



**MINISTRY OF INDUSTRY, BUSINESS
AND FINANCIAL AFFAIRS**

Commissioner Mairead McGuinness
Directorate-General for Financial Stability, Financial Services and Capital Markets Union
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1049 Bruxelles
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**MINISTER FOR INDUSTRY,
BUSINESS AND FINANCIAL
AFFAIRS**

Response to the public consultations on PSD2 and open finance

Dear Commissioner McGuinness,

Thank you for the opportunity to respond to the public consultations on the review of PSD2 and on open finance. PSD2 introduced several new legislative concepts, especially related to open banking and strong customer authentication (SCA). These concepts brought about significant and positive changes in the market, supporting innovation and security of payments, but have also proven complex and time-consuming to implement. Therefore, we very much welcome your comprehensive approach to the review of PSD2.

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A revision of PSD2 should address inconsistencies and challenges with the current framework

A revision should be based on thorough impact analysis and ensure added value. This would allow us to identify where there is a need for adjustments to address inconsistencies and challenges with the current framework.

In our view, a revision should focus on achieving the following goals:

- *Consumer protection should be strong, logical and transparent*, meaning that payment services that seem similar to the consumer should, as a starting point, entail similar consumer protection, and where consumer protection has shown to be insufficient it should be strengthened
- *Security requirements should be efficient and inclusive* to combat fraud while avoiding inconvenience for users and financial exclusion for vulnerable and non-tech savvy citizens
- *A level playing field between payment service providers should be ensured* to achieve effective market access for all providers as well as the best prices and the most innovative solutions for consumers.

Finally, we see a need for a recovery and resolution framework for significant payment institutions. In some cases, payments institutions have assumed a critical size in the retail payments market, and a bankruptcy of such institutions without a controlled wind-down could have significant

consequences for the real economy. Such a framework could be established either as part of a revised PSD2 or a separate legislative proposal.

For detailed explanations and exemplifications, please refer to Annex 1 to this letter.

Open finance should support innovation and data protection

We fully support the aim of improving and strengthening competition, especially regarding open finance. However, before developing a potential open finance framework and taking new initiatives, learnings from the open banking framework of PSD2 should be thoroughly evaluated.

When considering how an open finance framework could be developed, we would like to highlight the following points:

- *A common standard for access interfaces* can ensure a harmonized implementation across the market. To ensure flexibility, the development of an actual standard could potentially best be carried out by market participants with proper supervisory oversight, while legislation should remain largely principle-based.
- The Commission should continue considering how a *fair commercial model for data sharing* can be developed to ensure that data providers can cover costs and have an incentive to develop well-functioning access interfaces.
- There should be clear *limits to which types of data and functionalities should be made available to third parties* to ensure that banks and other data providers have an incentive to continue innovation on a level playing-field.
- Data sharing should be based on a *clearly informed basis from the consumers perspective*, especially when third parties share data with other parties without the consumer seeing it beforehand.
- Before any initiative to further expand data-sharing requirements are launched, it should be thoroughly considered how such initiatives will impact a *level playing field between different market players and how to avoid concentration risks*. It should be considered if increased data sharing unintentionally could reinforce the market power of large gatekeepers, e.g. so-called big techs.

The regulation should be more simple and coherent

Financial regulation has become increasingly extensive and complex. Simultaneously, the interplay between payment services and regulation both inside and outside financial services (e.g. GDPR, AMLD and the upcoming MiCA) has increased the complexity further. This has given rise to significant challenges when the various sets of rules have been applied in practice.

Additionally, the payments market is largely driven by technological developments. Therefore, regulation must be as technologically neutral as possible and leave sufficient flexibility for the adoption of new technological solutions.

For these reasons, the guiding principle for a revised PSD2 and an open finance framework should be to focus on general and principle-based regulation rather than detailed regulatory requirements.

I hope that you will find our considerations useful on the way forward on PSD2 and open finance. I look forward to continue the fruitful discussions on these important issues, including between our services. Should you have any questions to the views outlined above or in the questionnaires, we remain at your disposal to elaborate and discuss further.

