



PSD2 impact areas, practical
issues and open questions
Key topics for account-servicing
PSPs as identified by
an EBA membership survey

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Introduction

Background

The entry into force of the revised Payment Services Directive (PSD2) has marked the beginning of another major changeover period for the European¹ payments industry. In February 2016, the Euro Banking Association (EBA) created a task force of payment experts and legal specialists to support its members in identifying key areas of PSD2 impact that would benefit from being addressed or further discussed by payment practitioners at a pan-European level.

In July/August 2016, this EBA Task Force on PSD2 Impact Areas conducted a survey among the EBA membership to validate the identified impact areas with a larger constituency and seek guidance on the Association's future engagement in the PSD2 context. A total of 45 EBA member institutions from 18 different EU countries responded to this survey.

Scope and approach of this report

The present document gives a snapshot of the key PSD2-related impact areas, practical issues and open questions for account-servicing payment service providers (AS-PSPs), based on the feedback provided by the survey respondents. Their input was condensed into a report summarising the crucial areas of concern and open points for each impact topic. The report also provides examples of practical questions raised by the survey participants, to some of which the EBA task force has proposed answers based on a joint analysis and discussion.

¹ It should be noted that the PSD2 is a European Union Directive with relevance for the European Economic Area, meaning that its provisions should apply in Iceland, Liechtenstein and Norway as well.

Key findings from the survey

1. The survey results confirmed that the PSD2 will have a significant impact on AS-PSPs both from a compliance and strategic perspective;
2. At this stage – with the final text of the PSD2 published and the first regulatory technical standards (RTS)² published for consultation – current PSD2 interpretations by market players reveal a great number of open issues, in particular from a pan-European perspective;
3. A large number of respondents are looking for a pan-European platform where they could collaborate on discussing and, where possible, solving these practical issues.

Next steps

The Euro Banking Association will continue its work on PSD2-related matters:

1. An Open Banking Forum fostering a practitioners' dialogue among AS-PSPs and Fintechs on key developments and collaborative opportunities in the Access to the Account area and, more generally, on Open Banking, will be launched in Q4 2016;
2. The EBA Board may decide to broaden and deepen the exchange on the issues detailed in the present report through the creation of a PSD2 Practitioners' Panel, which could work on better understanding the practical implications of these issues and agreeing on how to address any remaining uncertainties.

² The European Banking Authority has been tasked with the development of draft regulatory technical standards (RTS) addressed to PSPs. These RTS will specify PSD2-related requirements in a number of areas as detailed in Art. 98 of the PSD2.

Disclaimer

The present report provides a summary of relevant findings from a survey on key PSD2 impact areas. It does not provide a legal interpretation of the PSD2. It should be noted that the source document takes precedence and any implementation initiatives need to be based on a close analysis of the text of the Directive.

It should also be stressed that the statements and questions included in this paper reflect the understanding by survey respondents and EBA task force participants by August 2016, prior to any detailed analysis of the consultation paper on the draft RTS on strong customer authentication and common and secure communication, which was published on 12th August 2016. The work by the European Banking Authority on these and all other RTS as well as the national transpositions of the PSD2 are still ongoing and will need to be closely followed for any implementation activities at the level of AS-PSPs.

Reference is also made to the PSD2 interpretation work taking place in the different European communities as well as to the guidance being provided by the European Banking Federation (EBF).³

³ The EBF PSD2 guidance paper can be found under the following link: <http://www.zyyme.com/zh5/212663#p=0>.

High-level considerations

Organisations responding to the survey (by type of organisation)

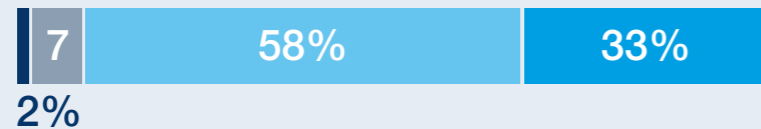
37 Payment service providers

- 4 CSM/technical providers
- 2 Consultancies
- 2 Others

Impact of compliance and strategic PSD2 requirements

Strategic impact

“Implementing the PSD2 strategic requirements will be challenging for PSPs”



Compliance impact

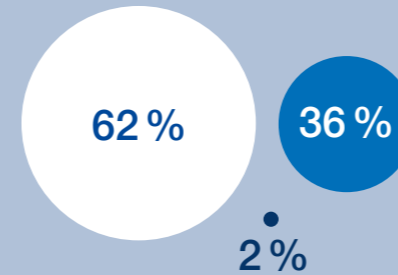
“Implementing the PSD2 compliance requirements will be challenging for PSPs”



Strongly disagree / Disagree / Somewhat agree / Agree / Strongly agree

Organisational approach for PSD2 evaluation and implementation planning

Organisational set-up for handling PSD2 matters

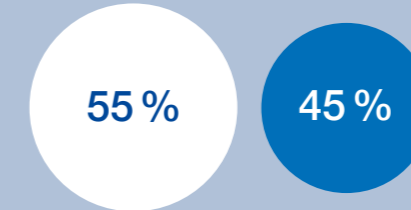


Centralised
We have a centralised set-up, where one team deals with all PSD2 aspects and impacts for the complete group / entity (also cross-border)

De-centralised
We have a de-centralised set-up, where each entity / department deals with the relevant PSD2 aspects and impacts

De-centralised with regular exchange
We have a de-centralised set-up, but there is a regular exchange between the different parties involved in different entities / departments

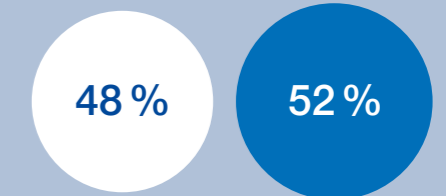
Approach for tackling compliance and business topics



Combined handling of compliance and business topics
We follow a holistic approach where all PSD2 compliance impacts and business opportunities / challenges are evaluated together

