



Brussels, July 2022

## **EACB Position Paper**

### **on the targeted consultation on the review of the revised Payment Services Directive (PSD2)**

#### **About the EACB:**

The **European Association of Co-operative Banks** ([EACB](https://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 27 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 2,700 locally operating banks and 52,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 214 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 85 million members and 705,000 employees and have a total average market share of about 20%.

For further details, please visit [www.eacb.coop](https://www.eacb.coop)

**The voice of 2.700 local and retail banks, 85 million members, 214 million customers in EU**

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## Summary of EACB position

The European Association of Co-operative Banks (EACB) welcomes the opportunity to contribute to the review of the revised Payment Services Directive (PSD2) by the European Commission. EACB's key messages are as follows:

**PSD2 has brought benefits for payment users** by making payments safer and more secure through the implementation of strong customer authentication, although new kinds of fraud have developed, and the methods used by fraudsters changed after the implementation of PSD2. Besides that, PSD2 has created a market for third-party providers, created more trust with consumers in sharing customer data, and has proliferated APIs.

**There is an unlevel playing field:** PSD2 does not ensure equal treatment of the interests of Account Servicing Payment Service Providers (ASPSPs), in particular credit institutions, and other providers, and has in effect established an uneven level-playing field. ASPSPs were forced to establish an expensive infrastructure without the possibility of recovering the costs incurred and regardless of their respective clients' needs and whether they use the services of Third-Party Providers (TPPs). At the same time, the full economic opportunities are to the sole benefit of the TPP.

**PSD2 impact should be assessed not only from a content perspective but from a cost-benefit and process perspective.** In terms of process: the division of the legislative process in different levels and stages (level 1, level 2, additional guidance from multiple supervisors) has created inefficiencies and additional cost to the implementation process. In terms of cost-benefit: all the efforts put in place, notably to facilitate AIS services, have not generated much demand. The implementation of PSD2 has generated considerable costs, without the possibility for ASPSP to generate income from account access by third parties.

**PSD2 revision is not needed at this stage:** Payments are well regulated by a broad range of EU legislative acts, including the Payment Services Directive, Payment Accounts Directive, Regulation on cross-border payments, SEPA Regulation, Regulation on interchange fees for card-based payment transactions, that seem to address all societal and legal needs in the area of payments at this moment in time. Therefore, there is a need for a legislative breathing space.

**The future of European payments landscape should support market-driven initiatives.** It is the right point in time to develop new solutions and services that provide a sustainable revenue base and hence innovative capabilities by market participants. In our view, the success of market driven initiatives depends on a broad agreement and involvement of all stakeholders, e.g. SEPA Payment Account Access Scheme which is currently under development.

**Should the Commission decide to revise the PSD2, we would be in favour of a targeted revision** focusing only on certain aspects. One such targeted aspect is access to payment accounts. There should be a sustainable business model for access to payments data by TPPs. Inspiration could be taken from the ongoing work on the SEPA Payment Account Access Scheme led by the European Payments Council. Also, it should be clarified how to handle in practice the liability for unauthorized transactions involving



TPPs, i.e., a framework is necessary for recovering ASPSP funds where TPP is responsible for non-executed, defective, or fraudulent transactions. Besides that, the Confirmation of Funds service should be removed from the directive or should at least be made non-mandatory or open to Member State option, as it seems to be a very niche service, used only in a few markets/countries.

**API standards should not be regulated:** EU legislation should not include a common API standard. The EACB supports a market-driven approach. We believe that the regulatory framework should provide incentives to implement good APIs and promote standardisation, and not impose them.

**Better interplay between PSD2 and GDPR is needed:** The guidance on the interplay of PSD2 and GDPR issued by the EDPB was late, contained important surprises for market actors and seemed to have been developed with little to no alignment with e.g. the EBA work. A joint industry letter on the interplay of PSD2 and GDPR addressed to the EDPB on 31 January 2022 sets out our concerns in that respect.

**Lessons learned from PSD2 should be taken into account in the context of the Open Finance Framework:** The outcome of the PSD2 review will need to be strongly considered when designing and proposing legislation, if any, on Open Finance. The lessons learned from the PSD2 review must be the basis upon which further development of an Open Finance Framework shall proceed, taking into account and assessing the variety of possible economic, operational and security risks for consumers and data holders resulting from a possible mandatory access to their data. Furthermore, it is strongly advisable to assess benefits and risks related from both Open Finance options, as consulted by the European Commission, namely voluntary data sharing versus mandatory data access, and align outcome of the latter assessment with already existing European Union strategies and values regarding data (Data Strategy, Digital Finance Strategy, Data Governance Act, Data Act, AI Act Proposal, etc.).

## **EACB answers to the consultation questions**

### **Q1. Has the PSD2 been effective in reaching its main objectives?**

Overall, PSD2 has been effective in making payments safer and more secure through the implementation of Strong Customer Authentication (SCA) and enabling payment service users (PSUs) to choose transparent and low-cost types of PSPs. Although, as reported by some EACB members, electronic payments were safe and secure before PSD2 as well.

That said, the implementation of SCA has not fully addressed the issue of fraud. New kinds of fraud have developed, and the methods used by fraudsters changed after the implementation of PSD2. Some of the new models seem to be connected to the introduction of SCA and its exemptions and use different techniques such as phishing (via different means), cell phone fraud, social engineering. As some of these kinds of fraud go far beyond payments and can also lead to other kinds of fraud, it is our view that they should not be addressed in PSD.

