

EBA CLEARING proposals regarding the proposed Payment Services Directive

As the private sector operator of the pan-European SEPA payment systems STEP2-T and RT1, EBA CLEARING welcomes the opportunity to provide feedback on the proposed Payment Services Directive.¹

For your consideration, EBA CLEARING has suggested specific amendments to the proposal wording, along with the reasoning behind each proposed amendment, in Annex I. However, we have also made available below a summary of our main observations for your convenience.

EBA CLEARING looks forward to continued dialogue with the European Union institutions, and to contributing towards the realisation of the Commission's objectives.

Summary

- **Centralised register of PSPs:** EBA CLEARING would encourage the European Banking Authority or any other relevant authority to notify SFD-designated FMIs in the event a PSP's license is suspended or terminated, in addition to establishing a centralised register of PSPs. This would assist financial market infrastructures (FMIs) in ensuring ongoing compliance with their admission criteria, as well as allowing FMIs to respond efficiently in the event of a resolution, limiting risks to participants of the FMI.
- **Licensing requirements for payment systems:** The proposal foresees that the Commission will review whether or not to apply licensing requirements to payment systems within a specifically shortened period of three years from the proposal's entry into force. Another review would take place again five years after the entry into force. EBA CLEARING considers that these reviews are unnecessary. As acknowledged in Recital (68) of the proposal, payment systems in the European Union (EU) are already regulated in the EU, under the Principles for Financial Market Infrastructures (PFMI),² as transposed in the EU by the SIPS Regulation³ and the ECB's *Revised oversight framework for retail payment systems*,⁴ as well as the Settlement Finality Directive. Licensing requirements would introduce parallel regulation via the PSD, despite that fact that existing oversight framework has proven to be efficient.
- **Entry into force of amendments:** The proposal has one deadline by which Member States must transpose changes to the Settlement Finality Directive, and a separate, subsequent deadline, by which changes to the authorisation regime for payment institutions (including e-money institutions) enter into effect under national law. We consider that the two deadlines should be the same – the (type of) authorisation granted to a PSP directly determines the PSP's eligibility to participate in an SFD-designated payment system, and has an important bearing on the risks a PSP can present to the ecosystem.

¹ Proposal for a Directive of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC.

² <https://www.bis.org/cpmi/publ/d101a.pdf>.

³ Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28), as amended.

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https://www.ecb.europa.eu/pub/pdf/other/Revised_oversight_framework_for_retail_payment_systems.pdf.

Annex I: Detailed EBA CLEARING proposals regarding the Payment Services Directive

Article	Proposed EBA CLEARING amendment	Justification for proposed amendments
Article 18(7)	<p><i>The EBA shall develop, operate and maintain a central, machine-readable list of the payment service providers offering the payment services listed in Annex I, points 6 and 7, based on the most recent information contained in the EBA register referred to in paragraph 1 and on the EBA Credit Institution Register created pursuant to Article 8(2), point (j) of Regulation (EU) No 1093/2010. That list shall contain the name and identifier of those payment services providers and their authorisation status.</i></p> <p><u><i>In the event that a payment service provider's authorisation is suspended or terminated by a competent authority, the EBA shall send an electronic message to the system operators of all systems designated pursuant to Article 10 of the Directive 98/26/EC, notifying the operator of the change in the payment service provider's authorisation status.</i></u></p>	<p>EBA CLEARING welcomes the Commission's proposal to create a central register of all PSPs and their authorisation status. Given the link between the (type of) authorisation of a payment service provider, and the PSP's resulting ability to participate in an SFD-designated payment system, a centralised register will assist payment system operators' in their assessment as to whether a PSP meets the system's admission criteria.</p> <p>However, EBA CLEARING observes that there is room for improvement in the timely notification of all relevant actors, including payment system operators, in the event that a PSP's license is suspended or terminated. EBA CLEARING would welcome that the authorities in charge of the register push notifications to relevant FMIs in the event that a PSP's authorisation status changes. In view of the envisaged enlarged access to payment systems, this appears an easily implementable risk mitigation measure, that can leverage the notification contact details of FMIs collected under the Settlement Finality Directive.</p> <p>Such push notification on authorisation status should also be provided if a PSP enters into resolution. From a European perspective, public notices of resolution actions are typically published on the website(s) of the relevant (national/supranational) resolution authorities (over 40 different authorities alone in the EU/EEA/UK alone).</p>