Separate handling of compliance and business topics
We separately handle the regulatory compliance program and any activities geared at understanding the business impact, evaluating opportunities / challenges and defining new business models and products

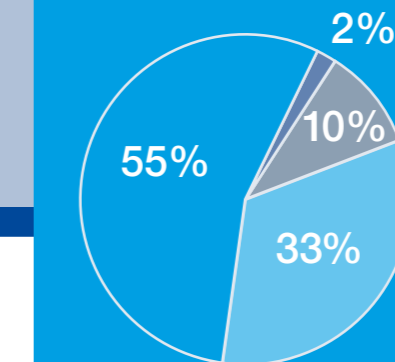
PSD2 implementation strategy



National approach
We are focussing our implementation project(s) on the requirements and opportunities we identify for our local environment(s) in consultation with other PSPs through national bodies or associations

Pan-European approach
We are pursuing a pan-European approach for our implementation project(s), which will be applicable to our entire group and based on consultations at national and European level

Interest in further PSD2 work by Euro Banking Association



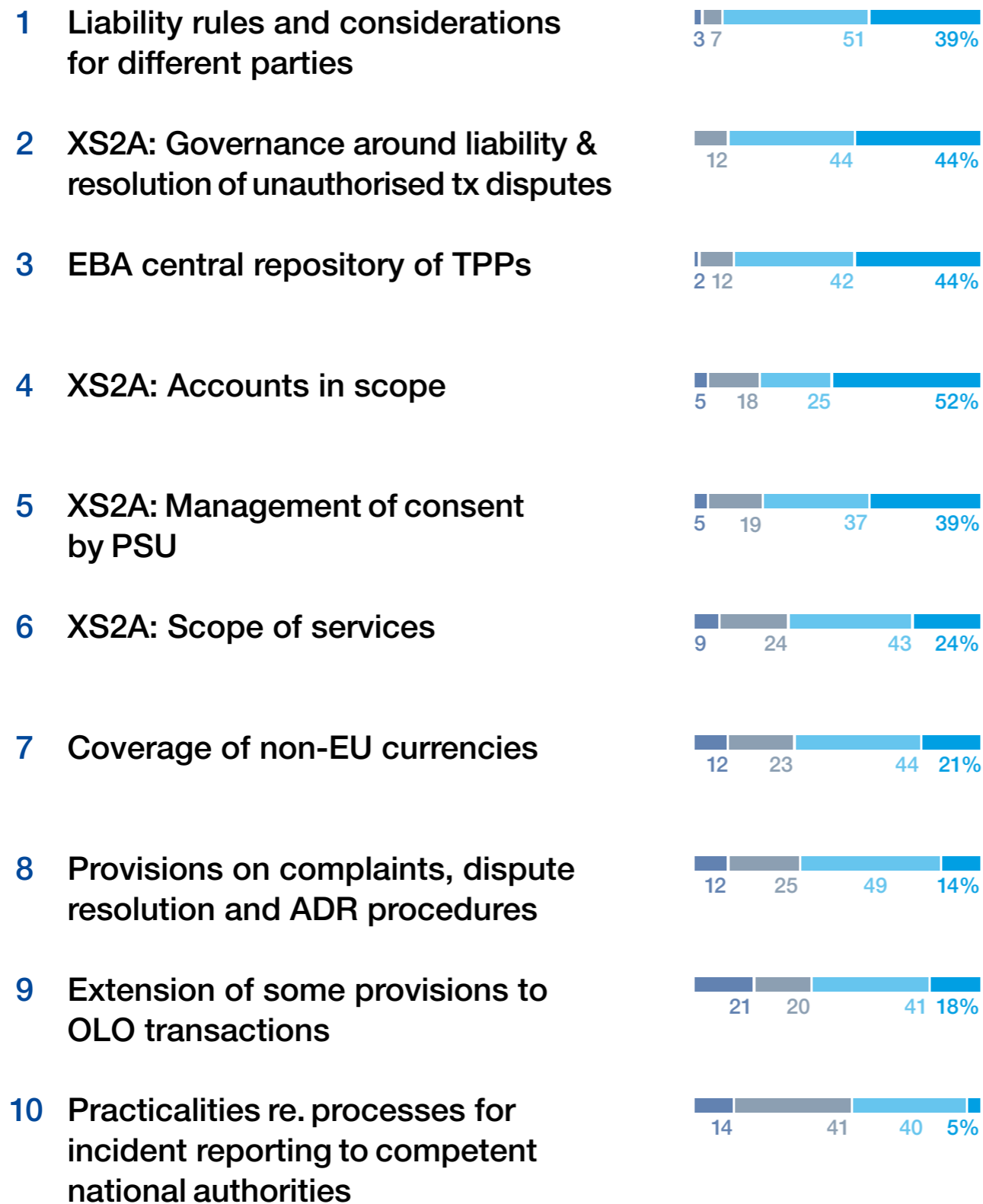
“If the Euro Banking Association were to further support the practical implementation of the PSD2 with a group that would have a broader mission and membership than the current EBA task force, we would be interested in participating in this group or in receiving any output it may produce.”

Strongly disagree / Disagree / Somewhat agree / Agree / Strongly agree

Overview of key impact areas

Ranking of topics by expected impact*

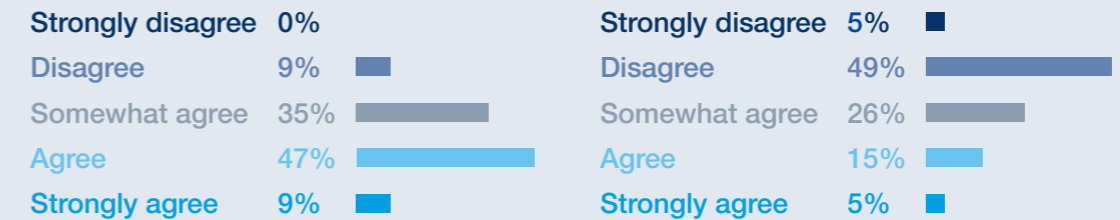
"Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs"