PSD2 has created a market for third-party providers, created more trust with consumers



in sharing customer data and has proliferated APIs.

PSD2 did not help in establishing a level playing field between the different categories of payment service providers. PSD2 may have propelled the widespread use of APIs and thus help build a strong technological foundation for new financial services, although it took the EBA some creative interpretations and strong persuasions to establish that, thereby filling in legal gaps in PSD2. But PSD2 does not ensure a level playing field for ASPSPs and therefore undermines the value they bring to their members, customers and society. Regulatory gaps are more likely to have widened than closed. In our view, the absence of a business model for access to payment account data by third parties is a major drawback of PSD2.

The implementation of PSD2 was a highly complicated and costly process for credit institutions (ASPSPs) and the whole market, in particular the part of the "PSD2 interface" due to unclear regulatory requirements from the beginning in relation to level 1 and level 2 texts (EBA RTS). At the end, by the legally required changeover date of 14.09.2019 for the access to payment accounts the credit institutions in the role of ASPSPs had provided a PSD2 interface in accordance with the requirements known at the time. Most TPPs had neither tested at this point in time the ASPSP interfaces already in place by then nor had concrete implementation plans.

The costs of the PSD2 implementation have been disproportionate, with only marginal benefits. These high implementation costs are not matched with positive economic benefits for the whole economy.

The future of European payments landscape should support market-driven initiatives. It is the right point in time to develop new solutions and services that provide a sustainable revenue base and hence innovative capabilities by market participants. In our view, the success of market driven initiatives depends on a broad agreement and involvement of all stakeholders (e.g. SEPA Payment Account Access Scheme which is currently under development).

PSD2 impact on cross-border payments has been limited so far. Although PSD1 allowed the provision of payment services abroad through EU passporting and PSD2 has continued in that vein, the directive is only a part of the whole, which also consists of e.g. consumer protection, data protection, reporting and AML regulations. And the regulation and NCAs' interpretations of the latter vary from one Member State to another.

**Q1.1 Do you consider that PSD2 favors specific technological solutions over others?**

The provisions on SCA are in general technology-neutral, but their requirements favour solutions for mobile phones in the case of remote payments, which lead to negative effects for consumers without a mobile phone.

As regards the communication between ASPSP and AISP/PISP, PSD2 favoured the API technology which was in fact the only one to allow the necessary instantaneity for answering certain use cases such as online payments in agreement with all requirements, most notably security requirements.

**Q2. In your view, has the current PSD2 framework achieved its objectives**



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### **in terms of meeting payment user needs?**

In general, EACB is of the opinion that it is not up to regulation to meet user needs, but rather up to market players to find out what the needs are and find solutions to it. Regulators should only step in where there is serious and prolonged market failure and other means of getting the market to move have not been successful. This question is therefore difficult for EACB members to answer.

Additionally, it is not only PSD2 that influences the payment offer made to payment users by payment service providers. There is a broad range of EU legislative acts, including the Payment Services Directive, Payment Accounts Directive, Regulation on cross-border payments, SEPA Regulation, Regulation on interchange fees for card-based payment transactions, that have an impact. PSD1 and PSD2 have significantly improved the processing time of a standard credit transfer for the broad mass of payment transactions, thus stable planning of payment transactions is possible. The SEPA environment therefore in general meets the needs of both retail and commercial payment service users. Standardisation of SEPA data formats has helped to move the EU payment service market forward.

On the whole however, we observe that PSD2 has significantly increased the rights of the payment service users and the obligations of payment service providers. In this respect, the PSUs are in a strong position. Banks may (and do) in addition voluntarily establish policies that further increase consumer protection, e.g. to safeguard the trust in safe and secure payment transactions.

On SCA, whilst the intentions of PSD2 were well intended, we are not convinced that it can be concluded that making electronic payments is easier than 5 years ago. For example, having to deal with SCA does not necessarily raise the level of convenience for a retail customer.

With respect to international payments, the PSD2 has made these payments more transparent, at least for the European party, without having helped to make their execution easier because it depends above all on international rules.

### **Q3. In your view, has the current PSD2 framework achieved its objectives in terms of innovation?**

In terms of contributing to innovation, by focusing on electronic payments, requiring strong two-factor authentication, introducing the concept of initiating payments and regulating the account aggregation service, PSD2 laid the foundation and fostered the development of innovations in payments. But one could also say that PSD2 has created a market for third-party providers and has proliferated APIs. On the other hand, with the mandatory opening of account access via ASPSPs for TPPs, it has seriously handicapped ASPSPs in their capacity to innovate in a number of ways: 1) by obliging banks to open up to third parties without the possibility to recover the cost of the infrastructure and data management required to enable this, it has increased the cost base for banks thereby decreasing the investment capacity available to invest in innovation, 2) by obliging the ASPSPs to offer all the same services that they develop for their own customers discourages the ASPSPs from introducing new services. This added with the fact that at the moment the PISPs own investments in and share of really new inventions seem to be quite low, there is a risk of a downward curve on new innovations.



Overall, the PSD2 implementation has taken a long time and has taken up resources which could not be devoted to customer driven innovations and meeting customer demands. Resources were used to a very limited set of innovations.

