

POSITION PAPER



ESBG response to the European Commission targeted consultation on the review of the revised payment services Directive (PSD2)

ESBG (European Savings and Retail Banking Group)

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The European Savings and Retail Banking Group (ESBG) welcomes the opportunity to respond to this targeted consultation from the European Commission on the review of the revised payment services Directive (PSD2).

As a preliminary remark, ESBG and its members would like to point out that it is too early to proceed with the review of PSD2, as the market effects have not yet been able to fully unfold. The PSD2 has been fully implemented only recently and this has already led to different attempts to develop concrete cooperation models and offers via market-driven initiatives and thus to advance innovations in payment services. A further development of the interfaces to "premium services" beyond PSD2 is currently taking place within the framework of both national and European initiatives with the participation of credit institutions, Third Party Provides (TPPs) and other market participants. We believe cooperation between market participants is a key driver of data sharing and innovation. Instead of introducing mandatory rules, the industry should be left free to find the best solutions, via market-led initiatives that involve all sides of the market. For this reason, we believe it is crucial to not hinder market driven initiatives with regulatory intervention. On a related note, it should be highlighted that PSD2 introduced new business models based on access to payment accounts, such as payment initiation services (PIS) and account information services (AIS). However, there are very few new entrants, with the market being led by players that existed already before PSD2, who unfortunately still largely continue to rely on screen scraping.

More in general, the development of attractive products belongs to the market sphere and should not be seen as the task of legislation. The latter should only provide a harmonized and sound legal foundation without privileging certain products or business models. With the mandatory opening of customer payment accounts, PSD2 has privileged certain payment solutions and business models, thereby directing resources to a very limited set of innovations. Moreover, it should be considered that PSD2 regulated a new area (i.e., data sharing) that needs to be evaluated properly not only to ensure that customer demands and needs are respected, but also that data is shared and processed on the right grounds.

Nevertheless, should the Commission decide to proceed with the review of PSD2, we would like to highlight that its core principle of free of charge access to data did not foster the best outcome. PSD2 implementation has been a highly complicated and costly process for ASPSPs and the whole market. Especially for ASPSPs, the investments required for the implementation of PSD2 have been unproportionally high without a chance of a return, especially when it comes to the development of dedicated access interfaces (APIs). More in general, we consider the significant investment levels do not match the limited economic



benefits for the market and the end-consumer. Therefore, the review of the PSD2 should seek a more balanced approach, with a fair distribution of value and risk and the possibility of remuneration for all market participants. This is in our point of view a fundamental prerequisite for the success of every future legislation. Furthermore, ESBG and its members experienced an inconsistent application of PSD2 supervisory framework across the EU. Therefore, further harmonisation in terms of interpretation, application and enforcement should be ensured. Further clarity should also be provided in respect of the interplay between PSD2 and other pieces of legislation, especially with the General Data Protection Regulation (GDPR). Another key point is to achieve a more balanced allocation of liability between ASPSPs and TPPs, especially regarding unauthorised payment transactions. Moreover, we consider questionable the requirement to refund an authorised payment immediately, as it is not always in line with a bank's requirement to duly examine the incident.

ESBG and its members still notice a certain amount of consumer distrust around making available account details to third parties, with very low consumer demand for this sort of payment services. Indeed, years after the entry into force of PSD2, consumers are still hesitant to share their data, or to complete PIS flows online, probably because they do not fully understand and/or trust the process. On a positive note, although the level of consumer protection was already high, we acknowledge further improvements introduced by PSD2 have led to a complete and adequate consumer protection regime: the strengthened SCA and fraud monitoring requirements for all payments has led to a decrease in fraud rates (for instance in card payments), as also noted by the EBA in its preliminary observations on selected payment fraud data (EBA/DP/2022/01). However, it is questionable whether the strict SCA requirements are fit for the emergence of automated and Machine to Machine (M2M) payment scenarios for corporate clients. The review should assess these aspects and give adequate leeway for new solutions and protocols, taking in mind that they are not offered to consumers and therefore entail both technologies and risk profiles which are not fit for the very rigid SCA requirements. Finally, transparency requirements laid down in PSD2 have resulted in an information overload, in particular for consumers and especially in conjunction with adjacent and partly overlapping legislation. Instead, it is necessary to consolidate and limit the information that has to be provided to the payment service user to the essentials. For this reason, we would welcome the introduction of a "*push&pull* model" that would avoid information overload and enable the further digitalisation of payment services.



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.

Question 1. Has the PSD2 been effective in reaching its main objectives? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
Improve the level playing field between the different categories of payment service providers				X		
Create an environment which stimulates innovation in payment services			X			
Make payments safer and more secure		X				
Ensure a high level of protection for PSUs across all EU Member States		X				
Strengthen consumers' rights		X				



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

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

5000 character(s) maximum

Payment services in the EU are functioning well and the market for payments is both competitive and innovative. End-users have access to a variety of payment instruments and channels while facing a high degree of transparency and protection. The legal foundation for this had already been laid by PSD1 and the SEPA regulation – any further contribution of PSD2 especially regarding cross-border-payments has been marginal. PSD2 improved the level playing field between some categories of Payment Service Providers (PSPs) but not all. As the directive is based on entity-based rules and not activity-based rules, there are entities providing payments services not subject to the same regulatory requirements (e.g., BigTechs). We believe it is necessary to maintain a level playing field (same activities, same rules and same supervision) across regulation and across Members States (same level of scrutiny from supervisors) – especially to address issues such as consumer/investor protection, KYC, fraud and financial crime, capital requirements (associated with operational risk) and transparency.

The implementation of PSD2 has been a highly complicated and costly process for Account Servicing Payment Service Providers (ASPSPs) and the whole market. Since PSD2 did not require the contribution of all the participants in the development and maintenance of the infrastructure, the costs of its implementation have been disproportionately put entirely on credit institutions, with only marginal benefits and return on investment for them. More in general, we consider the significant investment levels do not match the limited economic benefits for the market and the end-consumer. API implementation proved difficult also due to the highly inflexible standards for such APIs which were



published long after PSD2 was applicable (EBA Q&As and various EBA Opinions).

The PSD2 approach proved unsuccessful. A flourishing data-driven market – be it in payments, financial services, or between different industries – should be based on principles of mutual benefits and potential remuneration of services and infrastructure by all market participants, and thus should take a different approach to PSD2. Cooperation between market participants and further standardisation of standards are key drivers of data sharing. Instead of introducing mandatory rules, the industry should be left free to find the best solution, via market-led initiatives that involve all sides of the market. For this reason, we believe it is crucial to not hinder market driven initiatives with regulatory intervention. For instance, the EPC SEPA Payment Account Access (SPAA) scheme has the legal and regulatory requirements of PSD2 constituting the ‘baseline’ but goes beyond such a baseline to encompass value-added (‘premium’) services. The SPAA is expected to result in new client experiences accompanied by new additional revenue streams, and allowing for a fair distribution of value and risk between actors, by enabling ‘premium’ payment services beyond PSD2 and developing API-business models in a constructive dialogue with all the stakeholders in the payment ecosystem.

On a positive note, the implementation of PSD2 has yielded innovative infrastructures that may be used for further offerings and collaboration between ASPSPs and Third Party Providers (TPPs). Only recently has there been the necessary room to develop concrete cooperation models and offers based on the PSD2 regulations within the framework of market-driven initiatives and thus to advance innovations in payment services. A further development of the interfaces to “premium services” beyond PSD2 is currently taking place within the framework of both national and European initiatives with the participation of credit institutions, TPPs and other market participants. Indeed, whilst PSD2 was drafted solely focusing on the competition between ASPSP and TPP, the market has been realising the value of partnerships and using each other’s advantages to develop new products and services for the benefit of the consumers and businesses. It is of utmost importance that this co-operation may evolve according to market-based mechanisms.