Impact of national transpositions and Member State derogations/discretions

"We see a risk of substantial discrepancies in the area of national PSD2 transpositions or Member State derogations/discretions, which could have a considerable impact on the implementation projects of PSPs"

"We are already seeing concrete examples of substantial discrepancies in the area of national PSD2 transpositions or Member State derogations/discretions, which will have a considerable impact on our implementation project(s)"



Impact of regulatory technical standards on SCA and CSC

"While the detailed requirements are not yet known, we expect that the implementation of these RTS will have a considerable impact on PSPs"

Impact of (lack of) API minimum specification for TPP account access

"Without an API minimum specification for account information services and payment initiation services at a European level, we see a risk that the implementation of the access to the account provisions will be fragmented and inconsistent across the industry"



*Order based on "Strongly agree" and "Agree" answers

Topic 1

National transposition, Member State derogations and Member State discretions

Short description

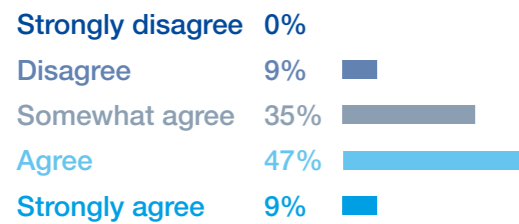
This topic relates to the potential impact on PSD2 implementation of the legislative process at national level, where the PSD2 needs to be transposed into national law and Member States may opt for certain derogations or discretions

Relevant PSD2 articles and /or EBA RTS

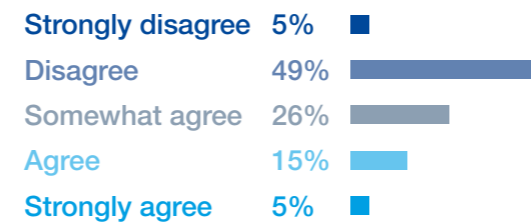
PSD2 Art. 107, 115

Expected impact as rated by survey respondents

“We see a risk of substantial discrepancies in the area of national PSD2 transpositions or Member State derogations /discretions, which could have a considerable impact on the implementation projects of PSPs”



“We are already seeing concrete examples of substantial discrepancies in the area of national PSD2 transpositions or Member State derogations /discretions, which will have a considerable impact on our implementation project(s)”



Areas of concern and open points/questions

- For PSD2 (as was the case for PSD1), achieving compliance will be a particular challenge for AS-PSPs operating in more than one country:
- Lack of information among AS-PSPs about ongoing national transposition projects and about envisaged or planned Member State derogations and discretions
- There is no ‘helicopter view’ on these matters from a multinational perspective (even for PSD1) – an overview document covering the derogations for all EEA legislations would be highly welcome
- The PSD2 text leaves considerable room for differing national interpretations (e.g. regarding legacy elements such as unique identifiers or central reporting) and market practices, which may lead to different requirements across communities. This could add complexity to multinational implementation projects and prevent a uniform customer experience
- Particular areas of concern:
 - The implementation of XS2A provisions, where a lack of a uniform approach and a proliferation of national and /or local solutions would have an impact on all parties involved, but specifically customers, and lead to interoperability issues
 - The handling of micro-enterprises, where significant discrepancies are expected across the EEA; this topic is of particular significance with regard to subsidiaries of multinational corporations

Why a pan-European / collective approach or analysis would be valuable

A detailed pan-European assessment could avoid discrepancies and different ways of interpretation, especially since the current assessments mostly focus on implications at a national level and do not seem to give much attention to cross-border considerations.



Coverage of non-EU currencies

Short description

This topic relates to the extended scope of the PSD2 in terms of currency, which encompasses relevant transactions in non-EU currencies

Relevant PSD2 articles and /or EBA RTS

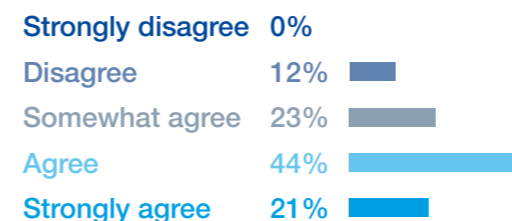
PSD2 Art. 2(3), 62, 87

Areas of concern and open points/questions

- Concerns /questions re. value dating and availability of funds:
 - There is a need for a clarification of the date of receipt, as it may be interpreted in several ways from a technical point of view
- Concerns /questions about application of the shared cost principle to intra-EU transactions in any currency:
 - Today, customers sending pensions or salaries in non-EU currency transactions within the EU generally use OUR to guarantee the amount received by the payee

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and/or additional guidance”



Examples of practical questions raised

Question
Value dating of incoming transactions where a currency conversion is involved: is there a requirement to back-value this transaction to the date where the transaction was received by the AS-PSP or not?

Answer
An intermediary that is located outside of the EU does not have to comply with the PSD2 provisions. Any intermediary within the EU has to comply itself with the PSD2 provisions, e.g. on maximum execution times and charging requirements for intra-EU payments. No special instructions should be needed in any of these cases.

Question
Article 62 (Charges applicable) applies to intra-EU payments in non-EU currencies, but Article 81 (Amounts transferred and amounts received) does not apply to intra-EU payments in non-EU currencies per the scope outlined in Article 2(3). From this, it is unclear how these payments should be treated when it comes to deducting charges from the transaction amount.

Question
Intermediaries of transactions involving non-EU currencies can often be located outside the European Union, and per Article 2(1) and (3) (Scope), the PSD2 only applies to services and parts of the payment transaction processing provided or carried out within the Union. As such, it is unclear if PSPs should instruct intermediaries to act differently depending on whether the intermediary is located within or outside of the Union.

Answer
Art 81 stipulates that the full amount of the payment transaction needs to be credited to the payee’s account and that only the payee’s PSP may deduct charges from this amount if amount and charges are separately stated on the account statement.
As Art. 81 does not apply to intra-EU payments in non-EU currencies, PSPs involved in the transaction may be in a position to deduct any charges from the amount.