We are strongly in favour of a legislative breathing space. The banking sector generates market-oriented solutions. The future of European payments landscape should support market-driven initiatives, like the SEPA Payment Account Access Scheme (SPAA Scheme).

**Q4. In your view, has PSD2 achieved its objectives in terms of market integration and enhancing competition?**

PSD2 contribution to the functioning of the internal payments market: New PSPs have entered the market. However, it seems that there is already consolidation taking place and it is likely that there will remain only a couple of multinational PSPs dominating the market.

Cross-border payments: The impact of PSD2 has been limited so far. Cross-border payments within the EU were well-developed before PSD2 (SEPA), and were influenced by more than PSD2 (e.g., Payment Accounts Directive, Regulation on cross-border payments, SEPA Regulation, Regulation on interchange fees for card-based payment transactions). PSD2 has not necessarily led to an improvement, but with the introduction of PIS, it indirectly promoted the use of credit transfer cross-border also for online purchase. Also, PSD2 is only a part of the whole, which also consists of e.g., consumer protection, data protection, reporting and AML regulations. And the regulation and NCAs' interpretations of the latter vary from one Member State to another.

EACB members also note that the abolishment of BEN and OUR as payment charging options, have created some unintended new issues such as the impossibility for a German employer paying a salary in Poland to take responsibility for the costs of the transfer.

On the point of the choice of payment instruments, the situation differs largely between countries. In countries where TPPs were already active before PSD2 not so much has changed.

Regarding the questions on fee levels, the EACB, as an association of banks, does not collect information on fee levels in line with competition rules.

**Q4.1 Do you think the current PSD2 provisions on access to accounts lead to an un-level playing field between payment service providers offering payment accounts, who have to be accessible to TPPs, and other players who do not offer payment accounts, and therefore are not obliged to share their users' data?**

PSD2 does not ensure equal treatment of the interests of ASPSPs, in particular credit institutions, and other providers, and has in effect established an uneven level-playing field. ASPSPs were forced to establish an expensive infrastructure without the possibility of recovering the costs incurred and regardless of their respective clients' needs and whether they use the services of TPPs. At the same time, the full economic opportunities are to the sole benefit of the TPP (AISP and PISP). Credit institutions (ASPSPs) became pure infrastructure providers fulfilling only the requirements of TPPs. In our opinion, the entire approach should be reconsidered to allow for appropriate compensation for ASPSPs.



A sustainable business model for TPPs access to data should be provided for both in the context of PSD and open finance framework.

The PSD2 regulation allows ASPSPs to participate in the exploitation of Open Banking data and to compete in the payment market with new entrants. However, the regulation gives new entrants a significant competitive advantage, which is ultimately a slowdown or cessation of innovation in certain service sectors normally provided by ASPSP. These are, in particular, ASPSP's payment solutions and authentication solutions, all of which, according to the current interpretation of EBA and national authorities, can be used by TPP operators without compensation. ASPSPs, on the other hand, are not allowed to take advantage of any new entrant solutions in their similar business.

As a general rule, a level playing field is not formed in a situation where obligations are imposed only on one market participant and rights on the other.

**Q5. In your view, has PSD2 achieved its objectives in terms of consumer protection?**

The level of consumer protection had already been satisfying before the implementation of PSD2. However, we note that further improvements introduced through PSD2 have yielded some positive effects, in particular for card payments, leading to a complete and adequate consumer protection regime. Overall, regarding the reduced liability of the PSU with fraudulent payment transactions the PSD2 has fulfilled its goal. On the other hand, new types of phishing criminality were observed in parallel with the implementation of the stricter SCA rules driving to fraudulent payments authenticated by the customer. It is our view that new types of fraud such as those based on social engineering cannot be addressed in PSD. It must also be taken into consideration that the SCA rules as such are not sufficient; the customers should also be aware of how to recognize the reliable service providers and of what they are giving their consent to.

PSD2 contains a significant number of disclosure obligations towards the PSU both before and after the establishment of a customer relationship. Furthermore, transparency rules are now so numerous that their real suitability for consumers is called into question. The Payment Services Directive, the Regulation on cross-border payments in euros and the Payment Accounts Directive set different transparency obligations, some of which are redundant, and define different time frames and reference points.

As concerns charges, the EACB, as an association of banks, does not collect information on fee levels in line with competition rules.

**Q6. In your view, has PSD2 achieved its objectives in terms of secure payments?**

Overall, PSD2 has been effective in making payments safer and more secure through the implementation of SCA. Although, as reported by some EACB members, electronic payments were safe and secure before PSD2 as well. That said, a wave of new types of phishing criminality was observed in parallel with the implementation of the stricter SCA rules, driving to fraudulent payments authenticated by the customer. It must also be taken into consideration that the SCA rules as such are not sufficient. The trust in electronic payments is based on the functioning of the payment rails and the adhesion of all the players to the rules of different agreement-based payment schemes.





PSD2 succeeded to some extent in restricting the improper market practices for accessing the account data (screen scraping and reverse engineering). Regulatory and supervisory actions at European and national level (as already done in some Member States) to make sure that such practices are permanently prohibited and enforced would be welcome.

Regarding the protection of consumers' financial data, PSD2 has indeed created more trust with consumers in sharing customer data. However, EACB has several concerns with regard to the PSD2-mandated access to payment accounts by third parties (see answers to questions 33-36 on open banking).

