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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	France's Non Paper: Treatment of Digital Wallets

TREATMENT OF DIGITAL WALLETS

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The framework for the provision of payment services needs to be up to date regarding the consumers' payment habits to ensure sufficient consumer protection with a coherent framework and adapted supervision of new players.

During the last decade, a significant shift in terms of payment habits has emerged through the **emergence of digital wallets**, that allows a consumer to tokenize his/her payment card for the purposes of online or proximity payments.

According to a study on the application and impact of PSD2[1], "*payments via digital wallets experienced a significant growth from close to 0% to* ***an average of 14% of the market for digital payments.*** *Sweden and the Netherlands are the two countries with the highest penetration rate as of March 2022 (25.3% and 24.2% respectively)*". The last *SPACE* study of the ECB[2] has emphasized that in 2024 for online payments, **the share of payments wallets and mobile apps was 29%.** This trend towards increasingly widespread adoption of digital wallets is set to continue over the coming years.

However, in spite of this growing adoption for both online and PoS payments, **digital wallets providers are not considered as providing payment services within the meaning of PSD2 and thus do not qualify as payment institutions**. These players are currently only **under the light oversight of the ECB under the PISA framework**[3], without any right of on-site or off-site inspections nor sanctions. Given the importance taken by digital wallets in payments and the fact that **the predominant digital wallets providers are non-EU actors**[4], **this oversight framework is clearly insufficient**.

Digital wallets providers should be considered based on their specific role: they don not process any payment flow, do not open any payment account to users and are considered

[1] European Commission: Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Bosch Chen, I., Fina, D., Hausemer, P., Henžel, A. et al., *A study on the application and impact of Directive (EU) 2015/2366 on Payment Services (PSD2)*, Publications Office of the European Union, 2023, **https://data.europa.eu/doi/10.2874/996945**

[2] ECB, Study on the payment attitudes of consumers in the euro area (SPACE) – 2024, December 2024.

[3] See the Eurosystem oversight framework for electronic payments (PISA) published in November 2021.

[4] Google Pay, Samsung Pay, Apple Pay.

today a technical service providers (TSPs). However, unlike other TSPs, they provide a service to payment service users who are not aware of the role played digital wallets that are not banks nor payment institutions, and payment service users are unaware of their rights.

We see a clear case for including digital wallets in the payment regulation for several reasons: (i) they should be monitored for IT and cyber reasons given their growing importance, (ii) they should have clear obligations to avoid fraudulent payment cards tokenisation i.e. by another person that the legitimate holder of that card[5]. Similar rules have been provided in other jurisdictions such as the US[6].

We do not fully agree with the the assertion that "So-called digital 'pass-through wallets', involving the tokenisation of an existing payment instrument, for example a payment card, are to be considered as technical services and should thus be excluded from the definition of payment instrument". We have clear doubts about the consistency of such assertion with the case law of the ECJ[7].

Furthermore, the current proposal only focuses on digital wallets in their interactions with PSPs, for outsourcing (see Article 87 PSR the drafting of which is very large and can raise side-effect issues) or for their liability for failure to support the application of strong customer authentication.

We consider that digital wallet providers should be included in the current PSD3/PSR proposal. The review clause mentioned in Article 43 (1) PSD3 requires the Commission to submit a report on the appropriateness of the scope of this Directive, in particular regarding the possibility of extending it to certain services, including the operating of digital wallets five years after entry into force of PSD3 is too far away.

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[5] This should be distincted from antitrust action undertaken by the Commission regarding Apple Pay, see the press release of January 19th 2024 : Commission seeks feedback on commitments offered by Apple. This should also be differentiated from Digital Market Act (DMA) that provides specific obligations for gatekeepers.

[6] The Consumer Financial Protection Bureau (CFPB) has adopted a guideline in November 2024 (CFPB Finalizes Rule on Federal Oversight of Popular Digital Payment Apps to Protect Personal Data, Reduce Fraud, and Stop Illegal "Debanking" | Consumer Financial Protection Bureau) that imposes supervision and ad hoc obligations – including reporting - for digital wallets providers.

[7] ECJ, 11 November 2020, C-287/19, ECLI:EU:C:2020:897 ;

Our proposal introduces a notification requirement for digital wallet providers to allow competent authorities to maintain a better overview of the market and of services provided by these actors (as well as of associated risks).

The aim of this notification is also to allow national competent authorities to monitor compliance with applicable regulatory frameworks (such as digital wallets providers' obligations regarding strong customer authentication, see Article 87 PSR or other obligations to be specified).

Specifically, service providers carrying out digital wallet should report at least annually to the competent authority on the services offered, statistical data on the processed payment transactions and fraud.

These statistical data would complement the reporting requirements of payment service providers on fraud laid down in Article 82 PSR (Article 96 PSD2) and should be transmitted to the ECB and EBA by NCAs.

Article 91 (3) PSR provides the competent authorities with the powers to:

- require information from (inter alia) technical service providers
- conduct all necessary investigations of these persons
- conduct all necessary inspections at the business premises of these persons.

Introducing a definition of digital wallet providers would also be useful in order to mark out these actors, for which Article 38a PSD3 (i.e., a duty of notification) will apply.

Modifications in the Payment Services Regulation (PSR):

- **Article 2 (2) PSR – Scope**

2. This Regulation does not apply to the following services:without prejudice to Article 23(2), and Articles 58 ~~***and***~~***,*** 87 ***and 91(3)***, services provided by technical service providers***, including digital wallet providers;***

- **Article 3 PSR – Definitions**

For the purposes of this Regulation, the following definitions apply:

(56) 'digital wallet' means a service by a digital wallet provider contracting with a payer, distinct from the issuing payment service provider of the payment instrument, which consist in storing the payer's payment instrument on an electronic device in order to facilitate the initiation of payment transactions based on that instrument, without the service provider entering at any time into possession of the funds to be transferred;

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Modifications in the Payment Services Directive (PSD3):

- **Article 2 PSD3 – Definitions**

For the purposes of this Directive, the following definitions apply:

(33a) 'digital wallet' means a service by a digital wallet provider contracting with a payer, distinct from the issuing payment service provider of the payment instrument, which consist in storing the payer's payment instrument on an electronic device in order to facilitate the initiation of payment transactions based on that instrument, without the service provider entering at any time into possession of the funds to be transferred;

- **Article 38a PSD3 – Digital wallets [New provision]**

1. Member States shall require providers of digital wallet referred to in Article 2(2) of Regulation XXX [PSR] to send a notification to competent authorities before providing their services. This notification shall contain a description of the services offered and a description of the internal control mechanisms, tools and processes that will be used by the digital wallet provider.

On the basis of this notification, the competent authority shall take a duly motivated decision on the basis of assessment criteria.

2. Member States shall require the digital wallet provider to report at least annually to the competent authority on the services offered and to provide statistical data on the processed payment transactions and fraud. Competent authorities shall provide the EBA and the ECB with such data in an aggregated form.

3. The EBA shall develop draft regulatory technical standards specifying the information to be provided to the competent authorities in the notification and in the annual report referred in paragraphs 1 and 3, and the assessment criteria mentioned in paragraph 1.

4. Member States shall designate competent authorities responsible for the notification and supervision of the digital wallets providers.

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