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		<p>Accordingly, FMIs must proactively search the websites of the relevant authorities. Given that a resolution might occur at any moment (especially outside standard business hours over a resolution weekend or evening), this creates a high risk of delayed awareness by FMIs should an FMI participant (or its parent) enter into resolution.</p> <p>To mitigate the risk of FMIs not being timely informed of a change in a PSP's status, a more efficient, effective, and direct communication procedure should be developed by European authorities in all jurisdictions, whereby all types of FMIs would directly receive a 'push notification' of the relevant resolution, at the latest upon public disclosure of the resolution, but preferably in advance. Advance notification would serve to mitigate potential concerns among market participants, as the FMIs would have time to prepare actions and respond to public inquiries in a timely manner.⁵</p>
Article 43(1) and 43(2)	<p><i>The Commission shall, by [OP please insert the date = 5 years after entry into force of this Directive], submit to the European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the application and impact of this Directive, and in particular on:</i></p> <p><i>(a) the appropriateness of the scope of this Directive, in particular regarding the possibility of extending it to certain services, including the operation of payment systems and the provision of technical services including processing or the operating of digital wallets, which are not covered in the scope;</i></p>	<p>The proposal foresees that the Commission will conduct reviews of the Payment Services Directive to determine if PSD-based licensing requirements should apply to payment systems, within a period of three years of the proposal's entry into force followed by an additional review two years later.</p> <p>However, the proposal does not explain on what basis the Commission would need to conduct such a review, or what the objectives of the review would be. The proposal argues that "the pace of innovation" and "possible emergence of new</p>

⁵ EBA CLEARING has further elaborated these views in the following position paper, following its participation in a resolution desktop exercise with other financial market infrastructures: <https://www.ebaclearing.eu/media/azure/production/2853/fmicommunicationsproposalsept15.pdf>.

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	<p><i>(b) the impact of the revision of Directive 2014/49/EU on the safeguarding of customer funds by payment institutions. Where appropriate, the Commission shall submit a legislative proposal together with its report.</i></p> <p><i>The Commission shall, by [OP please insert the date= three years after the date of application of the PSR] submit to the European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the scope of this Directive, with regard in particular to payment systems, payment schemes and technical service providers. Where appropriate, the Commission shall submit a legislative proposal together with that report.</i></p>	<p>risks” would make such accelerated review necessary, without the impact assessment providing further background on such rationale and without any explanation as to why the existing regulatory framework would not be sufficient, nor why the PSD review should be the right instrument for such a reassessment.</p> <p>As acknowledged by the proposal itself, EBA CLEARING notes that payment systems are already regulated in the EU, under the Principles for Financial Market Infrastructures (PFMI),⁶ as transposed in the EU by the SIPS Regulation⁷ and the ECB’s <i>Revised oversight framework for retail payment systems</i>,⁸ as well as the Settlement Finality Directive. Absent identified failures in these regulatory regimes and the oversight of the Eurosystem, it is not clear to EBA CLEARING why the PSD would need to be leveraged by the Commission for this purpose.</p> <p>Further, the operation of a payment system is fundamentally different from the business of a payment service provider, as the latter normally involves direct relationships with the ‘payment service users’ (individuals, business), where payments systems only have direct relationships with (certain) PSPs. It is therefore logical that different requirements should apply to payment system operators than to PSPs, as different types of risk arise in each business, and the policy objectives</p>

⁶ <https://www.bis.org/cpmi/pub/d101a.pdf>.

⁷ Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28), as amended.

⁸ https://www.ecb.europa.eu/pub/pdf/other/Revised_oversight_framework_for_retail_payment_systems.pdf.

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		<p>for each type of business are not aligned. For example, consumer protection is not relevant to the business of payment system operators as they do not have B2C relationships, whereas it is a key policy concern in the regulation of PSPs.</p>
<p>Article 49(1) and (2)</p>	<p><i>Member States shall adopt and publish, by [OP please insert the date= 18 months after entry into force of this Directive] at the latest, and within [OP please insert the date= 6 months after entry into force of this Directive] for Article 46, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</i></p> <p><i>They shall apply those measures from [OP please insert the date= 18 months after entry into force of this Directive] and from [OP please insert the date= 6 months after entry into force of this Directive] for Article 46.</i></p>	<p>As noted above, the (type of) authorisation granted to a PSP directly determines the PSP's eligibility to participate in an SFD-designated payment system.</p> <p>EBA CLEARING observes that Member States are to transpose the Settlement Finality Directive, as amended, into national law <u>6 months</u> after the publication of the revised PSD.</p> <p>By contrast, the deadline to transpose the revised PSD into national law is <u>not until 12 months later</u> (18 months after publication), with a further grace period of 6 months (24 months after publication) in which payment institutions can rely on their "old" authorisation under PSD2.⁹</p> <p>The revised PSD includes important changes to the licensing and ongoing supervision of payment institutions and e-money institutions, which is directly relevant to the risks that such entities can present to financial stability. This means that payment system operators will be forced to grapple with the parallel requirements of PSD2 and PSD3, and the differences between different Member State, when assessing applications by payment service providers to participate in a payment system.</p>

⁹ Article 44(1).

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		Therefore, in EBA CLEARING's view, the deadline for transposing the SFD should be the date on which all Member States must have implemented all relevant provisions to give national effect to PSD3.