In addition, according to some EACB members, based on the customer feedback it can be concluded that the payment service users do not fully comprehend the access to account functionality, this applies both to private and corporate customers.

Also, PSD should acknowledge the legal fact that the customer of the PISP is the merchant, not the payer. Currently, PSD2 is unclear about this and creates blurry lines.

**Q7. 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.**

As explained in answers to previous questions (see Q1), the implementation of PSD2 was a highly complicated and costly process for credit institutions and the whole market, in particular the part of the "PSD2 interface".

To offer some insight into the typical build-up of costs, we like to point to:

- Building and running a set of APIs in parallel to other systems and 24/7 operations, usually requiring a fully dedicated multi-disciplinarily team of specialists (for over 6 years to date).
- Track, assess and implement ever changing requirements to these APIs affecting customer journeys, systems, documentation, procedures, policies, central bank reporting, etc., mostly caused by new or revised guidance from supervisors filling in or clarifying or detailing certain legal provisions of PSD2 but also other legal sources (e.g., requirements on operational resilience - DORA). Note that changes to APIs usually are not limited to such interfaces alone but impact the entire payments processing chain of a bank.
- Discussing new features to these APIs sometimes TPPs feel entitled to or have a different interpretation of said requirements in the previous point. Such discussions continue until the present.
- Technical challenges that complicate operating said parallel systems and cut across infrastructures, such as (introducing) Instant Payments rails and Cloud migrations, where payments processing nevertheless must continue running smoothly and with high availability.

To sum up, the costs of the PSD2 implementation have been disproportionate, with only marginal benefits; these high implementation costs are not matched with positive economic benefits for the whole economy. Furthermore, they hampered use of these budgets to develop other customer-friendly services.





## **Q7.2 Did your business experience any problems due to the implementation of PSD2?**

There is a need to assess the impact of the directive not only from a content perspective but from a cost-benefit and process perspective.

In terms of process: Notwithstanding the much appreciated and highly valuable work of the EBA, the division of the legislative process in different levels and stages (level 1, level 2 (RTS) and additional guidance from multiple supervisors (such as Q&As)) has created inefficiencies and additional cost to the implementation process. Multiple supervisors involved do not always align their viewpoints (e.g., EDPB guidance on PSD2/GDPR interplay). In addition, guidance on all levels and from all supervisors is dispersed in time (e.g., extended deadline for SCA for online card transactions, guidance on PSD2/GDPR interplay, RTS deadline, plus the EBA keeps releasing Q&As on PSD2/RTS SCA) makes it a long process with large number of reiterations. It would be worthwhile to see if lessons can be learned from this experience.

In terms of cost-benefit:

- All the efforts put in place notably to facilitate AIS services have not generated much demand. Indeed, API usage in most countries is rather low. Even EACB members that act as AISP do not see many clients using the AIS services. The CAF service (Confirmation of Availability of Funds, Art. 65 PSD2) seems to have no market demand at all in most countries.
- The implementation of PSD2 has generated considerable costs. Together with other payment compliance work this has put pressure on the banks capacity to develop new services and new solutions for clients. Key cost elements are:
- The cost of development and ongoing production of parallel systems and APIs (commercial and PSD2). PSD2 caused viable market facing APIs to be partly cannibalized by free of charge APIs, thereby diminishing a solid basis for an ROI for both.
- The cost of PSD2 rollout and communication effort
- The nature of the PSD2 regulation and its goals vis-a-vis ASPSPs (there is no real benefit aimed at ASPSPs))
- The ongoing pressure for ASPSPs to keep on developing their back-end systems to increasingly cater to TPPs.

Access to account functionality brings only costs to ASPSPs but not adequate incomes. Development, implementation and in the long run the maintenance costs (including continuous compliance costs) of the PSD2 interface for TPPs are the main cost factors. From the ASPSP point of view there are no benefits. We also regret the inability caused by the legal provisions in PSD2 to charge customers for access-to-account services (multi-bank or multi-financial institution services) and limit the charging to those who value these services: currently all customers have to pay where only limited groups benefit.

It is important going forward to restore the balance on these points.

For SCA one of the problems was that merchants and their service providers were not aware of the upcoming requirements. On the customer side, SCA very often implies the use of a smartphone and not all the customers have one (e.g., elderly clients of a certain age). This obliges PSPs to develop other solutions.



As reported by our members serving financial institutions and corporate customers, they had to implement an interface that has not been used to date. Corporates with strong need for multibanking do not have appetite into retail PSD2 interfaces as these interfaces do not provide extra value to current business processes such as payments and accounts management.

**Q7.3 Overall, from your own stakeholder perspective, would you say the aggregated benefits stemming from the implementation of PSD2 outweigh its implementation costs?**

In our view, the aggregated benefits from the implementation of PSD2 do not outweigh its implementation costs. See answer to Q 7.2.

Managing APIs (implementation and support) remains very costly. The cost of maintenance for each development and the support provided to the API users required the setting up of a cell (support) to answer the various questions that arise in the TPP.

**Q8. Would you consider that the application and enforcement of PSD2 rules by national competent authorities (NCAs) are satisfactory?**

In our view, the provisions of PSD2 are sufficient to give the supervisors the power to tackle the possible breaches, but we have zero visibility to whether some supervisory activities are taking place. We do not see any need for immediate further legislative action but do see the need for much more clarification on the interplay of PSD2 with other pieces of legislation, including the competency of the applicable supervisor.