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

Yes	X
No	
Don't know/no opinion/not applicable	

Please explain your answer to question 1.1. Please be as specific as possible (e.g. include direct references and examples) and elaborate:

5000 character(s) maximum

ESBG and its members especially welcome the fact that new type of PSPs are now regulated, although we do not agree on the proposition that the regulation itself has led to innovation. It is difficult to regulate innovation and we see no



major innovations due to PSD2. Still, regulation can create opportunities for a higher degree of harmonization and level-playing-field to be achieved.

On the other hand, we acknowledge that the strengthened SCA and fraud monitoring requirements for all payments have led to decreased fraud rates and greater security for customers. Unfortunately, fraudsters have now moved into the social space, where they are targeting consumers through new methods (i.e., social engineering frauds). However, the full effect of SCA is yet to be seen, since SCA for e-commerce card payments was not rolled out fully until 2021.

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.

Question 2. In your view, has the current PSD2 framework achieved its objectives in terms of meeting payment user needs? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
Making electronic payments is easier than 5 years ago		X				
Making international payments between the EU and other jurisdictions is easier than before 5 years ago			X			
There are more options available to make payment transactions than before 5 years ago		X				
PSD2 has contributed to market players developing more convenient			X			



payment solutions						
PSD2 adequately addresses current payment needs			X			

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

5000 character(s) maximum

PSD2 introduced new business models based on access to payment accounts, such as payment initiation services (PIS) and account information services (AIS) ('open banking'). However, there are not too many new payment initiation service providers. The market has been led by existing players who unfortunately still largely continue to rely on screen scraping.

In principle, we believe that the complexity of payment initiation was low even before PSD2 came into force. In this respect, we do not see that payment initiation had to be or actually was significantly simplified. To the contrary, the gradual introduction of the SCA for card payments, which in some cases diverged between the member states, even reduced the simplicity of payment initiation for consumers in the short term due to e-commerce merchants (and their PSPs) not offering SCA from day one. Furthermore, we do not see that the increase of attractive payment options for consumers is actually attributable to PSD2. This is not an issue per se, since the development of attractive products belongs to the market sphere and should not be seen as the task of legislation. The latter should only provide a harmonized and sound legal foundation without privileging certain products or business models.

A higher level of innovation could have been achieved if the development had not been governed by legislation but led by the market itself. With PSD2, less resources within the banks became available for new innovative solutions.

Question 3. In your view, has the current PSD2 framework achieved its objectives in terms of innovation? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
PSD2 supports the development of innovative payment services			X			
PSD2 supports the development of innovative		X				



payment solutions						
PSD2 has contributed to innovation within payments		X				

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

3000 character(s) maximum

With the mandatory opening of ASPSPs for TPPs, PSD2 has privileged certain payment solutions and business models, thereby directing resources to a very limited set of innovations (without considering there is still a certain amount of consumer distrust around making available account details to third parties). We have not been able to identify if PSD2 has effectively increased the innovation capability of banks and other payment institutions. Actually, Payment Service Providers heavily invested time and money on implementing PSD2 to ensure compliance rather than really developing innovative services or solutions. Especially the example of CBPII shows that legally prescribed product solutions are likely to fail under real market conditions. As such, we believe the provisions of Article 65 PSD2 on CBPII should be removed.

On the other hand, the lack of a common technical standard made implementation more expensive. Moreover, we see that successful P2P payment solutions are local and supported by banks and customer integration, showing that cooperation rather than competition is able to foster success.

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.

Question 4. In your view, has PSD2 achieved its objectives in terms of market integration and enhancing competition? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
PSD2 has improved the functioning of the internal payments market		X				
PSD2 has contributed to			X			



the development of cross-border payments within the EU						
There is a wider choice of payment service providers than 5 years ago			X			
The EU payment market is more competitive than it was 5 years ago			X			
PSD2 has contributed to lower fees for digital payments			X			
PSD2 has contributed to lowering the costs of remittances				X		

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

3000 character(s) maximum

It was mostly the first payment service directive (PSD1) that had a strong effect on market harmonization and integration with respect to payments in the EU. Set against this, PSD2 supported this already sufficient market situation only with minor improvements, e.g., through the surcharge ban for electronic payments. It should be noted that Customer fees for digital payments and remittances have not increased despite the regulatory measures causing increase in costs for the PSPs. Moreover, we notice there are not too many new payment initiation service providers. Instead, the market evolution has been led by the previous existing players who still largely rely on screen scraping.

Question 4.1 Do you think the current PSD2 provisions on access to accounts lead to an un-level playing field between payment service providers offering payment accounts, who have to be accessible to TPPs, and other players who do not offer payment accounts, and therefore are not obliged to share their users' data?

Yes	X
No	
Don't know/no opinion/not applicable	



Please explain your answer to question 4.1 and include any suggestions for (legislative) amendments:

2000 character(s) maximum

PSD2 has in effect established an uneven level-playing field: ASPSPs were forced to build an expensive infrastructure for payments initiation and payments data aggregation regardless of their respective clients' needs and appetite to use the services of TPPs. At the same time, the full economic opportunities are to the sole benefit of the TPPs (AISP and PISP), which kept resorting to screen scraping as they did before PSD2, any prohibition notwithstanding. Such a behavior needs to be sanctioned by supervisors. Moreover, ASPSPs had to adapt their APIs to meet complex and specific requirements imposed by EBA by way of Level 2 legislation and the related clarifications (e.g., Q&As, Guidelines), whereas the definition of obstacle laid down in Article 32(3) RTS SCA & CSC has been interpreted very extensively and to the exclusive benefit of TPPs. In addition, once the Open Finance framework will be in place, APIs will also cover the objective pursued by the screen scraping.

As also established in the Data Act, we strongly believe an appropriate compensation should be provided for this responsibility and the entire free of charge approach should not be replicated. All payment providers should be subject to the same data sharing obligations. We advocate for the necessity to maintain a level playing field (same activities, same rules and same supervision) across regulation and across Members.

A second important component is that consumers still hold their bank responsible for safeguarding not only their money, but also their data. Meaning that if there is an issue caused by a TPP, the bank faces reputational damages even if no liability can arise.

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.

Question 5. In your view, has PSD2 achieved its objectives in terms of consumer protection? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
PSD2 has contributed to improving		X				



consumer protection						
PSD2 has led to a reduction in fraud in digital payments		X				
PSD2 has effectively removed surcharges for the use of a payment instrument		X				
With PSD2, payment service providers now provide clear information about payment services and their terms and conditions, for example about fees				X		
PSD2 has improved complaint procedures		X				

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

5000 character(s) maximum

Although the level of consumer protection was already high, we note that the further improvements introduced through PSD2 have yielded some minor positive effects, leading to a complete and adequate consumer protection regime. A reduction in fraud in digital payments could mainly be observed in card payment transactions, most probably due to the fact that in the past cards were used for e-commerce pull payments – i.e., without SCA. For Account-To-Account (A2A) payments, the use case most developed is payer push payments already covered by SCA or direct debit with good customer protections. Yet, we cannot find evidence for an improved user convenience, especially when it comes to transparency for end-users. Indeed, transparency rules are now so numerous that their real suitability for consumers is called into question. The PSD2, the Regulation on cross-border payments in euro and the Payment Accounts Directive all set different transparency obligations, some of which are inconsistent with one another or redundant, and define different time frames and reference points. In general, it is important to ensure that information requirements do not lead to an information overload of the payment service user and do not hinder the further digitalization of payment services. In times where contracts are concluded digitally (e.g., via smartphones), it does not make sense to oblige the Payment Service User (PSU) to read endless pages of information. We consider necessary to consolidate and limit to the essential the information that has to be provided to the PSU. Essential information includes only the key aspects of the payment service, such as name of PSP, type of



contract and terms, main fees and interest rates, contact options. This essential information should be provided briefly and clearly, (e.g., on a brief information sheet) and should indicate to the PSU where further information is available (“push-information”). All other information (e.g., information on dispute resolution, supervisory authority) should be made available to the PSU separately, e.g., via website (“pull-information”). This “*push&pull* model” would avoid information overload and enable the further digitalisation of payment services. The SCA requirements in combination with Request To Pay (RTP) messaging opens up for new, secure and convenient account to account pull payments that could not have been launched without the SCA requirement.