Topic 3

Extension of some provisions to one-leg-out transactions

Short description

This topic relates to the extension of some of the PSD2 provisions to one-leg-out (OLO) transactions, i.e. transactions where either the payer's or the payee's PSP is located outside of the EU

Relevant PSD2 articles and/or EBA RTS

PSD2 Art. 2(4), 82, 87

Areas of concern and open points/questions

- Concerns / questions about the practical application of PSD2 provisions to the more complex OLO environment

Examples of practical questions raised

Answer

Art. 2(4) on the scope of the PSD2 exempts a number of provisions from applying to OLO transactions (e.g. the maximum execution times set in Art. 83(1)).

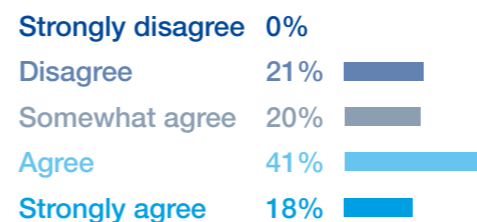
Furthermore, the PSD2 allows PSPs to agree with their customers that some provisions relating to value dating are not applied to OLO transactions (Art. 82(2)).

Question

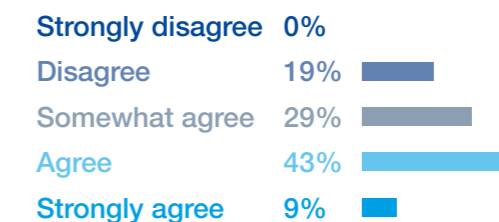
One-leg-out by definition means that PSPs will not have control of the second leg. How can they communicate the terms and conditions to their customers or ensure that requirements involving the end-to-end process (e.g. execution time) are met?

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Question

Will the shared cost principle have an impact on OLO transactions?

Answer

No, Art. 2(4) stipulates that Art. 62(2), which sets forth the shared cost principle, does not apply to OLO transactions.

Question

What if a US dollar transaction from the United States is sent to a US dollar account in the European Union, does the PSP have to book that transaction immediately on the customer's account as no currency exchange is needed?

Answer

Yes, Art. 87(2) stipulates that the payee's PSP has to ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the account of the payee's PSP in case there is no currency conversion or a currency conversion involving only EU currencies.

Art. 82(2) explicitly excludes that PSPs may agree otherwise with their customers for OLO transactions.

Questions on RTS on authentication and communication

Short description

This topic focuses on concerns and questions about the timing and content of the regulatory technical standards (RTS) on strong customer authentication and secure communication, which are under development by the European Banking Authority (consultation phase ongoing at the time of drafting of this paper)

Relevant PSD2 articles and/or EBA RTS

PSD2 Art. 98; on 12th August 2016, the European Banking Authority published a consultation paper on the draft regulatory technical standards specifying the requirements on strong customer authentication and common and secure communication under PSD2; discussions are ongoing at the level of the Euro Retail Payments Board and the European Payments Council in relation to the creation of a technical standard.

Examples of practical questions raised

Question

Which type of authorisation/authentication will be required/allowed – customers using the credentials of the AS-PSP on the PISP/AISP side or customers using PISP/AISP credentials and the PISP/AISP are authorised somehow against the AS-PSP?

Question

Will the AS-PSP always be in a position to identify the TPP requesting access to the account, so they may be able to comply with their KYC and AML obligations?

Question

What would be a viable solution for implementing the “silent authentication” of a customer or the exemption for secure customer authentication by the AISP to avoid the need to authenticate every single access?

Question

Recital 32 states: “Payment initiation services are based on direct or indirect access for the payment initiation service provider to the payer’s account. An account servicing payment service provider which provides a mechanism for indirect access should also allow direct access for the payment initiation service providers.” What does indirect access mean in this context?

Question

What kind of specific information will the AS-PSP have to provide at the request of TPPs when a customer initiates a payment?

Answer

Yes, Art. 66(3)(d) and Art. 67(2)(c) specify for PISPs and AISPs respectively that they have to identify themselves towards the PSU’s AS-PSP for each communication session.

Areas of concern and open points/questions

- Concerns /questions /needs raised around the RTS in general:
- Concerns about the time frames, as the PSD2 will be applied in January 2018, while the RTS will not be implemented at that time, meaning that some provisions will already have to be implemented while the RTS linked to them will not be available
- Needs and considerations regarding account access in general, (Open) Application Programming Interfaces (APIs) and related standardisation:
- Need for clear guidance and agreement on account access
- Concern about the entire workflow and technical standards around the communication with TPPs still being open

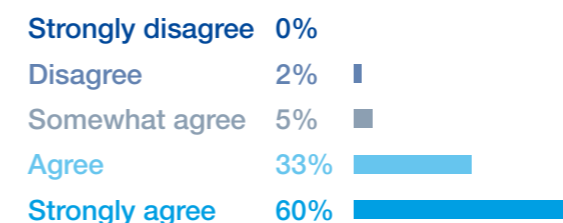
Why a pan-European / collective approach or analysis would be valuable

A level platform to discuss the proposed RTS at a pan-European level could help to avoid fragmentation. There seems to be a need at least for a minimum standard for APIs in order to avoid a fragmented approach across Europe; the implementation of Open APIs based on a minimum standard for APIs may be a helpful compromise.