**Q9. In your view, has the PSD led to improved complaint procedures?**

The provisions on the complaint procedures are effective. There is no need for further legislative action.

**Q10. Taking your responses to the above questions into consideration, should PSD2 be revised?**

EACB believes that PSD2 revision at this stage is not warranted because:

- Payments are well regulated by a broad range of EU legislative acts, including the Payment Services Directive, Payment Accounts Directive, Regulation on cross-border payments, SEPA Regulation, Regulation on interchange fees for card-based payment transactions, that seem to address all societal and legal needs in the area of payments at this moment in time.
- There is a need for a legislative breathing space. Also to let the market for access-to-accounts mature more. The banking sector generates market-oriented solutions. The PSD2 implementation, including all parts like the RTS SCA, has taken a long time, and has taken up resources which could not be devoted to customer driven innovations and meeting customer demands. The future of European payments landscape should support market-driven initiatives. It is the right point in time to develop new solutions and services that provide a sustainable revenue base and



hence innovative capabilities by market participants. In our view, the success of market driven initiatives depends on a broad agreement and involvement of all stakeholders (e. g. SEPA Payment Account Access Scheme which is currently under development).

- Several fundamental questions with the current regulation remain unanswered, notably the roles and responsibilities of TPPs and ASPSPs require clarification. For example, how one becomes the PISP customer? Should PISP know their customers? How to consolidate the differences in national regulations with regard to these issues? However, the clarifications should not be given via EBA Q&As.

However, should the Commission decide to revise the PSD2, we would be in favour of a targeted revision (rather than full revision) focusing only on certain aspects. In a relatively short amount of time, PSD2 has become a broad and solid basis for payment services offerings throughout Europe and as such would seem to benefit more from some targeted amendments than a complete overhaul. One such targeted aspect is access to payment accounts. In that respect, policymakers should ensure there are contractual relationships between ASPSPs and TPPs:

- Make sure that there is no free of charge access to data. Instead, a sustainable business model is needed for access to payments data by TPPs. Inspiration could be taken from the ongoing work on the SEPA Payment Account Access Scheme led by the European Payments Council.
- Clarify how to handle in practice the liability for unauthorized transactions, i.e. a framework is necessary for recovering ASPSP funds where TPP is responsible for fraudulent transactions.

Besides that, the Confirmation of Funds service should be removed from the directive or should at least be made non-mandatory or open to Member State option, as it seems to be a very niche service, used only in a few markets/countries.

Delegated authentication rules are very heavy and complex. The idea of every delegator regularly auditing the company the authentication was delegated to (for example Apple Pay), is impossible. There should be defined a new role and licensing criteria for delegated payment authenticator service providers, which could then be audited and supervised by the NCAs.

Directive versus Regulation: The current national transpositions work without shortcomings which can be attributed to the fact that the provisions are based on an EU Directive. In line with the principle of subsidiarity and taking into account that national specificities have to be taken into account in applying the PSD provisions, we believe PSD should remain a Directive and not be transformed into a Regulation.

#### **Q10.1 Is there any PSD2 provision that is, in your view, no longer relevant?**

- Art 65 (Confirmation on the availability of funds) should be deleted or should at least be made non-mandatory or be subject to a Member State option.
- Art 66.5 and 67.4 should be amended: there should be contracts possible between ASPSPs and TPPs (AISP, PISP) thereby creating fairer charging option and fairer distribution of risks and liability.



- Art. 94(2) (data protection) continues to create unclarity despite (or occasionally even exacerbated by) the guidance by the EDPB. We would strongly recommend its removal from PSD2, knowing that GDPR remains in full force.

**Q11. Do you consider that the scope of the PSD2 is still adequate?**

The scope is sufficiently clear. The market actors have also built their own operations in line with the current scope. Any changes to the scope should be minor, as their implementation will be very expensive. The cost for any scope changes should also be shared by TPPs. Technical Service Providers should not be included in scope of a revised PSD2.

**Q11.2 Article 3 lists the exclusions to PSD2. Do you believe there are exclusions in PSD2 that should be changed or deleted?**

The provisions of Articles 3j and 3n should be clarified as they were interpreted differently from one country to another.

**Q16. In your view, should changes be made to PSD2's authorisation regime?**

The PSD2 authorisation regime is adequate. No changes are needed.

**Q22. Do you consider that PSD2 is applied consistently, and aligned with other regulation?**

Adequacy of PSD2 supervisory framework: The adequacy is for our members (cooperative banks) difficult to assess as the activities of supervisors are usually not transparent nor meant to be totally transparent. As far as EACB members can observe, no sanctions or other enforcement actions have been imposed on any actor so far.

PSD2-GDPR interplay: There is definitively room for improvement here. For example, the guidance on the interplay of PSD2 and GDPR issued by the EDPB was late, contained important surprises for market actors and seemed to have been developed with little to no alignment with e.g., the EBA work. A joint industry letter on the interplay of PSD2 and GDPR addressed to the EDPB on 31 January 2022 sets out our concerns in that respect.

