

## EPSM's current views on the PSD3 and PSR Drafts

Munich, 31 October 2023

As a European association mainly of acquirers and other merchant facing payment providers, we would like to share our current views. The points 1. – 10 are unchanged to our 10 August 2023 preliminary statement, only topics have been added by considering some input by our Members:

We want to highlight the following topics:

1. There should be a real, unlimited "grandfathering option" for existing PIs and EMIs (this means: no new complete license applications), like for banks when European banking regulations are updated. Grandfathered institutions should only be required to document the new PSD3 requirements and not have to re-submit the information provided as part of authorization under PSD2.
2. It is good and helpful the PIs and EMIs will be able to get access to central bank accounts. But it should be possible to transfer via these central banks payees money according to the "standard safeguarding requirements" (e.g. by "collective trust accounts" at the central bank)
3. The introduction of the confirmation of funds and payment execution is a positive aspect.
4. Liability for fraud should be designed and implemented with the aim of increasing user protection, but without transferring the liability to rules-compliant non-responsible PSPs. It seems that if a fraudster pretends to be a PSP employee, illegally using data of the PSP, and that leads to a payment transaction, the rules-compliant non-responsible PSP might be obliged to refund the victim.
5. The shared importance of increasing transparency for the benefit of the user, should not increase complexity and costs for PSPs in the face of new and increased requirements by the EBA. This could undermine fair competition, to the disadvantage especially of smaller players or new entrants.
6. It is good and helpful that technical service providers are still out of scope of PSD3/PSR.
7. For "delegated SCA" using third party service providers, the concept and the legal relations need to be further clarified both in PSD3 and PSR - with involvement of the market participants. A well-known example, that should be clarified, would be an SCA on an Apple iPhone or on an Android-based phone. – "keep it simple".
8. The requirement for SCA on card payment refunds should be re-evaluated. The EBA had stated indicated that "there is merit in introducing an exemption from SCA [for refunds]"
9. Due to the development cycles of global standardization organizations in card payments like with EMVCo, there should be 3-4 years implementation timelines for any new mandatory SCA requirements, rather than the mentioned short time frame of 18 months. The very painful regulatory and market experiences and implementation delays for SCA for ecom card payments in 2019 and 2020 should be taken into account.
10. Last but not least: Several definitions should be further clarified and streamlined:
  - Is there perhaps some a "circular reasoning" in the definition of "acquiring"?  
PSD3: 'acquiring of payment transactions' means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee  
Annex1: payment services are "Acquiring of payment transactions" transactions, which results in a transfer of funds to the payee
  - Further discussion with legal experts should be on the wordings relating to cash dispensing services like "ATM", "cash back", "a real margin to negotiate with the commercial agent", and "retail store"
  - The definition of "Initiation of a payment transaction" should be further clarified (especially for "pull" card payments relating to a "payer initiated transaction" vs. a "payee / merchant initiated transaction – MIT")

And as add-on to our statement from 10 August 2023:

11. Regulation should address need to ensure business continuity during technical incidents:  
The EU PSR should exceptionally and temporarily allow payments without SCA during technical incidents (with appropriate safeguards to ensure security).
12. Further SCA exemptions should be envisaged later on by EBA for low-risk and low-value use cases, like:
  - Alternative fuel filling
  - Vending machines
  - Donation terminals (up to EUR 50)
  - Airline in-flight commerce
  - Access to accounts and Account Information Services (AIS) in a corporate environmentThe cumulative limit for the contactless exemption should be raised from EUR 150 to 250
13. SCA solutions based on the use of two knowledge factors (e.g., two passwords) should not be allowed as they are not sufficiently secure.
14. We believe that the EU PSR and PSD3 definitions of 'technical service provider' should be aligned for greater clarity and legal certainty. The PSD3 definition seems to be too narrow.
15. A more flexible approach to dynamic linking:  
There are a number of legitimate cases where the final amount of a transaction is not known, and the amount is not blocked. We support the UK FCA approach to allow for tolerance of up to 20% above the original amount before requiring SCA as long as the consumer has been informed.
16. And finally, for early clarification:  
The planned new eIDAS 2.0 regulation should be evaluated and in should be clarified, what – if any - obligations might relevant for payment providers, especially in the card acceptance sector.

**About the association EPSM:**

The European trade association EPSM represents the interests of payment service providers for merchants, like acquirers and internet PSPs for payment acceptance. As a non-for-profit organization, it provides a cost-effective interest representation and general information exchange on payment topics to its members.

There are currently 66 EPSM members based in 15 European countries (AT, BE, CH, CY, CZ, DE, FR, GR, IE, IT, LU, LT, NL, SE, UK) and 2 members outside Europe (USA). Voting members are acquirers, payment network operators, and internet payment providers, and additional extra-ordinary members are payment schemes, service providers, and terminal manufacturers.

EPSM organizes app. 3 physical and 4 virtual meetings per year, typically each with app. 30 - 50 participants from more than 10 European countries.

Recent new members have been Discover Global Network (United States), Rubean (Germany) and Wallee (Switzerland),

The association has been in contact with the European Commission, the ECB, the EBA, other European and national organisations and has actively taken part in several consultations.

EPSM representatives are active in the EU Payment Systems Market Expert Group (PSMEG), the global PCI SSC Board of Advisors (PCI BoA), and in the EU Intellectual Property Observatory (EUIPO). EPSM is an observer to the European Payment Institutions Federation (EPIF)

The services for members include typically three EPSM Meetings per year with external speakers, up-to-date information by e-mail, a homepage with a non-public intranet, a virtual AML Compliance WG and a virtual SCA working group.

For more information, please visit [www.epsm.eu](http://www.epsm.eu) or contact:

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EU Transparency Register ID: 75870078560-90