



PSD2 and other European legal developments

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Overview

EU legal framework covering retail payments

- SEPA Regulation
- Payment Services Directives 1 and 2
- Interchange Fee Regulation
- Payment Accounts Directive
- European Accessibility Act (proposal)
- NIS Directive
- eIDAS

A lot of initiatives have been launched by Authorities to harmonise European legislation covering retail payments

- Regulations
- Directives
- Recommendations & Guidelines
- Green & White Papers



- The field of Payments is permanently changing and legislation has to adapt
- This is a slow process and friction can arise between what's possible and what's desirable
- Always needed to manage with well-balanced and sound arguments



Legal intervention: Yes or No?

EU solution: proportionate regulation

Activity ► Risk ► Regulation



Single Euro Payments Area (SEPA)

SEPA = (the vision of) an area in which economic actors can make and receive payments in euro, nationally or across borders under the same basic conditions, rights and obligations, regardless of their location

Objective: to advance European integration with a single euro retail payments market, which will drive competition and innovation



SEPA consists of:

- one currency, the euro
- one set of euro payment instruments – credit transfers, direct debits, and payment cards
- efficient processing infrastructures
- common technical standards, common business practices
- a harmonized legal basis: Regulation number 260/2012 (amending Regulation No 924/(2009))

Payment Service Directive 1

Adopted on 13 November 2007

Implementation in national law by 1 November 2009
(through transposition)

Legal harmonisation for making SEPA possible



Objectives PSD 1

1. Enhance competition → Definition of Payment Institutions
2. Increase market transparency → Requirements on information and transparency
3. Standardise rights & obligations → Rules on the relation between user and provider of payment services

PSD 1

Objective: integration of payment services markets through the harmonization and coordination of various national payment services regulations, on:

- Prudential supervision
- Market entry
- Transparency and information requirements
- Rights and obligations of various payment services users and suppliers

Introduction of non-bank payment service providers (PSP's), i.e. **payment institutions** (as a new concept). Once a PSP has a license, it is allowed to provide payment services in the EU.

Over 300 PSP's in Europe, 45 in the Netherlands and 17 in Portugal (excluding money remittance institutions), excluding exempted institutions. PSP's mainly active in merchant acquiring business (platforms for acceptance of electronic payments, processing payments and pay-outs, reporting services, fraud and risk management, technical support).

Scope PSD 1

Territory limits of application: EEA

Currency limits: euro or other EEA currency

5 categories of payment services:

1. Cash deposit & withdrawal services
2. Execution of payment transactions
3. Issuing & acquiring of payment instruments
4. Money remittances
5. Intermediary payment services

Payment Institutions

- Legal person granted authorisation... to provide and execute ***payment services***;
- May undertake non-payment services as well, but cannot issue e-money or accept deposits;
- May grant credit subject to certain conditions;
- May undertake safe-keeping activities

Information requirements

Information requirements:

- Apply to all PSP's operating in covered region;
- Before, during and after payment execution.

Distinction between:

- Successive payment transactions; and
- Single payment transactions.

Information requirements

- Single payment transactions -

Info to the payer:

Info to the payee:

– Prior –

Information needed
Execution time
Charges
Exchange rate

Reference, payer
Amount
Charges
Exchange rate
Credit value date

– After –

Transaction Identifier, payee
Amount
Charges
Exchange rate
Date of receipt order

Rights & obligations

Obligations for the user:

- Act according to the contract
- Take reasonable safety measures
- Direct notification of loss/theft

Crediting & value dating:

- Crediting: D+1
- Credit value date: D+1

EU legislative process PSD 2

- Institutions involved: European Commission (EC), European Council of Ministers (= 28 Member States), European Parliament (EP)
- Process flow + timeline:
EC Green Paper --> EC proposal --> EP proposal and Council proposal --> Trilogue --> final approval --> publication --> entry into force (with special cases)
For PSD2: GP 2012 --> EC June 2013 --> EP + Council 2014 --> Trilogue + final approval 2015 --> publication January 2016 --> implementation January 2018
- Regulation = legally binding; Directive = to be implemented in national law via transposition (but: exemptions or Member State options)