PSD2 link with Open Finance: The outcome of the PSD2 review will need to be strongly considered when designing and proposing legislation, if any, on Open Finance. Given the fact that payments may be regarded as a commodity service, while Open Finance use cases (reference to the Commission's targeted consultation on Open Finance) seem to aim at giving access to private individuals' data, the lessons learned from the PSD2 review must be the basis upon which further development of an Open Finance Framework shall proceed, taking into account and assessing the variety of possible economic, operational and security risks for consumers and data holders resulting from a possible mandatory access to their data. Furthermore, it is strongly advisable to assess benefits and risks related from both Open Finance options, as consulted by the European Commission, namely voluntary data sharing versus mandatory data access, and align outcome of the latter assessment with already existing European Union strategies and values regarding



data (Data Strategy, Digital Finance Strategy, Data Governance Act, Data Act, AI Act Proposal, etc.).

eIDAS: Suggestion of use of EUDIW (European Digital Identity Wallets) in payments seem to be in conflict with PSD2 basic principle, according to which the SCA is made with a method issued by the ASPSP. There are severe concerns for example regarding how the information of closing of corrupted EUDIW would reach the ASPSP and who would be in charge of the possible losses caused by delays in the information flow.

AML monitoring rules defined for AISP basically duplicates the monitoring on the same transaction data as ASPSP are already monitoring. ASPSP can have more data on the individual transaction compared to the AISP. When there are multiple AISPs operating across different ASPSPs, it basically multiplies the amount of monitoring done across different AISP's. This would in worst case lead to many AML notifications on the same cases. It must be noted also that AISP providers do not have any preventive measures (payments blocking) at their disposal. Example: EBA's new ML / TF risk factors GL for AISPs and PISPs. Especially monitoring obligations when AIS operations are provided by an ASPSP. In GL, the requirements for monitoring AIS activities basically apply to information on payments (same payee, delivery of funds to risk areas, etc.). As payment transactions, they are already monitored by ASPSPs, however, through AIS operations, an ASPSP also receives information on payment transactions through other ASPSPs. Example: Bank A's customer has linked an account from Bank B and C to the multi-banking service view via Bank A AIS service. According to GL Bank A now has to build control over its AIS operations, even though all payment transactions are already monitored by banks B and C. In addition, these events are beyond Bank A's control, the only thing that can in practice be done is to make a statement of suspicion to relevant/competent authorities.

**Q24.1 Do you consider that certain conditions for access by authorised payment institutions and e-money institutions to designated payment systems should be laid down, and if so, should they be laid down in EU legislation or elsewhere (for example, in the rules of the system)? Please note that the question of whether specific risk assessment criteria should apply under the SFD, if it were to be decided to amend the SFD to allow payment institutions and e-money institutions to be direct participants in SFD-designated systems, was covered in the targeted consultation on the SFD.**

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

**Q25.1 Should the European Banking Authority (EBA) be mandated to developing technical standards or guidance further specifying PSD2 rules and/or ensuring the consistent application of Article 36?**

In terms of access to bank accounts as per PSD2 Article 36, it should be noted – as highlighted in last January EBA opinion (EBA/Op/2022/01) - that the challenges in meeting the obligations under Article 36 of the PSD2 stem from the different risk exposure of banks. In fact, the main issue is still the risk that banks must bear in the event of a liability implied



by an issue connected with the AML/CTF requirements' compliance, i.e., that of incurring sanctions for unlawful behaviour attributable to the PIs, with which the banks would be "obliged" to maintain relations. In other words, while the authority's goals for granting access to PIs accounts are clear, a proper balance of liabilities for AML/CTF compliance should be met at the same time. Legislative or supervisory clarification on that issue could be recommended. We would welcome the EBA work to ensure the consistent application of Article 36.

**Q27. In your view, are the requirements regarding the transparency of conditions and information requirements of PSD2 still adequate?**

There is no need for additional disclosure obligations of different actors towards their customers. PSD2 already contains a significant number of disclosure obligations towards the PSU both before and after the establishment of a customer relationship.

**Q27.1 Conversely, do you consider any of the currently required information irrelevant, and better be removed?**

We see several occasions where the information requirements seem to overshoot their goal and consumers grow unwilling or unable to consume the information conveyed. Therefore, it should be considered whether all that information is necessary. For example, with regard to e-commerce payments, why does a PISP operator have to inform the payer about almost the same information that the payer's bank must also inform the same PSU. Maybe some mandatory provisions and/or formats and/or timing of messages could become voluntary and thus potentially improve the customer experience and reduce an overload of legal information.

See also answer to Q5.

**Q27.2 For all one-leg transactions, are you of the opinion that currency conversion costs should be disclosed before and after a payment transaction, similar to the current rules for two-leg payment transactions that involve a currency conversion included in the cross-border payments Regulation that are currently only applicable to credit transfers in the EU?**

EACB is against extending the scope of PSD2 obligations to one-leg transactions.

**Q27.3 For one-leg transactions, should any other information be disclosed before the payment is initiated, that is currently not required to be disclosed, such as the execution time?**

EACB is against extending the scope of PSD2 obligations to one-leg transactions.

The customer is interested in the total execution time, i.e. when the beneficiary will have the funds at her/his disposal. As there are no global agreements for the execution times of the incoming payments from other jurisdictions, this information is impossible to give. Basing the execution times on individual agreements between banks would be a very heavy set-up which most probably would lead to diminishing reachability of the payments, as it is not possible for one bank to have such agreements negotiated with thousands of banks. The





EU should be active in prompting the global organizations in having frame agreements on this issue. Without binding global agreements, information could be given for only a part of the execution time, and that could easily be misinterpreted by the customer.