On a separate note, we believe the liability regime (Article 71(2) PSD2) is fairly unbalanced. In case of a complaint, banks are obliged to compensate the customer immediately and re-establish the balance in the payment account even where another party (i.e., the PISP) is liable for the mistake. Although PSD2 ensures the right of recourse of ASPSPs against the liable PSP, it does not define a procedure for dispute resolution among different types of PSPs.

Secure payments

Question 6. In your view, has PSD2 achieved its objectives in terms of secure payments? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
Making electronic payments is safer than before PSD2		X				
PSD2 has contributed to creating trust in electronic payments, by implementing measures to support the correct and safe processing of payments		X				
PSD2 has contributed to ensuring that consumers' financial data are protected			X			



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

5000 character(s) maximum

Since many consumers had to face at least some technical changes due to the PSD2 implementation, we doubt that the provisions of PSD2 (that at least in theory are sound and adequate), translated into a higher level of trust and consumer satisfaction. Indeed, years after the entry into force of PSD2, consumers are still hesitant to share their data, or to complete PIS flows online because they do not fully understand and/or trust the process. On a positive note, the strengthened SCA and fraud monitoring requirements for all payments has led to a decrease in fraud rates (for instance in card payments), as also noted by the EBA in its preliminary observations on selected payment fraud data (EBA/DP/2022/01). Fraudsters had to move into the social space, where they are now targeting consumers through social engineering attacks. In this regard, we would like to highlight the need for member states and consumer organisations to invest in educating customers, as banks cannot stop this kind of fraud. We also doubt Confirmation of Payee services would help, as these only tackle one type of fraud and still present lots of unresolved issues.

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.

Question 7. Would you say that the benefits stemming from the application of the PSD2 outweigh the costs of its implementation? Note that “costs” and “benefits” need not necessarily be quantitative. Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
As a payment service provider, the implementation of PSD2 resulted in higher costs for me	X					
The implementation of PSD2 has led to higher costs for merchants			X			



The implementation of PSD2 has led to higher costs for corporates			X			
The implementation of PSD2 has led to higher costs for individual consumers					X	
I or my company have benefitted from PSD2			X			
The investments required to comply with PSD2 were proportional to its benefits					X	
The benefits related to SCA exceed the costs of its implementation		X				
PSD2 has simplified and reduced the regulatory burden in comparison to the previous framework (PSD1)					X	

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

2000 character(s) maximum

Costs for implementing and maintaining SCA, develop and maintain APIs, build developer portal, project overall implementation and ensure compliance with PSD2 easily range within the double-digit million euro per institution.

The future new opportunities in the RTP area will benefit from the SCA rules. Moreover, card payments for standing payment orders will benefit from SCA.

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

Yes	X
No	
Don't know/no opinion/not applicable	



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

2000 character(s) maximum

The substantial implementation efforts for the access-to-account (TPP API) infrastructure and strong customer authentication procedures tied up significant resources (monetary, IT capacities, communication, etc.). This was amplified by the delayed entry into force of important provisions (due to lack of preparedness of some market participants, e.g., SCA for e-commerce payments). Further, bank customer services have received more complaints and had to deal with increased calls and request for support due to TPPs inefficiencies, as customers preferred to get in touch with their bank instead.

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

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 7.3:

5000 character(s) maximum

For most ASPSPs, the implementation costs are inadequate when compared with the very limited benefits for the costumers and own business development. However, it is still too early to assess the advantages or disadvantages of PSD2 conclusively, as the infrastructure established for the compliance with PSD2 will increasingly be used for other market driven offerings and cooperative initiatives (e.g., EPC SPAA Scheme) which might lead to a somewhat more balanced view.

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 breach of 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, where stakeholders can submit a complaint



where they consider that their rights established by the Directive have not been respected.

Question 8. Would you consider that the application and enforcement of PSD2 rules by national competent authorities (NCAs) are satisfactory? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
NCA's are sufficiently empowered by national law to ensure that PSD2 rules are correctly applied (Art. 100)	X					
NCA's are sufficiently empowered by national law to impose sanctions where needed (Art. 100, 103)	X					
The types and severity of sanctions available to NCAs are effective, proportionate and deterrent		X				
PSD2 provisions are sufficient to ensure investigation and sanctioning of a cross-border breach of PSD2		X				
The EBA should conduct mandatory peer review analysis of the supervisory activities of all competent authorities in accordance with Article 30 of Regulation (EU) No 1095 /2010			X			



Please explain your answer to question 8 and provide arguments for your views, in particular whether you consider that the enforcement shortcomings identified are due to the PSD2 legal framework or to its application:

5000 character(s) maximum

The PSD2 supervisory framework is not applied consistently across the EU. Just to give a few examples, the very same API of a banking group active internationally was refused the fallback exemption according to Art 33(6) RTS SCA in one member state, while said exemption was granted by the NCA of a different member state.

Main issues identified with NCAs powers: (i) different NCAs have interpreted PSD2 differently; (ii) different level of interest and speed of adoption different between NCAs; (iii) in some cases, shifting opinions of NCAs have led to moving target for implementation. Regulatory arbitrage (especially in Lithuania, Malta, and Estonia) is also an issue. Moreover, we would appreciate a more coordinated management of the centralized database that collects the established TPPs, inter alia by making sure the updates provided by NCAs are registered in real time.

Question 9. In your view, has the PSD led to improved complaint procedures? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The provisions on the complaint procedures to be implemented by NCAs are effective (Art. 99)		X				
The provisions on the complaint procedures to be implemented by PSPs are effective (Art. 101)		X				

Please explain your answer to question 9 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:

5000 character(s) maximum

In some Member States, like in Sweden, national complaint procedures were implemented well before PSD2.



Question 9.1 To which extent do you agree that the out-of-court complaint and redress procedures set up on the basis of Article 102 PSD2 are effective?

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

Question 10. Taking your responses to the above questions into consideration, should PSD2 be revised? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
PSD2 needs to be amended to cater for market developments						X
PSD2 must be complemented by self-regulatory measures and industry-led initiatives (e.g. standardisation)	X					
PSD2 should be a Regulation, not a Directive, 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			



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

5000 character(s) maximum

In general, we think it is too early to proceed with a review of the PSD2, as market effects have not been able to unfold fully, especially when it comes to the opportunity to utilize the API infrastructure and the development of market driven initiatives. However, in case the PSD2 were to be amended, some severe flaws must be addressed: inter alia, the one-sided burden for ASPSPs, the adverse incentives, and the overregulation for corporate clients. More in detail, we believe the principle of mandatory data sharing, free of charge, should not be replicated.

