THE EUROPEAN ASSOCIATION OF CORPORATE TREASURERS

5 July 2022

EACT response to the Consultation on the review of the EU's payment rulebook (PSD2)

Question 1 – Has the PSD2 been effective in reaching its main objectives?

The European Association of Corporate Treasurers ("EACT") brings together national treasury professional associations, representing over 6.500 companies across Europe.

Corporate treasurers use payment services for the conduct of essential day-to-day operations. Ensuring that the European payment landscape delivers the best possible outcomes in terms of safety, cost efficiency, innovation, and flexibility is key to our members.

In the years following the introduction of the PSD2 regime, the payment services market has become more competitive.

However, the roll out of PSD2 lacked consistency as some EU Member States have transposed the rules at different speeds and in uneven ways, creating grey zones in the legal requirements and adding to the costs and complexity for companies operating across different jurisdictions across the eurozone. PSD2 was largely focused on retail market – it is important that the review also focuses on companies' needs where the potential for transforming business-to consumer relationships is significant.

Question 2 – In your view, has the current PSD2 framework achieved its objectives in terms of meeting payment user needs?

An important issue for EU corporates has been the variety of interpretations of PSD2 by national regulators in relation to the treatment of payments and collection on behalf within corporates group payments and collection factories. While Recital 17 of PSD2 clearly states that an exemption should be granted for

payment orders on behalf of a group by a parent undertaking or its subsidiary for onward transmission to a payment service provider, Article 3n does not, and thus the transposition in certain jurisdictions has not reflected this exemption, creating legal uncertainties for European corporates. This uncertainty could affect the attractiveness of the EU to global businesses looking to locate their payment / collection factories.

Question 3 – In your view, has the current PSD2 framework achieved its objectives in terms of innovation?

The regulatory framework set by PSD2 has proven mostly fit to allow the adoption of new payment innovation technologies. The appearance of new entrants in the market is a welcome development to enable driving down costs and improve services. The regulatory framework needs strengthening and making more transparent to ensure that lessons from Wirecard are embedded.

Question 6 – In your view, has PSD2 achieved its objectives in terms of secure payments?

The introduction of Strong Customer Authentication (SCA) has led to a reduction in the number of frauds across the industry as two-factor authentication (2FA) has enabled a greater level of security. The communication on the new initiative could have been improved as it took time for consumers and businesses (especially smaller ones) to understand the process.

In the specific context of corporates using 2FA we would like to raise a specific point: 2FA is also/especially used in conjunction with a "Corporate Seal". The "Corporate Seal" is a contract is concluded between the bank and the corporate which obliges the corporate to comply with SCA and to check the identity of the

user. The advantage of the "Corporate Seal" is that the specific corporate staff members do not have to be the same natural person to conduct the business with the bank.
The bank retains the right to request the names of the authorised signatories at any time (declaratory). All payment orders received by the bank are considered sufficiently authenticated by the "Corporate Seal" and the upstream 2FA and the declaratory requests from the bank. SWIFT works according to the same principle with its bank members or with authorised corporates that use the SWIFT network for messaging within SCORE.
The possibility of agreeing on a "Corporate Seal" between corporates and the bank facilitates changing authorised signatories within the company without the bank being involved in the verification obligation and without the authorised signatory (user) having to be recorded in the banking systems (KYC). This increases efficiency between the bank and the corporate while upholding secure business practices.
However, under their transposition of AMLD, certain EEA jurisdictions, notably Norway, requires that the name and national ID of the bank must be provided for all transactions on bank accounts held in Norway, regardless of whether a "Corporate Seal" has been agreed between the bank and the corporate or whether the bank is already aware of the authorised signatories through KYC/onboarding.
This requirement is not only redundant, given the existence of "Corporate Seals", it also reduces the efficiency provided by the "Corporate Seal" approach. Furthermore, the approach from the Norwegian regulator differs the approach of the SWIFT network creating uncertainties with their compatibility and complicating the conduct of business.

Question 11 – Do you consider that the scope of the PSD2 is still adequate?
The treatment of payment/collection factories lacks uniformity in some EU jurisdictions which interpret the exemption of payments within a group very narrowly and understands it as only covering payment transactions within a group. Crucially, this interpretation does not allow for an extension of the payment exemption to payments from third parties to a group company or from a group company to a third party. Analysis from our members estimates that, for example, in the case of Germany, approximately 80 % of all German Companies would have to apply for PSP permission under the German transposition of PSD2 (ZAG) if it was not clarified in the EU Level 1 text (in the legal text, not only the recital). This would incur significant costs and the compliance with PSP requirement would be unfeasible for many smaller companies.
The use of Corporate Group In house Banks or Shared Treasury Services Centres (CGIHB/STSC) is a well-established way for corporates to centralise treasury operations for the purpose of increased cost-efficiency, risk reduction and simplified operations. The centralisation of payment processes within a group also facilitates the implementation of legal requirements and thus contribute significantly to the prevention of fraud or other misuse as well as the creation of transparency and the centralized control of the payment transactions of group companies.
These centres handle the management of internal and external payments for the group – this includes e.g. centralising payment execution for all the business units of a group (payments marked “on behalf of”) and/or operating directly on the group’s subsidiaries’ current accounts on their behalf using a software connection with the PSPs to initiate payments.
Since these services are provided to entities that are part of the same group, they should be excluded from the scope of PSD2, as argued by the wording of Recital 17 of PSD2. Specifically sentence 3 of Recital 17 PSD2 which refers to the allowance to operate a "collection factory" without the need for a licence.

