to undergo a re-authorization process. Should the European Commission and co-legislators opt to change the necessary requirements for PSD2 licensing, entities should be able to submit additional information rather than do a full re-submission.

EPIF members also note that currently, under both the PSD2 and the AML/CTF framework, Member States are given national discretion in the implementation of **Central Contact Points (CCP)**. This flexibility given to Member States is creating divergences in the CCP requirements across Member States, as well as unnecessary administrative and compliance burdens for companies operating across the Single Market. We urge the European Commission to consider restricting the establishment to a single CCP per country, enabling compliance with AML and PSD2 requirements via the same CCP.

At a minimum, within the PSD2 review, the European Commission should create a **harmonized EU-level approach**. Through this EU-level approach, Member States that require the appointment of a CCP for AML purposes should be obliged to permit companies to appoint the same CCP for PSD2 purposes.

Finally, on the supervision of Payment Institutions (PIs) under the PSD2, we note that the roles and responsibilities between **home and host supervisors** are not always clearly delimited in practice,

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<sup>2</sup> European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Bosch Chen, I., Fina, D., Hausemer, P., et al., *A study on the application and impact of Directive (EU) 2015/2366 on Payment Services (PSD2)*, Publications Office of the European Union, 2023, <https://data.europa.eu/doi/10.2874/996945>

notably in relation to reporting requirements. In practice, PIs are faced with a variety of regulatory reporting requirements from host supervisors that should fall within the remit of home supervisors. Moreover, EPIF members have also noted that some host supervisors treat PI agents (many of whom are sole traders) as if they themselves were regulated entities when in reality they are conducting payment services on behalf of a regulated financial service provider.

On **supervisory practices**, EPIF calls are two-fold: (i) for the European Commission to reassess whether supervisory practices in light of the above are aligned with the spirit of the RTSs on home-host cooperation under the PSD2 published in response to Article 29(6); and (ii) for the European Commission to clarify the interaction between the PSD2 and the AML/CTF legislation when it comes to the supervision of PIs in the context of agents. The move to a Regulation covering supervision and enforcement could be a positive development.

## Fraud prevention and Strong Customer Authentication

EPIF recognizes that the introduction of the PSD2 has coincided with a **decline in fraud levels** across the Union. However, we note that the feedback received from the industry, in particular from providers of acquiring services, is that fraud has been shifting to other areas, such as customer impersonation.

To counter the evolution of fraudulent behavior, we maintain that the provisions embedded in the PSD2 Level 1 text should go in the direction of allowing the application of a genuine **risk-based and outcome-oriented approach**. Prescriptive and detailed rules, notably for SCA under the PSD2, tend to decrease the level of security as they do not allow payment providers to evolve in their own fraud prevention mechanisms. Moreover, we note that the customer experience also tends to be lowered to a common denominator with time. The current detailed rules not only limit the number of options available to effectively detect fraud, but also introduce frictions and added difficulties to customers less accustomed to digital options.

EPIF would thus support clarifying the **mandate to the European Banking Authority (EBA)** currently under Article 98 (Regulatory technical standards on authentication and communication) of the PSD2. The revision of the provisions enabling the EBA to develop the RTSs should mandate a more technologically neutral approach to SCA, allowing PSPs to adapt their authentication processes as fraud behavior also evolves.

The static approach taken in the PSD2 and associated Regulatory Technical Standards on SCA rules do not match the dynamic nature of criminal behavior. PSPs should thus be granted, under the PSD2 review, enough flexibility to innovate on the technological solutions put in place to counter fraud. This includes the recognition of new forms of authentication, such as biometric recognition. EPIF strongly suggests setting authentication success rate targets and performance against targets. PSPs could then continuously innovate to reach established targets and effectively detect fraud. These targets should not only look at security, but also take account the customer experience, accessibility for vulnerable customers and the impact on innovation. The key is to balance these objectives, in relation to the risk of the transaction, so as to achieve a dynamic risk control framework that is able to adapt as fraudulent behaviors and innovation evolve.