**Q29. In your view, are the requirements for the rights and obligations in PSD2 still adequate?**

PSD2 significantly increased the rights of the PSU and the obligations of payment service providers. In this respect, the payment service user (PSU) has a strong position. Banks may (and do) in addition voluntarily establish policies that further increase consumer protection, e.g. to safeguard the trust in safe and secure payment transactions. The most significant change for the PSU has been the inclusion of mandatory SCA to payment services. SCA has in general strengthened the trust of payment service providers' customers. Regarding specifically some of the major changes brought by PSD2, e. g. TPP access and application of SCA, credit institutions informed their clients via multiple channels of these changes. Many ASPSPs also have dedicated webpages on PSD, where clients can find more information (e. g. FAQ, tutorials, risks, ways to share data safely, etc.).

From PSPs point of view, we are of the opinion that if rights and obligations are clear, they are not adequate as they discharge PSUs from responsibility and on the contrary charge PSPs with responsibilities, gross negligence being a good example.

National interpretations of PSD2 Article 74 on gross negligence vary a lot. This can be clearly seen also in EBA's Discussion Paper on Payment Fraud (EBA/DP/2022/0117 January 2022), where the losses borne by PSP vary from country to country from 19 to 80 %, and losses borne by PSUs respectively from 8 to 45 %. We assume that such large variation can not only be due to the difference of behaviour of the PSUs in different countries, but also an interpretation of the gross negligence rule plays a vital role here. As we assume that fraud schemes are quite similar across Europe, it would be interesting to see a study on how same kind of cases are treated in different countries.

**Q33. In your view, are the requirements regarding open banking in PSD2 still adequate?**

From EACB members' perspective, one of the major drawbacks of PSD2 is the access to accounts functionality, as already explained in previous questions. PSD2 has created a market largely based on freeriding, thereby depriving the market of the possibility of creating efficient outcomes (absence of a business model).

Access to account functionality brings only costs to ASPSPs but not adequate incomes. Development, implementation and in the long run the maintenance costs (including continuous compliance costs) of the PSD2 interface for TPPs are the main cost factors. From the ASPSP point of view there are no benefits. We also regret the inability caused by the legal provisions in PSD2 to charge customers for access-to-account services (multi-bank or multi-financial institution services) and limit the charging to those who value these services: currently all customers must pay where only limited groups benefit.





The access to accounts functionality should be narrowed down so that there should be set some basic level on the services that should be available via PIS services, if they are available to the customers via the bank's electronic channel. It cannot be the rule that every new service introduced by the banks (for example paying with telephone number) is automatically incorporated also to the PIS APIs. Broad application of free-of-charge access to account rules might lead into a situation where it is not commercially profitable for ASPSPs to introduce new functionalities for their customers, as implementing the functionality to the API makes the building costs double. This can have a detrimental impact on the innovations in the payments area. We want to emphasize that very few new payments innovations have been introduced by TPPs so far.

As reported by several EACB members, there have not been any users nor cases of availability of funds service. In our view, Art. 65 should be deleted or should at least be made non-mandatory or subject to Member State option.

**Q34. 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).**

API standards: EU legislation should not include a common API standard. EACB members support a market-driven approach. We believe that the regulatory framework should provide incentives to implement good APIs and promote standardisation, and not impose them.

**Q35. Access to payments data via interfaces is currently provided for free to third party providers. Should access to payment data continue to be provided for free?**

Access to account functionality brings only costs to ASPSPs but not adequate incomes. The free access to payment data and accounts evidently benefitted TPPs and left ASPSPs with the costs for implementation and administration. Development, implementation and in the long run the maintenance costs (including continuous compliance costs) of the PSD2 interface for TPPs are the main cost factors. From the ASPSP point of view there are no benefits. Broad application of free-of-charge access to account rules might lead into a situation where it is not commercially profitable for ASPSPs to introduce new functionalities for their customers, as implementing the functionality to the API makes the building costs double. This can have a very detrimental impact on the innovations on the payments area.

There should not be free of charge access to data. Instead, a sustainable business model is needed for access to payments data by TPPs. Inspiration could be taken from the ongoing work on the SEPA Payment Account Access Scheme (SPAA Scheme) led by the European Payments Council.

The lessons learned from the PSD2 review should also be taken into account in the context of the open finance framework. In particular, access to account data by third parties should be remunerated.

**Q36. What is your overall assessment about open banking in the EU? Would you say that it should be further extended?**



As already explained in questions 33-35, from the ASPSPs point of view, PSD2 “open banking” has not been a success. Access to account functionality brings only costs to ASPSPs but not adequate incomes. A sustainable business model is needed for access to payments data by TPPs.

Taking into account that user experience is one of the most important factors in the payment market, we support the aim of the Commission to home-grow user-friendly payment solutions. But the future of European payments landscape should enable market-driven initiatives that develop new solutions and services based on a sustainable revenue base and hence innovative capabilities by market participants. In our view, the success of market driven initiatives depends on a broad agreement and involvement of all stakeholders (e. g. SEPA Payment Account Access Scheme which is currently under development).

When considering a possible extension of open banking under the EU open finance framework, policymakers should keep the lessons learned from PSD2 in mind, especially the need for a sustainable business model and should allow for any extension of the open banking framework towards an open finance framework to come from market developments.