Payment Services Directive 2 (2016) a 'game changer'

- PSD2 has been introduced in view of technical innovation, growth in electronic and mobile payments and emergence of new types of payment services
- Objectives: to enhance PSD1 features and further contribute to the internal market, to promote level playing field, to ensure a high level of consumer protection and security of payments, lower prices for payments, to promote common technical standards and interoperability
- Basically, the same structure and same topics as PSD1 but covering new issues: expansion of scope to one-leg transactions, A2PA and requirements for Strong Customer Authentication

PSD2 – why is it a 'game changer'?

Two new types of payment institutions under PSD2:

- Payment initiation service providers (PISP's)
- Account information service providers (AISP's)
(also known as Third Party Providers, TPP's)

Both PISP's and AISP's, provided the payment services user gives explicit consent, can get access to the bank account (Articles 66 and 67). Various conditions apply to PSP and bank respectively, on e.g. processing of payments or information, Strong Customer Authentication, secure communication, use of bank credentials.

Note: banks obliged to give access, if consumer consents. No contracts needed.

PSD 2 – Acces to the account



Article 66

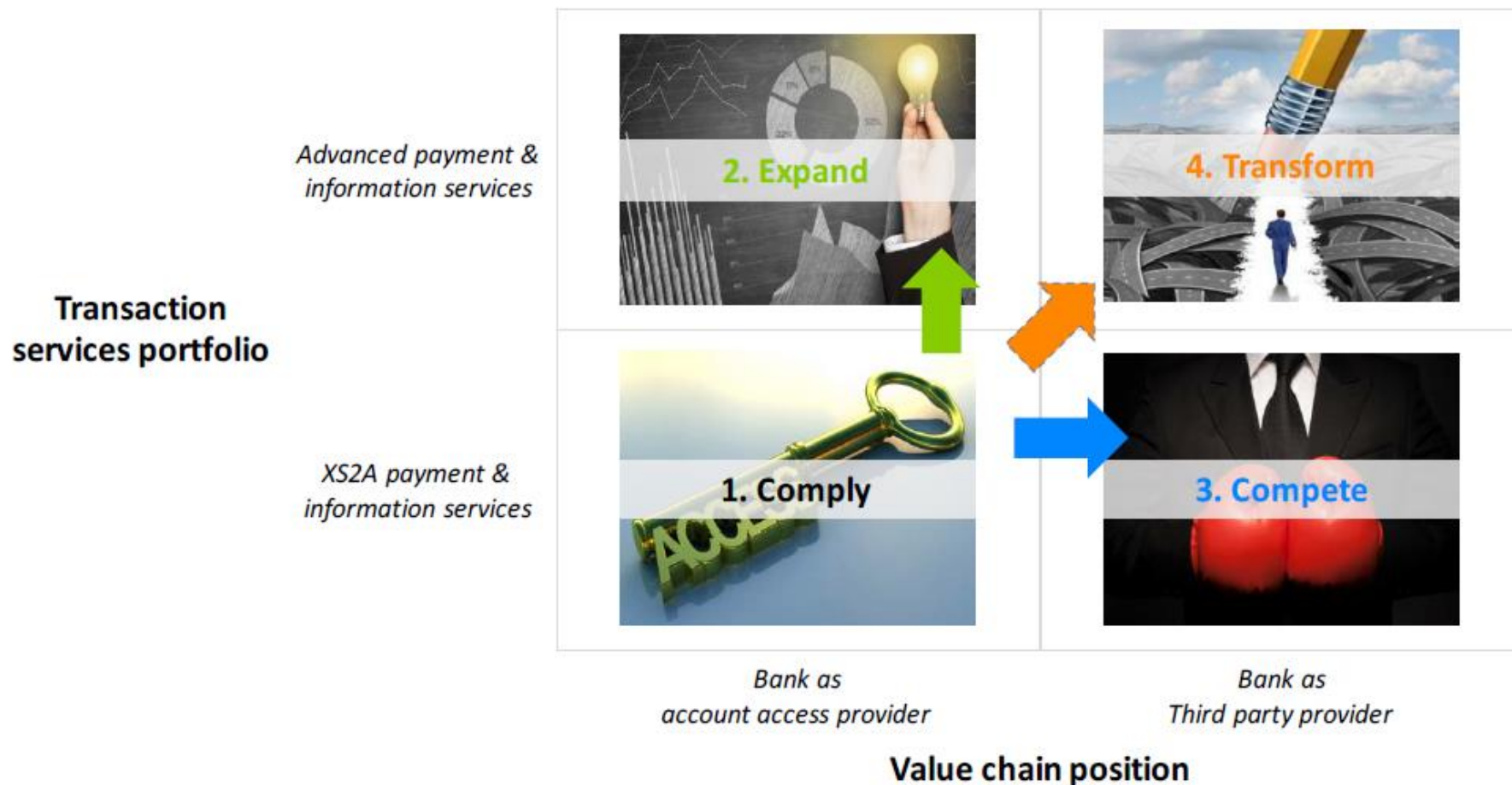
Rules on access to payment account in the case of payment initiation services