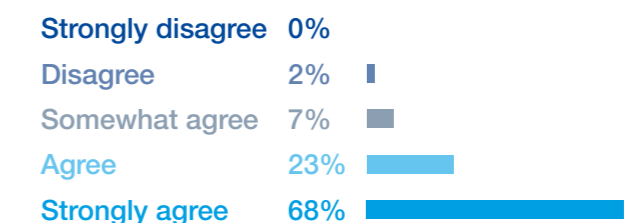
- Need for at least a minimum standard for APIs in order to avoid a fragmented approach across Europe, otherwise TPPs would have to customise their integration with every single AS-PSPs to provide payment initiation services; this fragmented approach would also negatively impact customer experience
- A minimum API standard could enable AS-PSPs to develop and offer value-added Open APIs with additional information and functionality available for TPPs and customers based on an API standard that all AS-ASP would need to follow

Expected impact as rated by survey respondents

“While the detailed requirements are not yet known, we expect that the implementation of this RTS will have a considerable impact on PSPs”



“Without an API minimum specification for account information services and payment initiation services at a European level, we see a risk that the implementation of the access to the account provisions will be fragmented and inconsistent across the industry”



Practicalities re. processes for incident reporting to competent national authorities

Short description

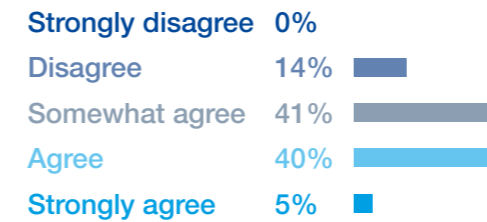
This topic covers practical questions and concerns around the processes for incident reporting to competent national authorities

Relevant PSD2 articles and /or EBA guidelines

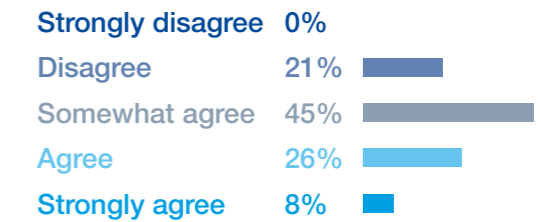
The European Banking Authority (EBA) has issued online payments security guidelines (SecuRe Pay) that give guidance with regard to incident reporting to competent authorities. The EBA will further provide guidelines to PSPs on the classification of incidents and on the format and procedures for incident reporting by 13th January 2018 (PSD2 Art. 96), taking into account the incident reporting standards stipulated by the Directive on Security of Network and Information System.

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Why a pan-European / collective approach or analysis would be valuable

Multinational banks in particular would benefit from uniform incident reporting processes and related instructions and from an information exchange between different competent authorities.

Areas of concern and open points/questions

- Concerns about diverging requirements for reporting to the current Overseer and future Overseers
- Clear mechanisms should be established among AS-PSPs and TPPs in case of disputes, risk management and also in the incident reporting to competent authorities and the provision of statistical information about fraud
- It should be defined how the reporting needs to be practically implemented in detail (e.g. automation of incident reporting processes)
- An information exchange between the authorities would be welcome in order to avoid the same incident having to be reported to several authorities
- An adapted categorisation of incident criticality by nature and size of the PSP could be introduced
- Concerns about potentially contradicting instructions on how to resolve reported issues

Liability rules and considerations for different parties

Short description

This topic covers practical questions and concerns around the liability rules and procedures related to, amongst other things, security incidents and transaction failures in the access to the account context

Relevant PSD2 articles and/or EBA RTS

PSD2 Art. 20, 73, 74

Areas of concern and open points/questions

- **Need for more clarity**
- The responsibilities of each single party should be clearly specified: the fact that PSPs need to grant TPPs access to sensitive information without TPPs having the obligation to sign a contract makes it difficult to determine the obligations and liability of each participant in case of e.g. a security incident or failure in the transactions, so it would be useful to establish the responsibilities of each actor in an alternative way
- Liability rules should be homogeneous across all EU countries
- In case of fraud, it is necessary to clarify when payers are considered to have acted with negligence and are therefore liable
- It would be helpful to clarify the liability with regard to the strong customer authentication exemption list
- **Areas of concern**
- The interim period between January 2018 and the RTS implementation is generating concerns re. liability provisions. Before the implementation of secure communication and SCA, identification control of the TPP and management of incident will be difficult.
- Art. 73 states that, in case of an unauthorised payment, the credit value date for the payer's payment account shall be no later than the date the amount had been debited. In terms of the technical implementation of such procedure, this will be difficult to achieve if the bank has issued a balance sheet after the unauthorised payment has taken place. Therefore, it should be taken into consideration that the bank is allowed to pay an appropriate remuneration instead.

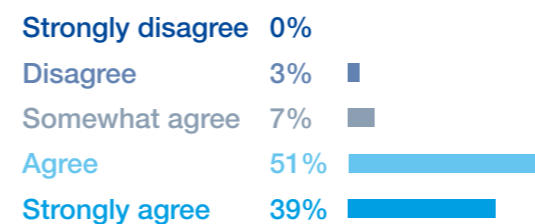


Why a pan-European / collective approach or analysis would be valuable

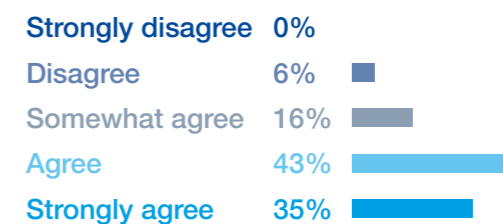
Liability procedures are needed at a pan-European level to ensure that all players in the payments eco-system will adhere to the same standards.

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and / or additional guidance”



Examples of practical questions raised

Question

Will the AS-PSP be the only one to determine whether to apply exemptions (where applicable) from strong customer authentication and not the TPP?

Question

What will the communication procedure look like between the banks and the TPPs in the case of fraud, non-execution of transactions, etc.?

Question

How will the insurance for PISPs/ AISPs work? How will they guarantee the ability to be able to refund the banks (and customers) where they are liable?

Answer

By January 2017, the EBA shall issue guidelines to the competent authorities on criteria on how to stipulate the minimum amount of professional indemnity insurance or guarantee for PISPs and AISPs.