## Open Banking under the PSD2

EPIF members recognize that the introduction of Open Banking in the EU through the PSD2 brought greater connectivity to enhance competition and innovation in payment services, benefiting both consumers and businesses. We however note that the full potential of Open Banking has not been realized. **Fragmentation** within the EU Single Market still persists, leading to a variety of user experiences. This is particularly true when it comes to application programming interfaces (APIs), for which the consistency of the quality is often challenged by fragmentation issues. EPIF would welcome

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additional measures to facilitate **harmonization of API standards** in accessing payments data. A revised PSD2 would also benefit from policymakers setting benchmarks for API performance, in order to ensure the required quality and reliability of APIs for innovation to flourish. In general, EPIF is supportive of the work of the European Payments Council on the SEPA Payments Account Access Scheme (SPAA Scheme). It is important that the scheme introduces greater functionality for Open Banking payments, such as recurring payments to allow for a wide variety of use cases.

We urge the European Commission to maintain a more **principles-based approach** in the area of authentication for Open Banking. The European market would then have the ability to develop different solutions, for instance innovative eKYC or onboarding, as well as leverage on the future European eID wallet. For EPIF members it is crucial that innovation remains possible, with a flexible regulatory framework supported by harmonized standards.

### Interplay between the PSD2 and other legislation

EPIF members strongly believe that the revision of the PSD2 is a great opportunity to align the rules of the Directive with other legislation also applicable to PIs and EMIs. This is particularly relevant for proposals that have developed since the application of the PSD2 such as Open Finance, the revision of the eIDAS Regulation, the GDPR, DORA and MiCA.

At a broad level, we urge the European Commission to ensure as much consistency as possible between the different files and the PSD2 but would like to highlight the following three points:

- **On the GDPR**, supervised entities are frequently faced with information requests by competent authorities creating a possible conflict with data protection rules. This leads to legal uncertainty for affected companies. Moreover, certain definitions under the GDPR and PSD2, such as “consent”, are not always aligned. EPIF thus calls for the EBA to be mandated to develop draft Guidelines, in collaboration with the European Data Protection Board (EDPB) for (1) supervisory authorities on information request; and (2) PIs/EMIs on how to deal with information requests from supervisory authorities while respecting the compliance requirements under the GDPR.
- **On the eIDAS review**, EPIF members have been supportive of ensuring that the eIDAS framework is adaptable to financial services firms and PSD2 regulated services in particular. Since the eIDAS is designed as a horizontal piece of regulation, we have also suggested that sector specific applications should be dealt with sector-specific legislation, as it is the case for payment services and the PSD2. For this reason, we believe that the PSD2 review should take into consideration whether further legal clarity might be needed in order to allow consumers and market participants alike to make full use of eIDAS for payment services covered under the PSD2.
- **On the wider Open Finance proposal**, we are fully aligned with the European Commission on the importance of lessons learnt from the implementation of Open Banking. This will ensure that Open Finance effectively improves outcomes for European businesses and consumers. More importantly, it is imperative to ensure that the interplay between Open Banking under the PSD2 and Open Finance under the new proposal are clearly delimited. The requirements imposed on Open Banking and Open Finance need to be as consistent as possible in order to avoid a duplication of procedures for entities captured in the scope of both the PSD2 and Open Finance.
- **On MiCA**, and as explained above, an alignment to include payment transactions using crypto-assets, including Stablecoins, is necessary. Payment institutions should also be allowed under the PSD2 to carry out activities which result in the transfer of crypto-assets. Particularly when electronic money tokens are deemed to be funds by MiCA, payment institutions should be permitted to execute payment transactions using e-money tokens.

EPIF, working closely with the FSB on the G20 Roadmap for Enhanced Cross-Border Payments, also supports transparency in fees in cross-border payments to the benefit of consumers.

### ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

**EPIF**, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

**EPIF** seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).