We consider the chosen instrument (directive) still reasonable, and we do not see the need for transforming it into a regulation (strong interweaving with member states' civil law, therefore directive is more suitable).

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

Yes	X
No	
Don't know/no opinion/not applicable	

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

5000 character(s) maximum

Due to the lack of practical providers on the market, the provisions of Article 65 PSD2 on Card Based Payment Instrument Issuing Service Provider (CBPII) should be waived. These rules have no market relevance, but result in compliance costs for ASPSPs.



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.

Question 11. Do you consider that the scope of the PSD2 is still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
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				X		



described in Art. 3(l) of PSD2 is still appropriate						
The limits to the transaction values set for payment transactions by a provider of electronic communications network or services as described in Art. 3(l) of PSD2 are still appropriate				X		

Please explain the reasoning of your answer to question 11:

5000 character(s) maximum

Providers of electronic communications network or services are already an important participant in the payment services ecosystem. Maintaining its exclusion from PSD would increase competition and level playing field problems.

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

Yes	
No	X
Don't know/no opinion/not applicable	

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

Yes	X
No	
Don't know/no opinion/not applicable	

Question 11.3 Should there be more exclusions?

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 11.2 and 11.3:

5000 character(s) maximum

We do not see the necessity for the inclusion of new exclusions but advocate for a clarification in Article 3(n) PSD2 stating that the exemption applies to intra-group payment transactions and services within one group like the national savings banks group or cooperative banks. Moreover, we consider the exclusions laid down in Article 3(k) and (l) should be removed – accordingly, Article 37(2)-(5) should also be repelled.



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

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

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

Yes	X
No	
Don't know/no opinion/not applicable	

Question 12.2 Are there definitions missing from Art. 4?

Yes	
No	X
Don't know/no opinion/not applicable	

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

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

Question 13.1 Please indicate whether services in the following list need to be maintained or modified. See question 13.3 in case you believe services should be added to the list that are currently not included:

	No change needed	Description of service should be changed	Don't know/no opinion/not applicable
(1) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account	X		
(2) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account	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	X		



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

Please explain your answer to question 13.1:

5000 character(s) maximum

Some provisions of the PSD2 should be amended in order to maintain the integrity and security of existing payment systems. For instance, we consider that the payment initiation service definition (Article 4(15) PSD2) should be redrafted as specified in answer to Q12.1.

Question 13.2 Cash-in-shops is being offered in various Members States across the EU and falls under service (2). The current authorisation regime for this particular service, however, might not be proportionate to the risk involved. Should a specific authorisation regime be considered for cash-in-shops, as a distinct service enabling cash to be withdrawn in shops, from a payment account? (Please note that “cash-in-shops” is not the same as “cash-back”. Cash-in-shops allows withdrawing money without making a purchase.)

Yes	
No	
Don't know/no opinion/not applicable	X

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

	Yes	No	Don't know/no opinion/not applicable
Issuance of e-money		X	



Payment transactions using crypto assets (incl. stable coins)		X	
Digital wallet services (e.g., mobile apps for payments)		X	
Payment processing services		X	
Operating payment systems		X	
Operating payment schemes		X	
Buy-Now-Pay-Later services		X	
Other/specific services in the payment chain provided by a technical service provider		X	
Other			

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

5000 character(s) maximum

We consider the scope of PSD2 adequate. Both electronic money and cryptocurrencies should not be included in the scope. Especially including cryptocurrency would have the effect of transforming the PSD2 from payment services to value transfer, with consequences also on the settlement of the transaction. Rules about electronic money and cryptocurrency payments should not be included in the revision of PSD2 as a payment service. On the contrary, Buy-Now-Pay-Later (BNPL) services should not be considered payment services but consumer credits. As to digital wallets, we deem those players sufficiently covered by current legislation (with the adjustments proposed on payee initiated including recourse between PSP).

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

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your reasoning of your answer to question 14, being specific and if possible, offering textual proposals:

5000 character(s) maximum

This question should be treated in the targeted consultation on open finance framework and data sharing.

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.



Question 15. Do you consider that the provisions on authorisation (licensing) of providers of payments services in PSD2 are still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
PSD2 is sufficiently clear in determining whether a service must be authorised or not		X				
The requirements to apply for an authorisation (Art. 5) are still adequate	X					
The exemption of small payment service providers (Art. 32) is adequate			X			
The dedicated regime for AIS-only providers is adequate		X				
The authorisation regime for PIS providers is adequate		X				
The authorisation regime for payment institutions that are part of a group of entities is adequate	X					
The minimum initial capital a payment institution needs to hold at the time of authorisation is adequate, taking into account the type of payment service provided (Art. 7)						X
Provisions on the own funds for payment institutions are required to hold at all times are						X



adequate, taking into account the type of payment service provided taking into account the type of payment service provided (Art. 8 and 9)						
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		

Question 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?**

Yes	
No	X
Don't know/no opinion/not applicable	



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

5000 character(s) maximum

Passporting is not implemented well. Moreover, in some Member States the local NCA wants to be the overseer of the passported PSP, who therefore needs to deal with two different NCAs.

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

	No change needed	Method should be changed	Method should be deleted	Don't know/no opinion/not applicable
Method A				X
Method B				X
Method C				X
Method D				X

Question 17.1. Should any other method be added?

Yes	
No	
Don't know/no opinion/not applicable	X

Question 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, please consider the safeguarding requirements as (EMD2) they are included in the EMD2 too (Art. 7 of Directive 2009/110/EC) (see also questions 11.2 and 11.3):

Yes	
No	
Don't know/no opinion/not applicable	X

Question 20. Should the activities listed under Article 18 (e.g. closely related services ancillary to the provision of payment services) be revised to reflect any changes in the day-to-day business of payment institutions, due to developments in the payment market?

Yes	
No	
Don't know/no opinion/not applicable	X



Other requirements

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

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The regime for PSPs providing services through third parties (agents, branches, outsourcing), as outlined in Article 19, is still adequate						X
The provision on liability (Art. 20) in case a PSP uses third parties to provide services is still adequate						X

Question 21.1 Should Article 19 be amended?

Yes	
No	
Don't know/no opinion/not applicable	X

Question 21.2 Should “triangular passporting” be regulated? Triangular passporting occurs where an authorised service provider in a Member State A makes use of the services of a service provider (e.g. an agent) in a Member State B in order to provide payment services in a Member State C.

Yes	
No	
Don't know/no opinion/not applicable	X

Question 22. Do you consider that PSD2 is applied consistently, and aligned with other related regulation? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The PSD2 authorisation framework is applied consistently across the EU				X		
The PSD2				X		



supervisory framework is applied consistently across the EU						
---	--	--	--	--	--	--

The PSD2 framework is aligned and consistent with other EU policies and legislation, in particular with:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
Electronic Money Directive (EMD2)				X		
General Data Protection Regulation (GDPR)				X		
Revised eIDAS (electronic Identification, Authentication and trust Services) Regulation (Commission proposal)				X		
Single Euro Payments Area (SEPA) Regulation	X					
Settlement Finality Directive (SFD)	X					
Anti-Money Laundering Directive (AMLD)	X					
Market in Crypto Assets (MiCA) (Commission proposal)				X		
Digital Operational Resilience Act (Commission proposal)			X			
Other act(s)			X			



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

5000 character(s) maximum

The wire transfer regulation is not mentioned in the table above. Also the interplay with the final version of the “Market in Crypto Assets” (MiCA) should be taken into consideration.

Please explain your answer to question 22:

5000 character(s) maximum

As a preliminary observation, we believe rules about electronic money should be included in the list of payment services (see also answer to Q 13.3).