Topic 7

Provisions on complaints, dispute resolution and alternative dispute resolution (ADR) procedures

Short description

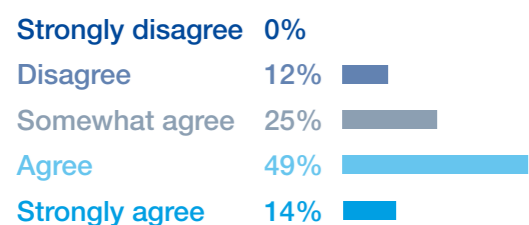
This topic covers open questions and concerns around the provisions in relation to complaints, dispute resolution and alternative dispute resolution procedures

Relevant PSD2 articles and /or EBA RTS

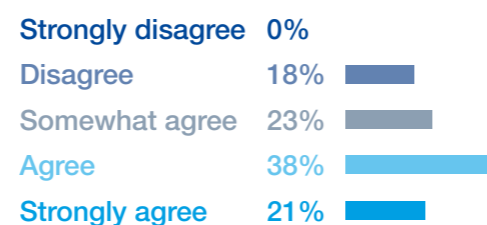
PSD2 Art. 99-103

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Why a pan-European / collective approach or analysis would be valuable

It would be helpful to have common procedures for complaint management and dispute resolution at a pan-European level to ensure a uniform management and handling.

Areas of concern and open points/questions

- **Need for clarifications and common processes:**
 - The process to reach a TPP involved in a complaint or dispute resolution needs to be clarified
 - A common process and technical standard for complaints management and dispute resolution should be defined
 - Clarity is needed on how AISPs and PISPs will be managed in the ADR process
- **Concerns about the time frames to be respected:**
 - The PSD2 requires payment services complaints to be resolved within 15 days while in some countries, a consumer protection code is in place that requires the resolution of customer complaints only within 30 days.
 - This could create challenges such as the education of all staff members in the payments department to recognise a payments-related complaint vs. a general bank complaint. Furthermore, additional resources may be required to resolve complaints within half of the current timelines.
- **Concerns re. credit risk:**
 - The obligation that the payer’s PSP refunds the payer the amount of the disputed payment transaction immediately imposes a credit risk on the payer’s PSP

Topic 1

Accounts in scope

Short description

This covers open questions around the practical scope of accounts falling under the PSD2 access to the account provisions

Relevant PSD2 articles and /or EBA RTS

PSD2 Art. 4(12), 66-68

Areas of concern and open points/questions

- Concerns about definitions:
- Different interpretations of payment accounts by AS-PSPs depending on the types of products they offer
- Uncertainty whether the definition “payment account” covers all account types from which PSUs could technically generate a payment or on which they could receive a payment
- Need for a clear cross-border definition of “payment account”

Examples of practical questions raised

Question

Which accounts a PSU holds with an AS-PSP qualify as payment accounts: current accounts, savings accounts, deposit accounts, credit card accounts, asset intermediation accounts, FBO (for benefit of)?

Question

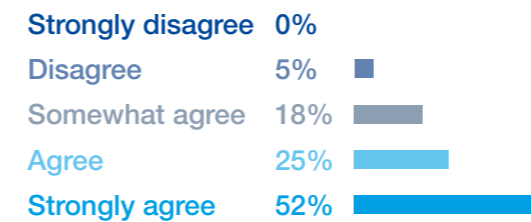
When is an account defined as online?

Why a pan-European / collective approach or analysis would be valuable

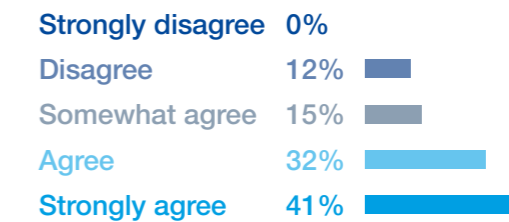
There is no uniform practical interpretation of “payment account” across the European Union.

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Scope of services

Short description

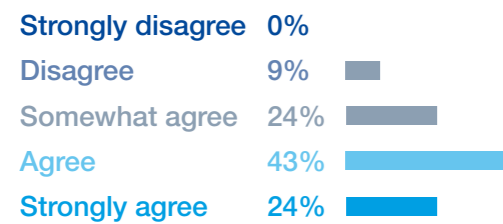
This relates to open questions around the information and services covered by the scope of the PSD2 access to the account provisions

Relevant PSD2 articles and /or EBA RTS

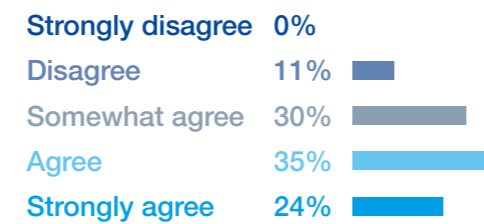
PSD2 Art. 4(3), 4(32), 66, 67, Annex 1

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and/or additional guidance”



Why a pan-European / collective approach or analysis would be valuable

There are no specifications on which account / payment details and services AS-PSPs need to provide via TPPs across the European Union.

Areas of concern and open points/questions

- Need for more certainty about the information and services related to a payment account that are in scope of account information and payment initiation services respectively
- Need for clarification regarding the interpretation of “sensitive data” to ensure a uniform understanding and avoid that AS-PSPs will deliver different levels of information to TPPs/ customers

Examples of practical questions raised

Question

Will instant payments be in scope (credit transfers are, so real-time payments too)?

Question

Our interpretation is that bulk files are not in scope of payment initiation services under the PSD2. Could this be clarified?

Question

Which account information must be made available for account information services?

Question

How much account/transaction history must be made available to TPPs?

Question

AISPs cannot request sensitive data linked to payment accounts – is the balance of account considered to be sensitive data?

Question

Will AS-PSPs choose to only provide hard posts and not shadow posts – like the temporary posts of card payments that are not finalised until the merchant submits the file to the card scheme?

Question

Will AS-PSPs provide multiple balances – reflecting funds available, funds to be cleared, etc.?

Question

Will the AS-PSP have to provide 100% availability of all payment account-related services or will downtime for maintenance purposes still be allowed?

