

Call for advice to the European Banking Authority (EBA) regarding the review of Directive (EU) 2015/2366 (PSD2)

Context

The PSD2 contains the most comprehensive set of rules in the field of retail payments. It sets out the requirements for the licensing of payment institutions (public law), as well as the supervisory regime for all payment service providers offering payment services, including the information requirements and the rights and obligations between payment service providers and payment service users (civil law). It aims to create a competitive and innovative payment market in the European Union under harmonised and technology-neutral conditions. The PSD2 also sets a high-level of protection for payment services users, together with strong security and ease of payments.

The review clause in Article 108 of PSD2 requires the Commission to report on the application and impact of the Directive to the Co-legislator (the European Parliament and the Council), the European Central Bank and the European Economic and Social Committee. The Commission is to accompany the report with a legislative proposal, if appropriate.

The review clause in Article 108 of PSD2 also specifies the content of the Commission's report – albeit not exhaustively. The Commission has indicated further areas to be included in the review process in its Communication on a “Retail Payments Strategy” of 24 September 2020¹.

Procedure

The objective of this request to the EBA is to gather evidence on the application and impact of the PSD2. This includes any benefits and challenges that may have arisen with regard to the areas further specified below. Moreover, the Commission services invite the EBA, based on its experience and mandate, to identify areas where amendments to the PSD2 might be appropriate.

The European Parliament and the Council will be informed about this Call for advice, which will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to the EBA.

Scope of the request to EBA

The Commission services invite the EBA to provide advice on the impact and application of the following specific areas of the PSD2:

Scope and definitions

- Are there any provisions regarding the scope of and definitions in the Directive that the EBA considers need to change due to market developments (e.g. no longer relevant, need to be clarified or added, etc.)?
- Has the EBA identified issues regarding the application of PSD2 provisions to one-leg transactions?
- Should specific business models or services that are currently not in the scope of the Directive be included? Please include in the assessment in particular new service

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0592&from=EN>

- providers (e.g. “white label”-business models), payment instruments with limited purposes, and services provided by “technical service providers” (such as “gateways” or intermediaries in the payment chain).
- What is the EBA’s position on the potential merging of PSD2 and Directive 2009/110/EC (EMD2)? What would be the opportunities and challenges?
 - Does the EBA consider the current level of thresholds in PSD2 (e.g. in Article 3(1) and 32(1) point (a) appropriate?

Licensing of payment institutions (PIs) and supervision of payment service providers under PSD2

- Does the EBA see a need to change the prudential requirements under PSD2, such as the calculation of own funds for particular types of payment services or the application of the requirements on professional indemnity insurance?
- Has the interplay between the EBA Register under PSD2 and the respective national registers caused any issues, including on harmonisation of data at EBA level?
- Does the EBA see a need for PSD2 to allow for more proportionality?
- Does the EBA see a need for further clarification in PSD2 and EMD2 on when payment services and electronic money services are provided based on the right of establishment or freedom to provide services?
- Does the EBA see a need to introduce consolidated group supervision in PSD2?

Transparency of conditions and information requirements

- Has the EBA identified any need for clarification or amendments of specific provisions in PSD2 on the application of the requirements for transparency of conditions and information requirements?

Rights and obligations

- Has the EBA identified any issues with respect to the application of the requirements in Article 75 of PSD2, i.e. payment transactions where the transaction amount is not known in advance and funds are blocked? Does the EBA see merit in introducing maximum limits for the amounts to be blocked on the payer’s payment account when the exact transaction amount is not known in advance?

Strong customer authentication (SCA)

- Has the EBA identified any need to clarify or amend specific provisions in PSD2 related to the application of SCA by payment market actors (Article 97 and 98 of the Directive)? If so, please indicate which provisions and to what extent they should be amended, and why?
- Has the EBA identified any security risks that are not addressed by the requirements in PSD2?

- Has the EBA identified any unintended consequences related to the application of SCA which, in the EBA's view, would justify an amendment of the Directive, e.g. on customer journeys, fraud prevention, costs, etc.?
- Are there transactions currently not subject to SCA (e.g. Merchant Initiated Transactions) that should be included in the SCA scope? Or are there transactions currently covered by SCA requirements that should not be?

Access to and use of payment accounts data in relation to payment initiation services and account information services

- Has the EBA identified impediments in terms of access to and use of payment account data?
- Has the EBA identified any need for clarification or amendments of specific provisions in PSD2 on the application of the requirements for access to payment accounts?
- Has the EBA identified technical barriers related to access of payment accounts data (e.g. related to interoperability, different standards or data sets)? Should the access to payment accounts be further standardised (e.g. regarding the actual technical access requirements/interfaces to promote interoperability)?
- What opportunities and challenges does the EBA see with respect to the potential expansion from access to payment account data towards access to other types of financial data?

Access to payment systems and access to accounts maintained with a credit institution

- Has the EBA identified any impediments to the ability of payment institutions and electronic money institutions to access payment systems, and/or payment accounts held by credit institutions, in a way that would undermine the competition enhancing objective of PSD2?

Cross-sectoral topics

- The EBA is invited to provide advice as to whether and to what extent some requirements currently contained in Guidelines should be transferred to Level 2 acts, and to whether and to what extent some requirements contained in Level 2 acts (e.g. Regulatory Technical Standards) could be 'upgraded' to Level 1. For example, should the Guidelines on authorisation of payment and electronic money institutions be converted into a Regulatory Technical Standard (as outlined under Article 5(6) of PSD2)?
- Has the EBA identified further areas or issues that may require additional Regulatory Technical Standards, Implementing Technical Standards or Guidelines?
- Does the EBA have any views on clarifications provided through Q&As and Opinions that might need to be further specified and/or clarified in PSD2 or introduced in new or existing Level 2 and Level 3 mandates? Please provide your reasoning.

Enforcement of PSD2

- Has the EBA identified any shortcomings in the enforcement by the National Competent Authorities of PSD2 rules?
- Does the EBA have views on whether any enforcement shortcomings observed are due to the PSD2 framework?
- Does the EBA consider that inclusion of a sanction regime for service providers would ensure better application of the PSD2? If affirmative, for which Articles of PSD2 would the EBA consider including sanctioning provisions?
- Has the EBA identified any specific issues in the interplay between PSD2 and other European Regulations and Directives (GDPR, WTR, AMLD, SFD) and forthcoming legal acts (DORA, MiCA)?

Final considerations

The Commission services would welcome any comments from the EBA on the experience regarding the impact and application of the Directive and any suggestions for possible improvements and amendments.

The analysis provided by the EBA will not prejudice the Commission's final decision with regard to the policy options in its possible legislative proposal.

The Commission reserves the right to revise and/or supplement this formal call for technical advice. We welcome any additional comments from the EBA that could further assist the Commission in its review of PSD2.

In order to effectively contribute to the Commission's work, the EBA is requested to deliver the report to the Commission services by **30 June 2022** at the latest.