1. Member States shall ensure that a payer has the right to make use of a payment initiation service provider to obtain payment services as referred to in point (7) of Annex I.....

Article 67

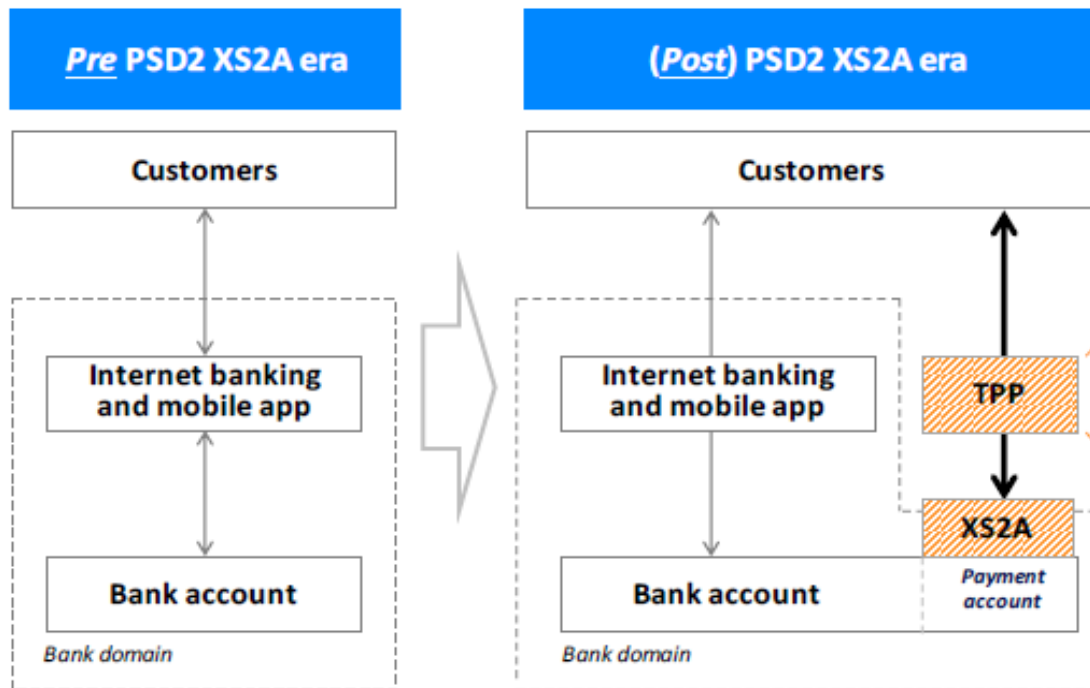
Rules on access to and use of payment account information in the case of account information services

Banks are at a strategic cross-road: four generic business strategies to consider