The issue came to further relevance as the introduction of SEPA facilitates the creation of payment factories and enables the creation of pan-European collection factories, where the handling of all payments
transactions of a corporate group can be centralised, using the "payments or collections on-behalf of" (POBO/COBO) functionalities and introducing XML-tags such as "Ultimate Beneficiary" or "Ultimate Debtor" of SEPA payment schemes.
The restriction in some EU countries to the management and initiation of such transactions to PSPs would impede the pan-European group centralisation of payments and collections, one of the most strongly argued benefits for corporates arising from SEPA (see recent PWC report "Economic analysis of SEPA – Benefits and opportunities ready to be unlocked by stakeholders") and furthermore limit such a centralisation to the large corporate entities able to comply with obligations and sustain the compliance costs laid down in PSD2 for PSPs.
The review of the exemption should take into consideration that non-financial groups can provide and properly operate centralised cash management systems (and related services), including payment factories and related incoming and/or outgoing payments of a group entity that are centrally processed through another group entity.

Question 22 – Do you consider that PSD2 is applied consistently, and aligned with other related regulation?
Ensuring a more robust identification of payees is key to prevent fraud, money laundering, and improve KYC compliance. The lack of an additional identification procedures (e.g. name of payee for natural persons, Legal Entity Identifier (LEI) for legal entities and/or secure EU IBANs) in payment transactions could compromises PSD2's alignment with AMLD requirements.

Question 27.2 – For , are you of all one-leg transactions the opinion that currency conversion costs should be disclosed before and after a payment transaction, similar to the current rules for two-leg payment transactions that involve a currency conversion included in the Cross-border payments Regulation that are currently only applicable to credit transfers in the EU?
For transparency purposes we do not see any difference between one or 2 leg transactions concerning currency transaction costs applied to the transaction.

Question 30 – In your view, should the current rules on the scope with regard to rights and obligations (Art. 61) be changed or clarified?
The flexibility given to the Member States creates heterogeneity. The same payment instrument could be not usable with same microenterprise in different countries. For example, SEPA Direct Debit B2B is available to microenterprises in some countries and prohibited in others. In order to create a real single payment area the same kind of operators should operate in the same legal environment.

Question 31.1 – In your view, should the right of the payee to request charges be further limited or restricted (e.g. regarding "3-party-card-schemes") in view of the need to encourage competition and promote the use of efficient payment instruments?
Payees should have no right to request charges to payer for use of a specific payment method. Only discounts should be allowed.
Furthermore, the different application of current rules by different member states should be avoided.

Question 37.1 – In your view, should changes be made to the PSD2 provisions on liability and refunds?
The reference to weeks in art 77 is ambiguous, working days are better identified and this reduces disputes.

Question 40 – In your view, is the unique identifier (Art. 88 / e.g. IBAN or other) sufficient to determine the payment account of the payee or should, for example, the name of the payee be required too before a payment is executed?
The use of the IBAN as sole identifier for executing a SEPA payment exposes the payer to the risk that the payment will be executed to a payee different to the expected one, with possibilities of frauds. In fact, it guarantees that the funds are credited to the indicated IBAN without any control that the holder of the account corresponds to the beneficiary of the payment as indicated by the payer in the payment initiation message.
A solution to improve a better and more accurate identification of the payee is needed. The issue of fraud – and the impact on EU business of this fraud - is too big to not be acted upon. And public authorities have a role to play in finding an appropriate solution. It is not an easy fix -but we feel that without public authorities intervention – including with the advance of instant payments- the situation will become worst.
A solution to identification needs to meet the following criteria: it needs to have global reach (companies will make payments not only to European entities/ individuals but globally) ; it needs to work in the digital context (including by being machine readable); and it needs to be non-proprietary. Finally the solution should also seek to impose minimal costs on the end-users (those making the payments or receiving the payments) – in particular to take into account the very small micro-entities, the SMEs, etc.
Solutions need to be found for better identification in payments of both “legal entities” and for “natural persons”. The solutions are unlikely to be the same for those two – but that doesn’t mean they shouldn’t be worked on both.
When it comes to legal entities, we think some solutions already exist and would be worth being explored by the Commission. For instance, today the “Legal Entity Identifier” meets a number of the criteria outlined above (including being global, being open and non-proprietary, as well as being machine readable). It remains to be seen if it can meet the criteria of low-cost, easily accessible identification standard– but like with national identifiers provided by national business registers, there could be a role to play by EU public authorities to make the LEI easily and at an extremely low cost accessible to all EU legal entities (no matter their size).
None of the solutions to better identification in payments are “easy” or “straightforward” – they will require some public intervention – but the problem of fraud linked to identification is too important to not be dealt with by the EU authorities as they are reviewing their payments regulatory framework.