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A quick scan of the proposed revised payment package: the EU's new regulatory approach for payments.

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With the needs and demands of the market changing in quick succession, it is important that the payment services regulatory framework evolves to be fit for purpose. The revised Payment Services Directive (Directive (EU) 2015/2366), also known as PSD2, is the current legislative backbone of the payment services framework. It has many benefits, including increasing and strengthening consumer rights and enabling innovation and competition for new market players.

Despite the benefits, however, there remain challenges for market participants, notably:

- The substantial costs associated with Strong Customer Authentication (SCA) implementation for Account based payment services providers (ASPSPs), Account Information Service Provider (AISPs) and Payment initiation services providers (PISPs);
- The lack of an established common Application Programming Interface (API)standard for data access and frictions in the Payment Service User's (PSU) online journey.

On 28 June 2023 the Commission published it proposed rules for data access in financial services, including an open finance framework (OFF), PSD3 proposal and an accompanying Payment Service Regulation (PSR). Once through the EU legislative process, and finalised, each EU/EEA country will be given a deadline to transpose PSD3 into national law. All proposals are unlikely to become applicable before mid-2026.

Who is in scope?

- Payment service providers (PSPs) (e.g., banks, pa7ment institutions (PIs), and electronic money institutions (EMIs);
- Firms operating in the EU payments sector (e.g., card schemes and providers of technological services to PSPs); and
- Merchants, particularly providers of unregulated cards and/or e-commerce services.

What changes will come with the proposed PSD3 and PSR?

The upcoming PSD3 and PSR is expected to provide further regulatory guidance on the use of open banking and on account to account (A2A) payments (areas which are currently not covered by PSD2). Similar to card transactions, A2A payments have benefits for merchants as well as customers, including the opportunity to increase accessibility, lower costs associated with payment acceptance, provide instant settlement functionalities, increase sales and ensure security for all parties involved.

A new Payment Services Regulation (PSR)

The existing PSD2 is set to be split into two EU legislative acts, with the creation of PSD3 and a new Payment Services Regulation (PSR). The new PSR will contain directly applicable rules for EU Member States, including in the areas of SCA, Information Requirements, Rights and obligations related to the use of payment services, including Open Banking.

These include:

- Enabling the use of just one of the 3 elements (knowledge; possession and inherence) for SCA twice provided independent, rather than the current 2 elements needed, and providing for the EBA to extend the definition of 'inherence' in SCA, to environmental and behavioural characteristics.
- Strengthening obligations for running APIs, which includes requirements on functionality and performance. Account based payment services providers (ASPSPs) will need to offer customers a dashboard to manage their permission arrangements.
- Strengthening de-risking requirements, including grounds for refusing an account to be opened or closed based on serious risks and the need for decisions to be set out in writing. It will also cover de-risking provisions that cover payment institutions managed by agents and distributors.

What changes with PSD3? - high level summary

	Proposed changes
E-Money Directive (EMD)	▪ The EMD will enter into the scope (e-money will be treated as one of the PSD services and the existing EMD and PSD2 will be repealed).
Authorisation regime	▪ The authorisation regime will be updated to align with PSD and EMD ▪ Payment Institutions (PIs) and e-money institutions (EMI) will be required to seek authorisation within 24 months.*
New EU regulation	▪ PSD3 will have an accompanying EU regulation, the Payment Services Regulation (PSR).
Clarification of territorial scope	▪ Territorial scope will be clarified to align to the EBA's view that the place of provision of an acquiring service is determined by the location of the merchant.
Revised authentication approach	▪ Addresses concerns around strong customer authentication approaches (SCA) e.g., Payment Service Providers (PSPs) will need to ensure all users can benefit from various methods to perform payment services online
Combats and mitigates payment fraud	▪ New approaches to address security risks e.g., enables PSPs to share fraud-related information amongst themselves
Safeguarding provisions	▪ Similar provisions regarding safeguarding of client funds will apply for both PIs, PSPs and EMIs. ▪ Safeguarding provision has also been extended to include the evaluation of the impact of the safeguarding of customer funds by PIs
Settlement Finality Directive	▪ Links to the Settlement Finality Directive, providing the option for a central bank to allow central bank accounts to be used for the safeguarding of client accounts (for this purpose only and at the discretion of the central bank).
Alignment of definitions	▪ The definition and rules on distributors are aligned with those of agents, automatically removing the distinction.
Role of the EBA	▪ EBA role strengthens when it comes to dispute resolution between national competent authorities
Open Finance	▪ Moves from Open banking to Open Finance - leading to access to other types of financial data rather than access to payment accounts data
Fairer competition and level playing field	▪ Levelling the playing field further between banks and non banks e.g., allowing non-banks payment service providers access to all EU payment systems with appropriate safeguards
Prudential requirements	▪ Adjusts the prudential requirements, notably, in relation to initial capital, own funds, the use of professional indemnity insurance, proposal for recovery and wind down for significant payment institutions and possible consolidation group supervision

* Authorisation process needs to be completed 30 months after PSD3 enters into force

What should firms consider now?

- PSPs and E-money institutions (EMIs) will need to plan for a potential increase of regulatory capital, should it increase in line with inflation as proposed.
- PISPs and AISPs will need to revisit the PSD3 regulatory capital regime and consider whether they should seek cover using a professional indemnity insurance.
- Payment Institutions (PI) or EMIs will need to seek a reauthorisation within 24 months of PSD3's application.
- PSPs, operating in the EU and the UK, will need to consider the implications of divergent regulation, with a continuation of the existing theme arising in SCA. In this sense, Firms will likely need to implement notably different approaches to authentcation and access.

How HVG Law can help

HVG Law can assist a broad range of PSPs, from credit institutions to payment institutions, in assessing the impact of regulatory change upon existing and proposed product suites, identifying the implications and transition required to provide PSD3 compliant services in future.

Disclaimer: The views reflected in this article are that of the authors and do not necessarily reflect the views of HVG Law.

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