Source: Innopay analysis, [Innopay Blog XS2A strategies](#), [Innopay Blog Bank-Fintech collaboration](#)

PSD 2 – Access to the account (XS2A)



PSD2 – implications of access to the account (1)

- Many types of companies can apply for authorization to become TPP
(banks, payment institutions, major retail companies, telco's; fintech, IT-providers, wallet providers, BigTech e.g. GAFA)
- More competition on the consumer/payer side --> potentially lower prices for payments
- Banks may loose contact with clients (disintermediation)
- New payments methods, next to credit cards, iDEAL, Paypal, wallets, etc
- New technical means of contact between bank and TPP, via Applied Programming Interfaces --> new & more complex 'ecosystems'
- Opportunity for banks to renovate their IT-systems and do away with legacy

PSD2 – implications of access to the account (2)

- Various sector alternatives → interoperability
- Security implications, when using bank credentials? (phishing, man in the middle attacks)
- Privacy

Note: SCA and other IT technical requirements need to be developed into Regulatory Technical Standards by the European Banking Authority (EBA) and given back to the EC

PSD2 : banks say 'disrupt or be disrupted', but some additional qualifications

Payment Accounts Directive (2014)

To foster financial inclusion

- Access to payment accounts (by customers)
- Basic bank accounts
- Comparability of payment account fees
- Payment account switching

PAD – what needs to be done (1)?

Comparability of fees connected with payment accounts

- List of the most significant services linked to a payment account and subject to a fee at national level
- Standardized terminology
- Fee information document and glossary
- Statement of fees
- Comparison websites

PAD – what needs to be done (2)?

Switching

- Switching service
- Fees connected with the switching service
- Information about the switching service

Situation in the Netherlands: the Dutch banking sector initiates an automated redirection service (Overstapservice) since 2004.

PAD – what needs to be done (3)?

Access(ibility) to payment accounts

- Non-discrimination
- Right of access to a payment account with basic features
- Characteristics of a payment account with basic features
- General information on payment accounts with basic features

In NL, the Dutch banking sector conducts the Covenant Basisbankrekening since 2001. Due to the PAD this will get a legal basis in the Dutch Financial Supervision Act in 2016.

In PT, there's is a concept of "minimum services account"

Proposal European Accessibility Act (EAA, 2015) Accessibility for all

UN Convention on the Rights of Persons with Disabilities (UN CRPD, 2006)

- Art. 9 UN Convention states that persons with disabilities should be able to live independently and to participate fully in all aspects of life on an equal basis with others.

EAA aims to contribute to improve the proper functioning of the internal market and remove and prevent barriers for the free movement of accessible products and services.

EAA will provide for a common EU definition and implementation framework for accessibility requirements of certain products and services

EAA – what will it cover

The EAA will cover the following products and services:

- Computers and operating systems
- ATMs, ticketing and check-in machines
- Telephones and smartphones
- TV equipment related to digital television services
- Telephony services and related equipment
- Audiovisual media services
- Services related to air, bus, rail and waterborne passenger transport
- Banking services
- E-books
- E-commerce

EAA and platform Pay-Able

EAA doesn't cover payment terminal (POS-terminals)

Platform Pay-Able

- Is an initiative of Eye Association Netherlands (Oogvereniging), as part of the Working Group Accessibility of the Dutch National Forum on the Payment System, and the European Blind Union.
- has one goal: barrier free access to payment terminals for everyone in Europe
- believes that payment terminals should be designed following the principle of Design for All

Animation Pay-Able showing the problem

Reachability of payment services



Availability of payments

- Time critical payment transactions ..
- ...should have an availability of 99,88% as of 2018.....
-in the 'high demand' period of the day....
- Future link to the launch of Instant Payment solutions



Summary

- SEPA-regulation and PSD (1 & 2) are the legal anchors of the internal payments market
- EU legislator is continuously trying to improve the European payments market by enhancing integration
- PSD2 comes a game changer
- PAD stimulates to financial inclusion
- EAA accessibility for all
- NIS and eIDAS as support for security and identification

Any questions?