In our opinion, the main conflict to resolve is that of the interplay between GDPR and PSD2. In this context, we do not consider the guidance provided by the EDPB (see Guidelines 06/2020) to be in line with the spirit of PSD2. Rather than providing clarity, said Guidelines expanded the scope of GDPR provisions to the detriment of PSD2. It is especially in the domain of consent, data management, and processing pursuant to GDPR that we would welcome further harmonization. Inter alia, we would appreciate that PSD2 clearly stated its status of *lex specialis* in relation to GDPR, at least in the context of data sharing with TPPs. Moreover, we see different interpretations are given by different NCAs in the same member state, for instance as regards what an AISP is allowed to do “*in accordance with data protection rules*” (see Article 67(2)(f) PSD2), therefore more clarity would be very much appreciated.

In addition to those challenges, even more issues arise regarding consent. Pursuant to Articles 67 and 94 PSD2, banks must only allow TPPs access to customers’ payment account data provided the TPPs have the “explicit consent” of the customer. Under article 6 GDPR, however, data controllers (i.e., banks and/or TPPs) can process a data subject’s (i.e., a customer’s) personal data under various legal bases. Consent is only one of the available legal bases. PSD2, however, increases the standard of protection in comparison to the GDPR by nevertheless imposing an additional consent requirement. Therefore, under PSD2, TPPs will be able to access the customer’s payment account information directly, provided they have the customer’s explicit consent, and use banks’ infrastructure to facilitate provision of payment initiation or account information services. Under the GDPR, banks are the data controllers of their customers’ information and are responsible for the purposes and the manner in which personal data is processed and shared. Pursuant to rules on portability set forth in Article 20 GDPR, data controllers are responsible for implementing safeguards “*to ensure that they genuinely act on the data subject’s behalf*”. PSD2 adds additional data protection requirements by stating that TPPs are only permitted to access information for the “*specific purpose(s) explicitly requested by the customer*” relating to the provision of the AIS or PIS, and not for any other reason. Nevertheless, due to the safeguards banks need to implement to protect their customer’s personal data, they need to somehow validate (not as a second-step process, but as a proof of consent) the customer request to share information under PSD2. Therefore, we would appreciate further guidance as to: (i) how banks can/should prove customers have given



TPPs their consent; (ii) how the third party verified the customer’s information and obtained their consent; (iii) what level of due diligence is expected from banks before sharing customer data with a TPP (knowing that the banks cannot impose contractual obligations on TPPs under Article 66(5) PSD2); and (iv) what is the scope of the consent and what level of granularity of choice users can expect.

Moreover, banks have to provide aggregators with the same information available to the customer when directly accessing their account information, provided that this information does not include “sensitive payment data”. However, sensitive payment data are not defined anywhere. The RTS state that it includes all data, including personalised security credentials, which can be used to carry out fraud, but leaves it at the banks’ discretion to determine which data they consider sensitive. GDPR, on the other side, allows Member States to specify their own rules for the processing of special categories of personal data (‘sensitive data’), defined as personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data. This lack of clarity on what constitutes sensitive payment data creates challenges for interpretation and implementation and increases the risk of non-compliance. Without further guidance, banks may need to take a very risk-averse approach and conceal all data that could possibly fall into the sensitive data category in order to avoid breaching rules around data protection, both under PSD2 and GDPR. This in itself could pose challenges, as concealing such data tends to be complex and costly.

Finally, we also see an unlevel playing field between credit institutions and TPPs when it comes to AML requirements, with banks being required to fulfill much stricter requirements when it comes to the screening of their clients.

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

Yes	
No	X
Don’t know/no opinion/not applicable	

Please explain the reasoning of your answer to question 22.1 and provide arguments for your views. In your response, please consider the following

- i. if, in your view, there is anything in PSD2 that is not consistent with other EU regulation, please be as specific as possible (e.g. include articles, paragraphs, names of regulations)**
- ii. should the Directive’s requirements related to home/host competent authorities be clarified or amended? If yes, please specify**

5000 character(s) maximum

We consider the formal requirements fit for purpose. However, we would welcome more alignment and exchange between NCAs, especially as to the interpretation and adherence. The implementation of PSD2 has been fragmented (see the need for the EBA to issue Guidelines and Q&As) and



supervision across EU member states has not been harmonized. ESBG members have observed differences in NCAs' interpretations of which payment services needs to be part of authorization to be able to conduct a specific form of business.

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

It should be increased	
It should be decreased	
It should not be changed	X
Don't know/no opinion/not applicable	

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 asking for views on the SFD to prepare a report to the European Parliament and the Council. 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.

Question 24. If it were decided to amend the SFD to allow payment institutions and e-money institutions to be direct participants in SFD-designated systems, do you consider that the exclusion of systems designated under in Article 35.2(a) should be removed, thus facilitating participation of authorised payment institutions and e-money institutions in such designated payment systems?

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 24:

5000 character(s) maximum

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

Question 24.1 Do you consider that certain conditions for access by authorised payment institutions and e-money institutions to designated payment systems should be laid down, and if so, should they be laid down in EU legislation or elsewhere (for example, in the rules of the system)? Please note that the question of whether specific risk assessment criteria should apply under the SFD, if it were to be decided to amend the SFD to allow payment institutions



and e-money institutions to be direct participants in SFD-designated systems, was covered in the targeted consultation on the SFD.

Yes	X
No	
Don't know/no opinion/not applicable	

Please explain your answer to question 24.1:

5000 character(s) maximum

If non-bank PSPs were granted access to payment infrastructures, any possible additional systemic risks on the CSMs and the payments sector in general has to be taken into account. Payment and e-money institutions are not subject to the same stringent regulations as banks. Therefore, objective measures – including the obligation to provide adequate guarantees and/or collateral – should be in place to ensure that any broader direct access does not create systemic impacts in terms of risk and resilience of payment systems. This would also require high minimum standards addressing IT risk and operational risks as well as credit risks and liquidity risks.

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

5000 character(s) maximum

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

Access to accounts maintained with a credit institution

Article 36 of PSD2 provides for a right for payment institutions (and mutatis mutandis e-money institutions) to access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis.

Question 25. Do you think that Article 36 PSD2 should be modified, for example, by extending it to the termination of business relationships in addition to the access?

Yes	X
No	
Don't know/no opinion/not applicable	

Please explain your answer to question 25:

5000 character(s) maximum

It should be clarified that credit institutions may orient their business model according to entrepreneurial considerations and may decide within the



framework of their general risk appetite and/or policies whether or not to enter into business relationships with third parties (without discriminating against certain market participants) in certain jurisdictions, industries (e.g., gambling), and/or currencies, if certain objective KPIs are achieved. Since an escrow account with a credit institution is not the only option under Art 10 PSD2, this is not disproportionate in our view.

Question 25.1. Should the European Banking Authority (EBA) be mandated to developing technical standards or guidance further specifying PSD2 rules and/or ensuring the consistent application of Article 36?

Yes	
No	X
Don't know/no opinion/not applicable	

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

5000 character(s) maximum

In terms of access to bank accounts, it should be noted that - as also highlighted in the January 2022 EBA opinion (EBA/Op/2022/01) - the challenges in meeting the obligations under Article 36 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 behaviors attributable to the Payment Institution (PI) 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.