Topic 3

Management of consent by PSU – including provision and withdrawal

Short description

This topic covers concerns and questions regarding the management of the consent processes around the access to the payment account by TPPs; they relate among others to requirements with regard to the provision, withdrawal and communication of consent

Relevant PSD2 articles and /or EBA RTS

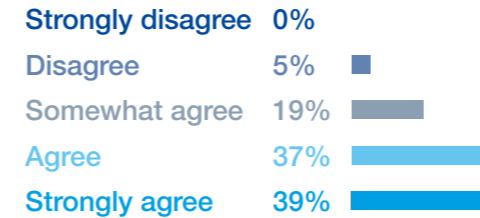
PSD2 Art. 64, 66, 67; EBA regulatory technical standards on strong customer authentication and common and secure communication under PSD2

Areas of concern and open points/questions

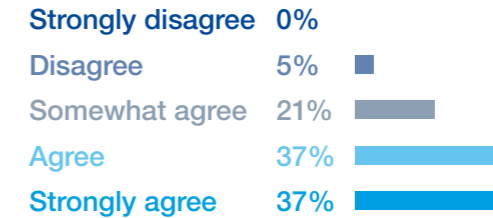
- Concerns/questions about how the procedure of providing or withdrawing consent will be organised between the different parties in practice and the role of the AS-PSP in this context
- Uncertainties about how the concepts of “consent” and “authorisation” relate to each other in practice
- Open points about
- Standardisation requirements and possibilities around the authorisation process, e.g. putting in place APIs based on clear requirements (in line with strong customer authentication requirements) involving the capturing of the authorisation of the PSU to access his/her payment account
- Possibilities for AS-PSPs to set up similar processes as for SEPA Direct Debit mandate management, e.g. keeping records of the authorisations and withdrawals
- Potential service options by AS-PSPs around consent management, e.g. providing PSUs with the option to set their account to “no consent given to any TPP” by default or create “black/white lists” of TPPs banned from or allowed to access their account
- Concern about whether it will be assured that the AS-PSP will always be in a position to identify the TPP requesting access to the account
- Uncertainty about who should carry the burden of proof that a TPP acted with the explicit consent of the PSU
- Open questions around the management of PSUs’ consent to TPP access granted for joint accounts with multiple holders
- Questions around time and frequency limitations for consent as well as consent procedures around recurrent or other multiple transactions, etc.
- Concerns re. how the secure customer authentication should work and how to receive/communicate the secure customer authentication details without hampering the encryption details

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Why a pan-European / collective approach or analysis would be valuable

A collective exploration of best practices for managing and sharing PSUs’ preferences could be useful given that the handling of this topic represents a new area of functionality for many AS-PSPs.

Examples of practical questions raised

Question

Will the PSU need to inform the AS-PSP about giving or withdrawing consent to/from a TPP prior to the transaction?

Question

Could AS-PSPs offer to PSUs the possibility to “customise” the consent they wish to grant to TPPs: one-time vs. recurrent consent, consent with a threshold, consent for a specific category of transactions (travel, hotel, etc.)?

EBA central repository listing third party providers

Short description

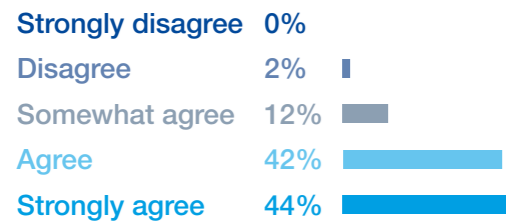
This topic focuses on the central repository of Third Party Providers to be put in place by the European Banking Authority

Relevant PSD2 articles and /or EBA RTS

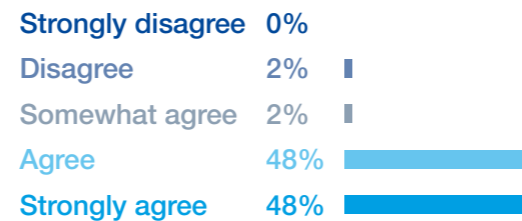
PSD2 Art. 5, 14, 15; EBA draft regulatory technical standards setting technical requirements on development, operation and maintenance of the electronic central register and on access to the information contained therein. The EBA shall submit these draft regulatory technical standards to the European Commission by 13th January 2018.

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Why a pan-European / collective approach or analysis would be valuable

Strong need raised for an online real-time pan-European central repository, which should be binding for all TPPs to be listed in, and where information both can be easily accessed and should be updated 24/7/365.

Areas of concern and open points/questions

- Concerns /questions /needs raised around a central repository for TPPs:
- Need for access to a central (EBA) repository of all TPPs because the passported TPP is registered in the home member state competent authority's register and not in the host member state (according to Art. 28(3))
- All TPPs should be subject to full authorisation before starting the provision of their services and should be registered in this central repository. The authorisation criteria in all Member States should be similar.

- Need for real-time online access to the central repository by AS-PSPs in order to ensure that AS-PSPs can process requests in the same processing time as if they came from the customer
- Need for timely and continuous updates of the central repository – maybe even 24/7 updates required
- Need for procedures to be defined for emergency situations where precautionary measures have to be taken by Member States towards TPPs (e.g. fraud, misuse of consent or information etc) and access to so-called 'TPPs' black lists' should be granted to AS-PSPs
- Need for insurance-related information for each TPP to be included in a central repository, in particular on the status of the insurance, maximum insurance coverage and any related restrictions (e.g. exclusion of coverage of fraudulent behaviour by TPP)

Examples of practical questions raised

Question

Will the European Banking Authority provide a central repository that will be able to meet the practical needs of AS-PSPs?

Question

What will be the exact content of the repository (e.g. scope of services licensed, passporting etc.)?

Question

What access should PSPs have to the information stored in this repository?

Question

Who is legally responsible for the correctness of the information, for changing/updating the information, etc.?

Question

When do AS-PSPs need to check a TPP against this repository?

