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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Regulatory Scrutiny Board Opinion Review of Payment Services in the internal market

Delegations will find attached document SEC(2023) 256 final .

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EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

Review of Payment Services
in the internal market

{COM(2023) 366, 367}

{SWD(2023) 231, 232}

EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment / Review of Payment Services in the internal market Directive (PSD 2)

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The 2015 second Payment Services Directive (PSD2) forms the legal framework for retail payments in the EU and is designed to create a competitive single market for payments while protecting payment service users and ensuring security and ease of payments. The ex-post evaluation of the PSD2 found that some of these objectives, such as consumer protection, innovation and level playing field, were only partially achieved.

This initiative aims to address identified shortcomings regarding payment fraud, Open Banking services, enforcement and implementation by Member States. It also aims to simplify the access to payment systems of Payment Institutions and E-Money Institutions to address concerns about regulatory arbitrage and uneven level playing field.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report lacks clarity on consumer demand for Open Banking and on the extent to which consumer confidence in data sharing and cybersecurity may affect uptake.

(2) The report does not provide sufficient impact analysis, in particular on competitiveness, SMEs, consumers and Member States as well as the impact of the proposed flanking measures.

(3) The report does not provide sufficient clarity, including granular analysis, on the costs and benefits for the preferred set of measures.

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should further develop the analysis of the problem related to the low take-up of Open Banking services in the EU. It should cite and build on the related evaluation findings thereby ensuring that the evaluation feeds better into the problem definition. It should provide clear data on the existing and projected consumer demand for Open Banking in the EU. The analysis should explain to what extent consumer behaviour, including reluctance to share data due to lack of trust and cybersecurity concerns, affects the uptake. It should explore to what extent the higher fraud risk, as detailed in the report, influences consumer trust and presents a barrier to the use of Open Banking services in the internal market. It should be more specific on potential differences in intra- and extra-EU cross-border fraud rates and clearer on the root causes for such differences across the Member States, and how the policy options will address them.

(2) The report should further highlight the initiative's importance for security, particularly cyber security but also more widely. In this respect it should strengthen the section on coherence by exploring potential synergies with the Anti Money Laundering Directive.The report should clarify to what extent invoice fraud is a problem that needs attention at EU level and the extent to which it is within the scope of the initiative.

(3) Given the envisaged repeal of parts of the Directive, and the consequences for the national legal systems, the report should strengthen the presentation of the arguments in favour of a Regulation, including by better demonstrating that the expected benefits will clearly outweigh any negative impacts on existing systems. This analysis should be informed by the views of Member States.

(4) The report should further develop the impact analysis of all measures, including combinations thereof. It should sufficiently assess all relevant significant impacts. In particular, it should:

- Provide more analysis on impacts and distributional effects of options on competition among the different types of payment service providers and discuss how the competitiveness of EU originating operators (compared to third country head quartered operators) may be affected.
- Analyse the impact on SMEs including undertaking the SME test. The analysis should include the differentiation of costs by size of businesses to be affected, in particular for the option on the extension of the provision of IBAN/name verification.
- Assess the impacts on Member States by identifying those that will face significantly higher (or lower) implementation costs, including those resulting from the repeals of parts of the Directive.
- Explain how consumers will be impacted. This should include the analysis of possible additional fees (for the IBAN verification service) and any cost past through as well as the impact on fundamental rights of consumers.
- Analyse macroeconomic impacts given the importance of retail payments for economic activity.

(5) The report should better integrate the flanking measures into the analysis. It should link them more clearly with the problems and objectives and consider presenting them as horizontal measures part of all relevant combinations of options. It should explain whether there are any significant impacts resulting from those measures and, if there are, they should be assessed and quantified to the extent possible. In particular, this should include the quantification of the impact of simplification as a result of the integration of the Second e-Money Directive to PSD2, as part of the One In, One Out approach.

2

(6) The report should include an overview of the costs and benefits of each option per problem area (including combinations thereof) and provide more detail on the scoring used in the comparison of options tables. It should ensure that the current scores bring out clearly how the different combination of measures compare to individual measures. For instance with respect to the problem area fraud, it should clarify what the additional effect of their combination would be, since most of the individual measures already seem to deliver maximum performance on all assessment criteria.

(7) The report should better assess the combined effect of and synergies between the preferred measures identified per problem area. It should further discuss proportionality of the proposed measures using the results of the granular cost benefit analysis.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact assessment accompanying the prososal for a Regulation on payment services in the internal market, repealing Directive 2015/2366 on payment services in the internal market, and the proposal on licencing and supervision of payment institutions and Electronic Money Institutions, repealing Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions, and amending Directive 98/26/EC on settlement finality in payment and securities settlement systems.
Reference number	PLAN/2022/892, PLAN/2022/1630
Submitted to RSB on	06 February 2023
Date of RSB meeting	01 March 2023