As reported by some members, from corporate perspective there is currently very low demand for PSD2 open banking. The reason is that multi-banking capabilities for payments and account information already existed before PSD2 (MT101/MT940, EBICS, SWIFT), hence no benefit or desire to move to PSD2 interfaces.

**Q37.1 In your view, should changes be made to the PSD2 provisions on liability and refunds?**

Currently, customers must claim their money to the ASPSP who subsequently has to reach out to the TPP. This is not satisfactory from the point of view of the ASPSP, but logical as there is no contractual relation between customer and TPP. Also, the TPPs usually cannot be held liable in case of fraud. One solution also to counter fraud might be to increase due diligence requirements for TPPs, in particular PISPs.

Besides that, it should be clarified how to handle in practice the liability for unauthorized transactions involving TPPs, i.e., a framework is necessary for recovering ASPSP funds where TPP is responsible for non-executed, defective, or fraudulent transactions.

Some of our members have chosen to refund – where applicable – the PSU without taking an effort to be reimbursed by the PISP as gathering the evidence and building the case would likely turn out much more costly than the refund itself. This was particularly a practice during the ‘grandfathering’ period where PSD2 applied but the RTS SCA did not yet apply and PISPs used ‘legacy’ technology (also known as “screen scraping”) to initiate payments (see Art. 109 PSD2). Although prohibited as per RTS SCA, the practice of screen scraping has not completely died out and enforcement actions are not visibly taken.

**Q39.1 Should the current maximum execution time allowed for payments (Art. 83) within the EU (“two leg”) be adjusted?**



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

Furthermore, we believe the transition towards SCT Inst will cater for the execution times coming to a very satisfactory level and that transition should be left to be market driven.

**Q39.2 For payments to and from countries outside of the EU (“one- leg”), should action be taken at EU level with a view to limiting the maximum amount of time (execution time) for the payment (or transfer) to reach its recipient?**

PSD2 is not the right framework to regulate the execution time of one-leg transactions nor is any action warranted on this point at EU level. One-leg transactions are more complex and heterogenous compared to intra-EU/EEA payments. Such payments are not comparable to euro mass payments within the EU with a single currency (SEPA with euro) and with EU-wide regulatory rules.

**Q40. 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?**

We believe IBAN as unique identifier is sufficient and has been functioning well in the SEPA area. Validating also the name would slow down the payments processing and increase the number of rejected payments (for example because of misspelling e.g. sharp ß, ö,ä,ü) leading to worsening customer experience. Also, name verification currently is needed for AML/CFT purposes. An extension to prevent wrong recipients would jeopardise these prevention efforts.

**Q43.1 Are the current provisions operational-and security risk, including those on fraud prevention, future-proof?**

It is difficult to know for sure how the current legislation will fit into future developments. What is sure, however, is that general level regulation is more future proof than a detailed one. So, at least there is no need to add any details to the current legislative framework.

**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:**

The harmonization of the different regulatory requirements for financial institutions is essential, e.g. Digital Operational Resilience Act (DORA). Multiple reporting to different bodies must be avoided. A feedback loop would be useful for reported data, e.g. incidents, results of risk assessments, etc. to derive further improvements or to identify additional threats from e.g. incidents to other institutions (anonymization of such shared data is essential).



The current PSD2 framework is sufficient. Additionally, not even SCA did prevent every fraud. Any extension would only make the process less customer friendly for the PSU without advantages for fraud prevention.

**Q44.1 Currently, what type of fraud is your main concern/ causing most problems (if available, illustrate with figures)? Is there a particular type of payment transaction that is more sensitive to fraud? Please elaborate:**

There are different types of fraud scams (CEO, love, investment scams) and phishing techniques and they are evolving over time. Common factor for all these frauds is that the user is somehow lured to do something against his better knowledge or interest. In other words, for the most harmful types of frauds the PSU himself is actively involved and thus authenticates the fraudulent transaction. In the love and investment scams it can be very hard to convince the customer of the fraudulent nature of the counterpart. In phishing cases, raising the customer awareness of the different techniques is important. The dynamic linking in payments acceptance for example is a practical tool in preventing some modes of phishing, but if the PSU is not paying attention to the details when accepting payments, having dynamic linking in place does not help. In our view, these types of fraud should not be addressed in PSD.

**Q45. In your view, are the requirements regarding fraud prevention in PSD2, in particular those on strong customer authentication (SCA), still sufficient?**

The implementation of the SCA had a significant impact on the customer-bank relationship and involved significant implementation costs. In particular, there was also a high need to educate customers about the SCA. We consider the current requirements to remain appropriate.

The implementation of SCA has enhanced the security of payment transactions. SCA has in general strengthened the trust of payment service providers' customers.

Increasingly remote fraud cases happen with direct fraudster/customer interaction for scam transactions (social engineering). SCA cannot address this type of fraud.

The current PSD2 framework is sufficient. Fraud prevention should not be the sole responsibility of the financial sector and the PSPs, but also other parties.

**Q55.1 In case of a revision of PSD2, would you have suggestions for further items to be reviewed, in line with the review clause (Art. 108) of the PSD2?**

In case of a revision of PSD2, the unlevel playing field between ASPSPs and TPPs should be addressed (see answers to questions 1, 4.1, 7, 35). Furthermore, the outcome of the PSD2 review needs to be taken into account when designing and proposing legislation, if any, on Open Finance (see answer to Q22).



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