

EBA CLEARING's response to the European Commission's Targeted Consultation on the review of PSD2¹

The European Commission (Commission) conducted a targeted consultation on potential revisions to Directive (EU) 2015/2366 on payment services in the internal market (Payment Services Directive – PSD2).²

EBA CLEARING has submitted a response raising the following points:

- **PSD2 increased the interest in developing innovative payment solutions, which in turn contributed to the development of instant payments.**
 - Instant payments, based on the non-mandatory SCT Inst Scheme, have witnessed a rapid ramp-up with an average of EUR 1 billion and an average of 1.7 million transactions being processed daily in RT1 alone.
 - However, it is important to note that the success of SCT Inst should not be measured in the percentage of migrated SCT transactions, but rather in the percentage growth of SCT Inst transactions that have enabled competitive European payment solutions.
 - SCT continues to provide a low-cost, very robust, competitive payment solution fit for many use cases. In EBA CLEARING's community view, attempts to accelerate the migration of bulk/batch SCT payments to SCT Inst would increase risks and costs, and distract resources from building innovative European payment solutions that could truly benefit from specific SCT Inst characteristics, such as real-time settlement including time-out controls.
- **It would be inappropriate to add "operating payment systems" to the definition of "payment service" in PSD2**
 - The operation of payment systems is already regulated under the ECB Regulation (EU 795/2014) on Oversight Requirements for Systemically Important Payment Systems (SIPS Regulation), the Revised oversight framework for retail payment systems, and the Directive 98/26/EC on settlement finality in payment and securities settlement systems (Settlement Finality Directive – SFD).
 - The SIPS Regulation and the Revised oversight framework for retail payment systems set out detailed risk-based rules with which system operators must comply, as well as sanctions for non-compliance.

¹ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/consultations-banking-and-finance/targeted-consultation-review-revised-payment-services-directive-psd2_en

² Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC

- These frameworks are based on the Principles for Financial Market Infrastructures (PFMI) issued by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) in 2012. The PFMI constitute a global baseline for the oversight of payment systems, on which the industry has relied since 2012. If the EU were to deviate from the PFMI by imposing a different set of rules on payment system operators, this would greatly hinder the industry's efforts to provide enhanced cross-border payments.
- Similarly, the Commission's proposal to remove the exclusion of SFD-designated systems from Article 35.2(a) could create confusion or conflict between: (1) PSD2; and (2) the SIPS Regulation/PFMI, given that the latter also impose requirements regarding the access and participation criteria of payment systems.
- **It is not necessary to amend the provisions on the execution time for one-leg or two-leg payment transactions, or the provisions regarding refunds.**
 - EBA CLEARING supports the G20's objective to increase the speed of cross-border payments, as piloted by the CPMI and the Financial Stability Board (FSB). Decreasing the current maximum execution time for payments within the EU could contribute to achieving this target (75% of payments to be executed in less than one hour).
 - Nevertheless, not all payments require real-time delivery, and it is equally important to continue to develop and enhance non-instant payment systems, in line with the continued demand for such systems. In addition, an overemphasis on speed can be detrimental to resilience and cost efficiency and distract resources from the development of innovative solutions that would leverage existing instant payments systems.
 - For one-leg transactions, EBA CLEARING considers that EU action is not necessary. One-leg transactions are already processed in a resilient and liquidity-efficient manner. There are efficient mechanisms to support the G20's Targets on cross-border payments, such as interconnecting existing payment systems in different currency corridors, that do not require legislative action but can be supported, for example, through regulatory harmonisation of compliance requirements.
 - Regarding refunds, the finality and irrevocability of credit transfers is a competitive advantage, as compared to other payment instruments, and is valued by SEPA credit transfer scheme adherents. SEPA payment schemes offer recall processes, which fulfil the same objective as refunds.