- Need for a better understanding of what kind of certificates are going to be used for mutual certification between AISP/PISPs and AS-PSPs and what process is going to be designed (re. issuing and revocation of certificated) to allow the AS-PSP to verify the AISP/PISP's identity, authorisation and role
- The use of certificates under eIDAS regulation could be adopted, enabling qualified competent authorities to verify pertinent information about the identification and role of PSP and their licensing on a qualified register. This information should be included as a standard in qualified certificates.
- Concerns about downsides of having to deal with many national repositories or databases of local competent authorities: they are generally not updated 24/7, practical access procedures / rights may vary, authorisation and liability criteria may differ.

Governance around liability and resolution of unauthorised transaction disputes

Short description

This covers practical questions and concerns around the framework and approach applicable in relation to the execution of refunds for unauthorised transactions as well as to dispute resolution on this matter between AS-PSPs and TPPs, including compensation

Relevant PSD2 articles and /or EBA RTS

PSD2 Art. 71, 73, 74

Areas of concern and open points/questions

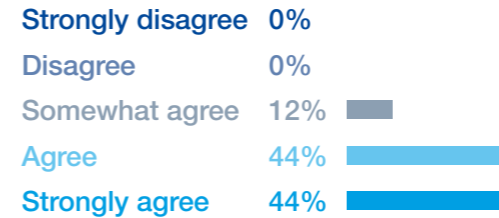
- Concerns / questions about the practical handling of refunds in connection to unauthorised transactions and related investigations:
- The complexity of investigations will increase due to the potential additional parties involved in the initiation of the transaction and due to the extension of the scope to intra-EU transactions in non-EU currencies
- This increased complexity combined with the obligation for a speedy refund (by D+1) will make it challenging to complete the necessary investigations before the refund has to be executed
- There is a lack of clarity and guidance around the communication channels and procedures for investigations between AS-PSPs and TPPs
- Concerns / questions about liability / responsibility of the different parties
- Concerns / questions about procedures between AS-PSPs and TPPs (including communication channels and timelines) and the underlying framework:
- As access by a PISP to the payer’s account with the AS-PSP is not dependent or based on a contract between these two parties, and characteristics of the professional indemnity insurance a PISP must hold have not been defined yet, it remains unclear how this will work in practice
- The way AS-PSPs can request compensation from TPPs is not described and there is no provision about timing (except immediately) for that compensation

Why a pan-European / collective approach or analysis would be valuable

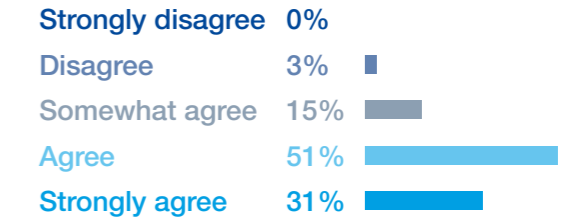
It would be helpful to have a pan-European framework for dispute resolution to ensure a uniform handling of such matters across Europe and of cross-border disputes in particular.

Expected impact as rated by survey respondents

“Implementing the PSD2 requirements with regard to this topic will have a considerable impact on PSPs”



“In our analysis of this topic, we have come across questions or practical issues around this topic that remain open and would benefit from a collective analysis and /or additional guidance”



Examples of practical questions raised

Question

Can an AS-PSP decide on a refund itself in case it has strong indications that the transaction was unauthorised?

Answer

Art. 73(1) states that the payer’s PSP should refund the amount of the unauthorised payment transaction “after noting or being notified” of the transaction, which means that the AS-PSP should pro-actively decide on a refund in case it notices that a payment transaction was unauthorised.

Question

Under what circumstances would an AS-PSP be allowed to even stop a transaction before execution?

Answer

Art. 68(2) specifies that the PSP “may reserve the right to block the payment instrument for objectively justified reasons relating to the security of the payment instrument, the suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil its liability to pay.”

Question

What is a TPP supposed to present in terms of evidence that a transaction has been duly authorised by the payer (e.g. standard documentation)?

Question

How can an AS-PSP request compensation from a TPP in practice (content and communication channel)?

The conditions under which the payment service provider reserves the right to block a payment instrument need to be agreed in the framework contract between the payer and the AS-PSP (Art. 68(2) and Art. 52(5)(c)). For further reference, see also Art. 52(2)(b) and Art. 64(2).

Glossary of key abbreviations

AISP

an account information service provider provides consolidated information on one or more payment accounts held by a PSU with either another PSP or with more than one PSP

AS-PSP

an account-servicing payment service provider provides and maintains a payment account for a payer

CSM

clearing and settlement mechanism

PISP

a payment initiation service provider initiates payment orders at the request of the PSUs with respect to payment accounts held at other PSPs

PSD2

revised Payment Services Directive (Directive (EU) 2015/2366 on payment services in the internal market)

PSU

a payment service user is a natural or legal person making use of a payment service in the capacity of payer, payee, or both

RTS

regulatory technical standards are developed by the European Banking Authority; they are addressed at PSPs and will specify PSD2-related requirements in a number of areas as detailed in PSD2 Art. 98

SCA and SCS

secure customer authentication and common and secure communication

TPP

third party provider; this includes both AISPs and PISPs

XS2A

abbreviation of Access to the (Payment) Account by third party providers; this refers both to access for account information and payment initiation purposes

References

The text of the revised Payment Services Directive (PSD2) in English can be found at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2366&from=DE>

The consultation paper on the draft regulatory technical standards (RTS) on strong customer authentication and common and secure communication, which includes the draft RTS, can be downloaded at <https://www.eba.europa.eu/documents/10180/1548183/Consultation+Paper+on+draft+RTS+on+SCA+and+CS+and+SC+%28EBA-CP-2016-11%29.pdf/679054cf-474d-443c-9ca6-c60d56246bd1>

An overview of the regulatory technical standards, sets of guidelines and register to be delivered by the European Banking Authority can be downloaded at <https://www.eba.europa.eu/documents/10180/87703/EBA+Mandates+PSD2.pdf/5c2493a4-ef26-4434-8338-736895bd423f>

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