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

Yes	
No	X
Don't know/no opinion/not applicable	



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

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

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The transparency and information requirements are still adequate: they still fit current payment needs and methods		X				
The transparency and information requirements have contributed to making electronic payments more secure		X				
The transparency and information requirements have contributed to an informed user choice between different payment products, allowing for comparisons			X			



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

Please explain your reasoning of your answer to question 27, providing arguments for your views. In your response, please consider whether there is any additional information that is important for you to know before making a payment, which is not currently part of PSD2, namely Article 45 and 52:

5000 character(s) maximum

The transparency requirements of PSD2 have resulted in an information overload, in particular for consumers and especially in conjunction with adjacent and partly overlapping legislation (e.g., Payment Accounts Directive and Cross-border payments Regulation). Regulators should consider reducing this complexity, consolidating the sources for transparency requirements and focusing on less but relevant information. In addition, more emphasis should be put on the PSP's ability to make information available for individual retrieval by the consumer through digital means.

It is therefore necessary to consolidate and limit the information that has to be provided to the payment service user to the essentials. Essential information includes only the key aspects of the payment service, such as name of the PSP, type of contract and term, main fees and interest rates, contact options. This essential information should be provided briefly and clearly, (e.g. on a brief information sheet) and should indicate to the payment service user where further information is available ("push-information"). All other information (e.g. information on dispute resolution, supervisory authority) should be made available to the payment service user, e.g. via website ("pull-information"). This "push&pull model" avoids an information overload and enables the further digitalisation of payment services.



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

Yes	X
No	
Don't know/no opinion/not applicable	

Please explain your answer to question 27.1:

5000 character(s) maximum

The transparency requirements of PSD2 have resulted in an information overload, in particular for consumers and especially in conjunction with adjacent and partly overlapping legislation (e.g., Payment Accounts Directive and Cross-border payments Regulation). Regulators should consider reducing this complexity, consolidating the sources for transparency requirements and focusing on less but relevant information. In addition, more emphasis should be put on the PSP's ability to make information available for individual retrieval by the consumer through digital means.

It is therefore necessary to consolidate and limit the information that has to be provided to the payment service user to the essentials. Essential information includes only the key aspects of the payment service, such as name of the PSP, type of contract and term, main fees and interest rates, contact options. This essential information should be provided briefly and clearly, (e.g. on a brief information sheet) and should indicate to the payment service user where further information is available ("push-information"). All other information (e.g. information on dispute resolution, supervisory authority) should be made available to the payment service user, e.g. via website ("pull-information"). This "push&pull model" avoids an information overload and enables the further digitalisation of payment services.

Question 27.2 For all one-leg transactions, are you of the opinion that currency conversion costs should be disclosed before and after a payment transaction, similar to the current rules for two-leg payment transactions that involve a currency conversion included in the Cross-border payments Regulation that are currently only applicable to credit transfers in the EU?

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 27.2:

5000 character(s) maximum

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



Question 27.3 For one-leg transactions, should any other information be disclosed before the payment is initiated, that is currently not required to be disclosed, such as the execution time?

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 27.3:

5000 character(s) maximum

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

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

Yes	X
No	
Don't know/no opinion/not applicable	

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

5000 character(s) maximum

The ECJ decided in Case C-287/19 (Deniz Bank AG) on tacit consent to changes of the framework contract and has clarified that the Consumer Rights Directive applies. In practice, this has led to the fact that amendments to the framework contract by way of fictitious consent are hardly possible any more due to the constant and very strict case law of the national courts in Austria and recently also in Germany. The banking industry urgently needs an effective instrument for changing conditions in framework contracts. Article 54 PSD2 should be amended accordingly.



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.

Question 29. In your view, are the requirements for the rights and obligations in PSD2 still adequate? Please indicate to which extent you (dis)agree with the following statements:

Question 29.1 The rights and obligations as described in PSD2 are clear

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
For PSUs		X				
For PSPs		X				

Question 29.2 The rights and obligations included in PSD2 are adequate

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
For PSUs		X				
For PSPs			X			

Common provisions

Question 30. In your view, should the current rules on the scope with regard to rights and obligations (Art. 61) be changed or clarified?

Yes	
No	
Don't know/no opinion/not applicable	X



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

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

Question 31.1 In your view, should the right of the payee to request charges be further limited or restricted (e.g. regarding “3-party-card-schemes”) in view of the need to encourage competition and promote the use of efficient payment instruments?

Yes	
No	X
Don't know/no opinion/not applicable	

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

Yes	
No	
Don't know/no opinion/not applicable	X

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

Question 33. In your view, are the requirements regarding open banking in PSD2 still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The rules on access to and use of payments account data in PSD2 are adequate (Art. 66, 67 and 68)				X		
PSD2 ensures a safe sharing of payments data			X			



The provisions on consent management are adequate			X			
When providing consent to a third party to access payment data, is it clear which party is accountable /liable				X		
PSD2 rules on access to payments accounts do not create unnecessary barriers to access these accounts and provide services		X				
PSD2's open banking regime is successful				X		

Please explain your reasoning and provide arguments for your views, in particular regarding your opinion on the success of open banking. In case you believe provisions on access to accounts should be changed, please explain why, refer to specific articles to be changed and include suggestions. If your remark is about a particular type of service which depends on access to payment accounts (CAF (confirmation on the availability of funds), PIS or AIS), indicate to which service(s) your argument(s) relate:

5000 character(s) maximum

With the mandatory opening of ASPSPs for TPPs, PSD2 has privileged certain payment solutions and business models, thereby directing resources to a very limited set of innovations. We doubt that this has effectively increased the innovation capability of banks and other payment institutions. Articles 66 and 67 should be amended in a way that provides for the possibility for ASPSPs and TPPs to agree on remunerations in order to enable a fair share of costs and opportunities.

Moreover, the relationship between PSD2 and GDPR seems unclear. Especially the topic of what an AISP is allowed to do “*in accordance with data protection rules*”, as stated in Article 67(2)(f) PSD2 is subject to different interpretations in within and between Member States.

Question 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 Providers (ASPSP). Please consider the following suggestions and indicate whether you think the suggestion should be implemented or not:

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

Please explain your answer to question 34:

5000 character(s) maximum

The "obstacle" definition has already been subject to various EBA Q&As, RTS and Opinions. In our opinion, the discussion on obstacles has been very TPP-friendly, without taking into account objective reasons for additional steps in the customer journey that are necessary to ensure customer protection and fraud prevention. We also believe that screen scraping should be forbidden and subject to supervisory monitoring.

As to standardisation, we would like to point out that it has both costs and benefits, which require evaluation on a case-by-case basis. Changing the current principle to one mandatory standard would require again significant investment efforts for ASPSPs that do not yet use the then defined standard. Therefore, we do not see any need for further clarification. The regulatory framework should only define in a clear manner the requirements for standard and common criteria that could allow the market to develop technical standards of implementations. Setting up the API specifications in concrete should be left to the market, although some margin of flexibility, for example in relation to some additional or new functionalities offered by the ASPSP, could be foreseen.

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

Yes	
No	X
Don't know/no opinion/not applicable	



Please explain your answer to question 35:

5000 character(s) maximum

Financial firms holding customer data face high costs for setting up, updating and maintaining the infrastructure necessary to make data available in an appropriate quality, frequency, and format. Therefore, they should be entitled to compensation for making the data available, in order to be able to compensate any cost incurred in putting in place the required technical infrastructure. The PSD2 experience showed the importance to enable a fair distribution of value and risk and the possibility of remuneration for all market participants. This is in our point of view a fundamental prerequisite for the success of future legislation in that regard. Also, it is crucial not to hinder market driven initiatives (like the SPAA on European level) to further develop API-business models in a constructive dialogue of the stakeholders.

Current market initiatives between ASPSPs and TPPs demonstrate that sound open banking offerings are worthy of a price. The legislation should acknowledge this basic market principle. This is for instant already happening he principle stated above is already adopted by the Data Act proposal (see Recital 42: *“In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request reasonable compensation when legally obliged to make data available to the data recipient”*) and should also be mirrored in a future Open Finance Framework when financial firms are legally obliged to make data available to third parties.

Question 36. What is your overall assessment about open banking in the EU?

Would you say that it should be further extended?

5000 character(s) maximum

We are strongly against extending the unbalanced approach of PSD2 to other accounts or financial services. As stated above, we believe the PSD2 approach needs to be changed. Any extension or development towards open finance should be based on the fair distribution of value and risk and the possibility of remuneration of services by all market participants. Open finance development should be mainly market driven and should also take due account of the need for a level playing field with actor sectors, therefore opening up data from non-financial companies also. We see the need that already made investments in infrastructure must be protected (e.g., API infrastructures created).



Liability and refunds

Question 37. In your view, are the provisions on liability and refunds in PSD2 still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The provisions on liability in PSD2 are still adequate				X		
The provisions on refunds are still adequate (Art. 71, 73, 74, 76 and 77)				X		
The unconditional refunds requirement has improved consumer protection		X				
The allocation of liability when executing a payment transaction is adequate			X			

Question 37.1 In your view, should changes be made to the PSD2 provisions on liability and refunds? Please consider the following suggestions:

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

Please explain your answer to question 37.1 and 37.2. In case you are of the opinion that any other changes should be made to the PSD2 provisions on liability and refunds, please include those in your answer:

5000 character(s) maximum

It is important to achieve a more balanced allocation of liability and adjacent obligations between the ASPSP, as the primary liability holder, and PISP especially with regard to unauthorised payment transactions. Indeed, pursuant to Article 73(2) PSD2, ASPSPs shall reimburse the customer by the end of the next business day after the customer submitted the complaint. However, when a TPP is involved in the payment, the investigation and resolution of suchlike complaint is more complex and often requires more time. Therefore, an extension of the reimbursement period to at least 2 business days would be



appropriate. This would also mitigate the fact that the ASPSP bears the (default) risk until the case is being solved and final liability issues have been clarified. Furthermore, a harmonised resolution framework for the handling of customer complaints related to unauthorised payments between ASPSPs and PISPs, including minimum response deadlines and standard communication channels, might support the efficient solution of cases and reduce risks for all parties involved. It should also be noted that customers do not expect an immediate refund.

Question 38. Article 75 of PSD2 allows funds to be blocked in case of a payment where the exact final amount of the payment is not yet known at payment initiation. Is this provision adequate, or should a maximum limit be introduced to the amount of funds that can be blocked?

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 38:

5000 character(s) maximum

We do not see the need for the introduction of a maximum limit in Article 75. However, we believe it should be evaluated if it would be efficient to revisit the current scope of Article 75, which is limited to card payments. Similar mechanisms are being developed using regular credit transfers.

Execution of payment transactions

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.

Question 39. 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)	Don't know/no opinion/not applicable
The provisions on payment orders and amounts transferred are still adequate		X				
The provisions on execution time and value date are still adequate	X					
The provisions on liability (Art. 88-93) are still adequate			X			



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

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 39.1:

5000 character(s) maximum

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.

Question 39.2 For payments to and from countries outside of the EU (“one-leg”), should action be taken at EU level with a view to limiting the maximum amount of time (execution time) for the payment (or transfer) to reach its recipient?

Yes	
No	X
Don't know/no opinion/not applicable	

Please explain your answer to question 39.2:

5000 character(s) maximum

Such obligations would require a coherent global approach aiming at a broad harmonization of regulatory requirements and oversight. Any legislative limit to the execution time will not be achievable until this ambitious target can be reached. Furthermore, the complexities of one-leg transactions are both considerably higher and more heterogenous compared to SEPA or intra-EEA payments. This is due to the fact that a multitude of intermediary banks, different technical standards and currency conversions may be needed along the payment chain. One-leg payments are not comparable to mass payments within a single market which features a single currency, uniform regulatory rules, and efficient market infrastructures that can be leverage on these premises. It should also be noted that the Financial Stability Board is currently working on the Targets for Addressing the Four Challenges of Cross-Border Payments, therefore there is no need for adjustments at this stage.

Question 39.3 If, in your view, the provisions under question 39 are not adequate, please explain and provide arguments for your views:

5000 character(s) maximum

The provisions on liability and refunds are very much in favor of the customer and disadvantage credit institutions. Also, the primary refund obligation of the ASPSP in the case of payment initiation services for non-execution, defective or late execution of payment transactions according to Article 90 PSD2 is very burdensome for credit institutions. See also answer to Q37.1.



Question 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	X
The unique identifier must be combined with the name of the payee	
The unique identifier must be combined with something else	
Other	
Don't know/no opinion/not applicable	

Please explain your answer to question 40:

5000 character(s) maximum

It should be noted that a combination of the unique identifier with the name of the payee would only be possible for incoming payments and would be very hard to implement with the necessary legal certainty. Moreover, it is not clear the maximum degree of misspelling could be allowed before hitting the mismatch. It would also not be clear how to deal with divergences due to automation-supported processes (for example Scan&Pay, scan of a payment order).

Operational and security risk

Question 41. In your view, are the requirements regarding operational- and security risk in PSD2 still adequate? Please indicate to which extent you (dis)agree with the following statements: (Note: you will be able to explain your responses and elaborate under question 43.)

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
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		X				



providers more secure /resilient						
The security measures introduced by PSD2 adequately protect the confidentiality and integrity of payment service users' personalised security credentials						X
The provision on major incident reporting (Art. 96) is adequate						X

Question 42. In your view, are the requirements regarding fraud prevention in PSD2, in particular those on procedures and reporting, still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The provisions requiring a PSP to provide documentation on how they deal with fraud (data collection, controls and mitigation measures) (Art. 5) are still adequate		X				
The provision requiring PSPs to provide an annual report on fraud (Art. 95(5)) is still adequate		X				
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 unauthorized access or fraud (Art. 68 (5)) is sufficiently clear		X				

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

Yes	
No	X
Don't know/no opinion/not applicable	

Question 43.1 Are the current provisions future-proof?

Yes	X
No	
Don't know/no opinion/not applicable	

Question 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%.

	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		

Question 44.1 Currently, what type of fraud is your main concern/causing most problems (if available, illustrate with figures)? Is there a particular type of payment transaction that is more sensitive to fraud? Please elaborate:

5000 character(s) maximum

According to our data, the majority of fraud (in some instances up to 99%) involves card not present transactions. Main threats are phishing and cardholder manipulation to perform SCA by means of social engineering techniques.

Question 45. In your view, are the requirements regarding fraud prevention in PSD2, in particular those on strong customer authentication (SCA), still sufficient? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The requirements for SCA (Art. 97) are still adequate		X				
SCA has made electronic payments safer		X				
The provision on SCA do not adversely impact the TPPs' business models		X				
If you are a PSP, the provisions on SCA did not lead to obstacles in providing payment services towards PSUs (leaving aside any costs incurred for the technical implementation of SCA. For costs and benefits related to the implementation of) PSD2, please see question 7)			X			
The provisions on SCA do not leave room for circumvention			X			



The implementation of SCA has not led to the exclusion of categories of customers/citizens			X			
The implementation of SCA did not negatively impact your business				X		

Please explain the reasoning of your answer to question 45 and provide arguments for your views, including possible suggestions for changes to the provision (if any). If your business experienced any problems due to the implementation of SCA, please include these in your answer:

5000 character(s) maximum

The implementation of the SCA had a significant impact on the customer-bank relationship and involved significant implementation costs. In particular, there was also the need to educate customers about the new feature, that entirely fell on banks. We consider the current SCA requirements to still be appropriate for the majority of customers. However, we also consider SCA requirements should always be aligned with security capabilities of each entity. Standard models applicable to any kind of entity are inefficient and generate risks as different entities have different security needs. Rules should give flexibility to entities to balance their risks with adequate security measures.

Finally, we consider the requirements set forth in Article 17 RTS SCA (Corporate seal: need for upfront alignment with NCA, contractual requirements towards customers, AML and outsourcing questions, etc.) to be very burdensome. This makes the service difficult to implement. As this is likely to encourage the migration of customers to other ASPSPs that are less stringent in their interpretation of regulatory requirements, we would welcome further harmonization.

Question 45.1 The current SCA regime prescribes an authentication via a combination of at least 2 distinct factors, or elements, to be applied in case of payer initiated transactions (see Art. 97(1)). Should any changes be made to the current SCA regime?

Yes	
No	X
Don't know/no opinion/not applicable	



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

5000 character(s) maximum

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

Question 45.2 The current regime requires SCA to be applied in case of payer initiated transactions. Should the application of SCA be extended to payee-initiated transactions too, for example merchant initiated transactions?

Yes	
No	X
Don't know/no opinion/not applicable	

Contactless payments

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.

Question 46. What is your opinion about the applicable value limit to single contactless payments (without SCA)? If the EUR is not the main currency in your country of residence, please convert the 50 EUR limit into your own currency and use that as a point of reference for your response.

The 50 EUR limit should remain	X
The limit should be lower than 50 EUR	
The limit should be higher than 50 EUR	
PSUs should be able to fix their own limit	
Don't know/no opinion/not applicable	

Question 46.1 What is your opinion about this cumulative EUR-limit for contactless payments (without SCA)? If the EUR is not the main currency in your country of residence, please convert the 150 EUR limit into your own currency and use that as a point of reference for your response.

The limit of 150 EUR should remain	X
The limit should be lower than 150 EUR	
The limit should be higher than 150 EUR	
Other	
Don't know/no opinion/not applicable	



Question 46.2 What is your opinion about this cumulative payments-limit for contactless payments (without SCA)? If the EUR is not the main currency in your country of residence, please convert the 150 EUR limit into your own currency and use that as a point of reference for your response.

The limit to consecutive transactions (5 times) should remain	
The limit should be lower than 5 consecutive transactions	
The limit should be higher than 5 consecutive transactions	
Other	X
Don't know/no opinion/not applicable	

Please specify to what you mean by "other" in your answer to question 46.2:
 5000 character(s) maximum

The decision should be left to individual PSPs and should be taken based on a risk-oriented approach.

Question 47. Overall, do you believe that additional measures are needed to combat/prevent fraud in payments, and to make payment service providers more secure/resilient?

Yes	X
No	
Don't know/no opinion/not applicable	

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

5000 character(s) maximum

From a fraud perspective it should be noted that the following points should still be considered in PSD2 in the future to improve fraud prevention in day-to-day business:

- uniform procedures for handling fraud cases with regard to the design of the claim, the requirements for remittances and the duration of blocks.
- special regulations with regard to instant payments, as there is only little time for fraud checks and prevention.

ADR procedures for the settlement of disputes and penalties

Article 57(7)b requires that, for framework contracts, Member States ensure that information on ADR procedures is provided to the payment service user.

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

Yes	
No	X
Don't know/no opinion/not applicable	



Please explain your answer to question 48:

5000 character(s) maximum

Information can be found on the homepage of the ASPSP (Article 101(4) PSD2), therefore there is no need for additional implementation.

Question 49. Should the PSD2 be amended with regard to sanctioning powers and penalties? Please consider the following suggestions and indicate whether you think the suggestion should be implemented or not:

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

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

Yes	
No	
Don't know/no opinion/not applicable	X



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).

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

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

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

5000 character(s) maximum

In principle, we see them as adequate. However, we consider it would have been much easier for the implementation and supervisory proceedings to have the details provided in the EBA opinions at a later stage already within the technical standards.

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

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

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

5000 character(s) maximum

With PSD2, there has been a lot of level 2 legislation already, which resulted in a very complex set of obligations that led to a hardly comprehensible – and sometimes conflicting – regulatory framework.

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

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

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

5000 character(s) maximum

Customer rights and consumer protection are already set at the highest level possible in PSD2.



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

Yes	
No	X
Don't know/no opinion/not applicable	



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.

Question 55. In your view, are the final provisions listed in Title VI still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know/no opinion/not applicable
The provisions on full harmonisation (Art. 107) are still adequate	X					
The transitional provisions (Art. 109) of the PSD2 are adequate	X					
The amendments to other Directives and regulation (Art. 110, 111, 112) were adequate	X					

Question 55.1 In case of a revision of PSD2, would you have suggestions for further items to be reviewed, in line with the review clause (Art. 108) of the PSD2?

Yes	X
No	
Don't know/no opinion/not applicable	

Please explain what further items you suggest to review and why you think they should be reviewed:

5000 character(s) maximum

Considering the current consultations on Open Finance Framework, we would recommend reviewing the principle of PSD2 regarding the account access of and through third parties. As stated above, the underlying principles of the interplay between ASPSPs and TPPs are not sound and actually are counterproductive (on-level playing field to the detriment of ASPSPs and their customers). We hope that this approach will not be repeated during the establishment of an Open Finance Framework. We strongly suggest that new principles will have to be found that then should also be applied to the payment services with the interplay of TPPs.

In addition, procedures required by the Directive for its application in a common and homogeneous manner to all EU actors and countries (Apple Pay case)



should be reviewed and clarified. Operation with xPays has grown since 2017 and authentication occurs with biometrics on the device. There are different interpretations regarding the application of the regulation within the industry and it should be clarified in PSD3.

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

Yes	X
No	
Don't know/no opinion/not applicable	

Please explain what other issue(s) should be considered in a possible revision of PSD2 related to the final provisions:

5000 character(s) maximum

The Payment Services Directive has promoted legal and security harmonisation that is particularly oriented towards consumers. However, it has become apparent that a transfer of these rules to offers for corporate customers often misses the market needs. This refers in particular to strong customer authentication - oriented towards card payments and online banking - which, due to their narrow principles and technical specifications, are difficult to apply to modern remote communication protocols for corporate customers or M2M payments. In this respect, it is questionable whether the strict SCA requirements are fit for the emergence of automated and M2M payments scenarios for corporate clients. This is accompanied by current uncertainties regarding the regulatory assessment/classification of dedicated communication protocols for corporate clients. We deem it necessary to limit the obligations to apply a strong customer authentication to consumers. This is not least justified by the higher degree of professionalism of corporate clients. Therefore, a new paragraph should be included, stating that the respective articles may be applied by ASPSPs only on an opt-in basis (e.g., Article 97).

Also in other areas, such as transparency and liability rules or openness to third party services, which are geared to the protection and product needs of consumers, more flexibility would be appropriate to the level of professionalism of corporate customers and would contribute to the necessary flexibility in product a contract design.

Any other issues

Question 56. Are there any other issues that have not been raised in this questionnaire that you think would be relevant for the review of PSD2 and its possible revision?

Yes	
No	X
Don't know/no opinion/not applicable	



About ESBG (European Savings and Retail Banking Group)

ESBG is an association that represents the locally focused European banking sector, helping savings and retail banks in 17 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion billion in corporate loans, including SMEs, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org.



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