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Reduction of payment fraud	The combined effect of the proposed anti-fraud measures can be anticipated as a reduction of a few percentage points in APP fraud (for example, a 10% reduction would represent €32 million of benefit annually). Wider use of SCA will also contribute to a reduction in all payment fraud.	The value of APP fraud in 2020 for all SEPA euro credit transfers in the EU is estimated by Commission services on the basis of EBA data at approximately € 323 million.
Better legal framework for Open Banking	The proposed changes are intended to support further growth of the OB sector in addition to the projected growth with no legislative change (baseline). Assuming the changes can increase the existing growth trend of Open Banking by, for example, 10%, it would create an additional €2 bn of OB market value by end 2027.	Various market research projects OB will grow. Some research explicitly include legislative changes in their predication, others do not. Taking these reports as a baseline, the EU OB users would grow from 15.5 mln users end 2021 to about 60 mln end 2024 and 80 mln end 2027. OB market value is estimated to increase from €5.5 bn end of 2021 to €11 bn end 2024 and €20.5 bn end 2027. With TPPs reported to have made additional revenues (recurring) of €1.9 bn for 2021 (35% of €5.5 bn, based on €1.6 revenues reported for 2020). Cumulative OB benefits, using the same assumptions as for users and market value, is estimated to be around 12 bn € end of 2024 and 30 bn € by 2027. See also chapter 7.2
Fairer competition between banks and non-bank PSPs	Many PIs and EMIs will be able to offer credit transfers, including instant payments, to customers for the first time.	
Better enforcement and harmonised application of PSD2	Difficult to quantify. Qualitative benefits will include: • A detailed and coherent set of rules for entities subject to EU payments legislation	This topic combines the measures discussed in the main impact assessment under "improvement of enforcement and implementation" and also the technical clarifications described in Annex 7.

	• Further removal of fragmentation including of gold-plating in the Internal Market • Lower compliance costs over time (as the EU payments legislation is to large extent clear, up to date and self-explaining and therefore easy to apply) • Higher legal certainty • Reduction in waiting time for action by PSPs with complaints to NCAs.	
Greater consumer rights and information	Not quantifiable	See Annex 10
Merger of regimes for Payment Institutions and E-money Institutions	Administrative cost savings for PIs and EMIs	These two regimes will be combined and simplified (see Annex 8)
Indirect benefits		
A wider range of better priced payment services available	Not quantifiable	In particular, new OB services and new services from PIs and EMIs
Reduced costs for PSP of fraud complaints handling	Not quantifiable	
Reduced complaints for NCAs to handle	Not quantifiable	

II. Overview of costs – Preferred option				*II. Overview of costs – Preferred option*			
		Citizens/Consumers		Businesses[1]		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Fraud reduction	Direct adjustment costs	None	Possible fees as users of the IBAN verification service	*IBAN verification:* for those PSPs not already obliged to offer this service, about 1200-1300 in number, in the area of a few hundred thousand euro, possibly less.	*IBAN verification:* for those PSPs not already obliged to offer this service, in the range of several thousand € and € 350 000, depending on	None	Possible fees as users of the IBAN verification service

[1] This category includes both business users of IPs and the PSPs.

					the size of the PSP and the extent to which costs are recovered through fees. Costs of exchanging data on fraud (voluntary)		
	Indirect costs	None	None	None	ASPSPs: possible compensation to payers in cases where IBAN/name check failed	None	None
	Enforcement cost	None	None	None	None	None	None
Improvements to user rights	Direct adjustment costs	None	None	None	Min. 123m €. Education campaigns for customers on their rights/ obligations, improving financial literacy, and alerting on fraud schemes. Cost based on the VVA/CEPS' study estimates for ASPSPs.	None	None
	Indirect costs	None	None	None	None	None	None
	Enforcement cost	None	None	None	None	None	Cost of complaints handling for NCAs
Open Banking improvements	Direct adjustment costs	None	None	For some ASPSPs, cost of upgrading OB APIs or of creating new dedicated interfaces where there is none (options 2a+2d), estimated at	Any maintenance costs of a dedicated interface should be offset by the fact that a fallback interface is	None	None

				€190 ml net. For all ASPSPs, cost of creating permissions dashboards, total cost from €12ml to €48ml For TPPs, total cost of adapting to API changes up to €26 ml, offset by savings from better APIs and no fallback	no longer required Limited maintenance cost of permissions dashboards		
	Indirect costs	None	None	None	None	None	None
	Enforcement cost	None	None	None	None	None	Cost of complaints handling for NCAs
Better enforcement and application in Member States	Direct adjustment costs	None	None	None	In some cases, higher penalties for breaches	Adjustment costs of familiarisation with new rules (for example Open banking), and recruitment of extra staff in some cases	Enforcement of compliance; costs for NCAs for human resources e.g. for maintaining specialised teams supervising the various clarified provisions on open banking and fraud prevention, possibly offset by fees levied to the supervised entities. Possible 10% rise in cost of supervision (estimated by the VVA/CEPS study about €28m/€30m per year EU-wide)
	Indirect costs	None	None	None	None	None	None
	Enforcement cost	None	None	See above	None	See above	See above

7

Non-bank PSP access to payment systems	Direct adjustment costs	None	None	For payment system operators, cost of risk assessment and admission procedure for PIs and EMIs	For payment system operators, ongoing monitoring of new participants	For central banks as payment system operators, cost of risk assessment and admission procedure for PIs and EMIs	For central banks as payment system operators, ongoing monitoring of new participants
	Indirect costs	None	None	None	None	None	None
	Enforcement cost	None	None	None	None	None	For NCAs, cost of enforcement
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	None	None	One-off implementation costs in the ranges given above	Recurrent implementation costs in the ranges given above		
	Indirect adjustment costs	None	None	None	None		
	Administrative costs (for offsetting)	None	None	None	None		

Electronically signed on 03/03/2023 11:19 (UTC+01) in accordance with Article 11 of Commission Decision (EU) 2021/2121