

PSD2 – Targeted Consultation

About Barclays

Barclays is a universal bank. We are diversified by business, by different types of customer and client, and geography. Our businesses include consumer banking and payments operations around the world, as well as a top-tier, full service, global corporate and investment bank, all of which are supported by our service company, which provides technology, operations and functional services across the Group. For further information about Barclays, please visit our website <https://www.barclays.co.uk>

Barclays Perspective

Main objectives

- Overall, we broadly agree that PSD2 has been effective in achieving its headline objectives, from stimulating innovation in payment services through the open banking provisions, to making payments safer and more secure through the Secure Customer Authorisation (SCA) framework.
 - **Stimulating innovation** - while we note that PSD2 has helped stimulate innovation, we stress the importance of innovation being market-led, rather than driven by legislation. Policymakers have a key role to play in facilitating innovation by removing barriers where appropriate. Actual innovation should be driven by the market.
 - **Competition and integration** – we suggest that PSD2 has improved competition, and the functioning, of the payments markets, and has improved customer choice. We note that lower fees are down to market competition rather than PSD2. We suggest an un-level playing field exists under PSD2, with players that do not offer payment accounts being able to access customers' payment account data, and no reciprocal ability for payment account firms to access customer data in other sectors.
 - **Customer protection** – we agree that PSD2 has helped protect consumers through removal of surcharges, clear and transparent information and terms, improved complaints procedures, and by helping tackle fraud. However, we note that while PSD2 is effectively tackling unauthorised fraud through the SCA framework, fraud has evolved and authorised push payment fraud is rapidly increasing. We note that PSD2 is not intended or designed to tackle APP fraud, and that APP fraud originates in other key sectors, e.g. online platforms and telecoms. We suggest that policymakers consider appropriate intervention in these sectors to help tackle and prevent APP fraud at its source. We would also note that PSD2's existing liability framework for fraud stemming from open banking PISP payments is too limited in scope. We therefore recommend that these provisions are reconsidered with a view to being extended.
 - **Costs and benefits of PSD2** – notwithstanding the above, we note that PSD2 created significant costs and implementation issues for industry, in particularly regarding the SCA and open banking frameworks, and we question whether the benefits outweigh these costs. We also note that PSD2 has resulted in a higher regulatory burden than PSD1.
 - **Enforcement** – we suggest that the NCA enforcement framework under PSD2 is proportionate, effective and sufficient to ensure rules are applied consistently and to impose sanctions where necessary.
- **Focus areas for PSD2 changes** - amendments to ensure new and emerging players are covered by PSD2, payment protections for PISP payments, and greater clarity regarding complaints processes related to open banking.

Title I: Subject matter, scope and definitions

- **Scope and definitions** – we suggest that the current geographical scope of PSD2 is appropriate and it should not capture transactions outside of the EU. However, we suggest the exclusion list should be amended to bring new and emerging types of providers into the PSD2 regime. We also suggest that policymakers should consider whether other types of firms – e.g. payment processing services, operating schemes and technical service providers – should be appropriately regulated if they are deemed to pose a significant stability risk to the payment system. We note that the definitions are still adequate.

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46. What is your opinion about the applicable value limit to single contactless payments (without SCA)?

- The 50 EUR limit should remain
- The limit should be lower than 50 EUR
- **The limit should be higher than 50 EUR**
- Don't know / no opinion / not applicable

46.1 what is your opinion about this cumulative EUR-limit for contactless payments (without SCA)?

- The limit of 150 EUR should remain
- The limit should be lower than 150 EUR
- **The limit should be higher than 150 EUR**
- Other
- Don't know / no opinion / not applicable

If you think the EUR-limit for contactless payments should change, please explain your views. 5000 characters.

We support an increase in the applicable value limit and the cumulative limit for contactless payments as we believe increasing the limits encourages economic growth and innovation. In addition, in case of the ability of PSUs to fix their own limit, liability should be clarified. It should be clarified how the cumulative limit will be set in case of a flexible limit set by the PSU, e.g. 3 times the set limit.

46.2 What is your opinion about the cumulative payments-limit for contactless payments (without SCA)?

- The limit to consecutive transactions (5 times) should remain
- The limit to transactions should be lower than 5 consecutive transactions
- The limit to transactions should be higher than 5 consecutive transactions
- Other
- Don't know / **no opinion** / not applicable

If you think the payments-limit for contactless payments should change, please explain your views. 5000 characters.

47. Overall, do you believe that additional measures are needed to combat/prevent fraud in payments, and to make payment service providers more secure/resilient?

- **Yes** /no
- Don't know / no opinion / not applicable

If yes, please explain your answer to question 47 and include drafting proposals for measures: 5000 character(s) maximum

As set out in Q5, we agree that PSD2 has been effective in relation to unauthorised fraud through the introduction of SCA requirements. However, since the introduction of PSD2 there has been a significant increase in authorised push payment (APP) fraud. With the volume and value of APP fraud increasing rapidly, this issue is a significant industry concern that is negatively impacting consumers both financially and emotionally. We note that PSD2 is not intended or designed to tackle APP fraud, but would suggest this is potential focus area for future policy intervention. However, we would note that policy intervention focussed on the payments and financial services sector is unlikely to be sufficient as these sectors are only the last link in the scam chain. