



ESBG's position paper on Payment Services Regulation.

Executive summary

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In November 2023, ESBG published a position paper on the European Commission's proposal for a new Payment Services Regulation (PSR) following its review of PSD2. The position paper is provided to share the views of European retail and savings banks in response to the Commission's call for feedback and as the Commission's co-legislators begin to form their own views and proposed amendments to the proposal. Throughout the Commission's work, it has been said that the PSR is an 'evolution not revolution' in the EU's payments framework. However, some individual provisions in the text have potential implications which would go far beyond an 'evolution' of the current operation of payments.

ESBG'S POSITION

The PSR is part of a substantial package of payments reforms seeking to take greater advantage of open banking and data in finance while protecting the consumer from new forms of fraud. ESBG strongly supports these aims, in particular safeguarding the security and trust of European customers in the modern payments landscape.

However, due to the matrix of proposed legislation, ESBG would urge the legislators to harmonise the timelines of the interconnected legislation, particularly PSD3, PSR and FIDA, to be ensure they are complementary and each provide sufficient time for effective industry implementation - **the 24 months given for PSD2 implementation should be used as a minimum benchmark** for the timeframe required.

ESBG further feels greater clarity is required in the text to ensure harmonisation between the PSR and existing EU legislative requirements, notably the GDPR. For example, for ASPSPs to uphold its obligations under the PSR, including maintaining the consumer interface, certain GDPR provisions would be contravened.

ESBG seeks a number of language points to be clarified in the text. Included in these is our request for the text **to use authentication, rather than authorisation, in the requirement for PSPs to demonstrate in payment transactions**. As authorisation relates to the will of the payer, while authentication is the expression of that will, and something which the PSP is in a position to demonstrate.

Of all the provisions, one of the greatest diversions from established EU law, representing a 'revolution' in payments, is the standard of liability for banks. The current PSR imposition of liability on credit institutions does not align with the principle of consumer protection as a qualified right, **it represents a threshold of liability far below the widely applied standard of gross negligence in operation throughout EU consumer law**. ESBG warns against the landmark deviation from this established standard which would impose an excessive civil burden on banks.