Yours sincerely,

Simon Kollerup

Minister for Industry, Business and Financial Affairs
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Annex 1: Key areas for a revised framework for payment services

1. Consumer protection should be strong, logical and transparent

Strong and coherent consumer protection is fundamental for widespread adoption of electronic financial services. It has been one of the main drivers for the public's broad adoption of new and innovative solutions in Denmark. It should therefore be a guiding principle to maintain and strengthen the consumer protection in PSD2.

Payment services that seem similar to the consumer should, as a starting point, entail similar consumer protection. This will ensure that it is logical and transparent to the consumer what protection applies.

For example, currently, consumer protection varies between credit transfers and card payments. If credit transfers are increasingly used for retail payments between consumers and merchants, e.g. through payment initiation service providers (PISPs), the applicable consumer protection should be similar to card payments since it will not be clear to many consumers that different protection regimes apply.

Consumer protection in recurring payee-initiated card-payments should also be strengthened and further aligned with traditional direct debits. We have e.g. observed an increase in so-called subscription scams using recurring payee-initiated card payments where consumers are not aware that further payments will be made on an ongoing basis after an initial payment for a good or service has taken place.

Finally, PSD2 should be merged with the electronic money directive (EMD). In addition to a simplification of the overall payments services framework, this could ensure a more consistent application of a common consumer protection regime for payment services. Further, the interplay with MiCA, especially with regards to e-money tokens, should be carefully considered. For the consumer, it will rarely be clear whether a payment is carried out with "regular" funds from a payment account, e-money from an e-money account or e-money tokens. The payment can seem similar for the consumer but different consumer protection can apply, and this is neither consistent nor appropriate.

2. Security requirements should be efficient and inclusive

The application of SCA has led to a significant decrease in fraud cases. However, the same positive effects could maybe be achieved in a less prescriptive way to avoid inconvenience for users and not least lack of financial inclusion for vulnerable and non-tech savvy citizens.

In some Member States, electronic payments can be substituted by cash or paper-check payments. However, citizens in the most digitized Member States increasingly rely solely on electronic payments. Therefore, security requirements should be made more flexible so payment service providers can better accommodate all user groups.

A more outcome-based approach (e.g. setting a maximum fraud level allowed before SCA should be applied) would be more appropriate and technologically neutral, and it would give payment service providers the largest possible space to innovate and provide consumer friendly security solutions while still combatting fraud. Increased reliance on transaction monitoring could be expanded to a larger section of payments where SCA would only be used for the most high-risk payment.

To achieve a more simple and principle based regulation, we should avoid further detailed requirements on payment service providers to address financial inclusion.

3. A level playing-field between payment service providers should be ensured

Non-bank payment institutions and electronic money institutions play an important role in providing innovation and competition in the market. To fulfill this potential, the practical application of the initiatives taken in PSD2 to increase market access for these actors should be evaluated.

PSD2 article 36 on access to accounts maintained with a credit institution is an important tool to further the market access for payment institutions and electronic institutions. However, the provisions have given rise to some concerns among credit institutions regarding the interplay with AML legislation. Further guidance on the practical application is needed to ensure a common practice across the EU, and to make sure that the provision will have the intended competition-enhancing effect without exposing credit institutions to unintended AML risks.

Also, the experience in the Danish market is that there is a need to make PSD2 article 35 on access to payment systems more operational in practice to increase competition in the card acquiring market. This is especially relevant to make sure that national card networks dominated by a single or a few card acquirers are exposed to more competition.

4. A recovery and resolution framework for significant payment institutions

Payment institutions are increasing in size and play a pivotal role in the market for payments between merchants and consumers. Capital requirements and on-going supervision limit the risk of bankruptcy. However, authorities have very few tools should this happen anyway, with severe consequences for the real economy. For example, if non-bank card acquirers declare bankruptcy without a controlled wind-down, merchants would largely be unable to continue their business until other acquirers have managed to absorb these customers. This could take months in cases of the largest non-bank card acquirers.

For this reason, there is a need to introduce a recovery and resolution framework for the most significant payment institutions. Inspiration could be drawn from the BRRD-regime, but the different nature of payment institutions should be thoroughly taken into consideration. Also, the regime should be sufficiently flexible to allow for the often very diverging business models of payment institutions.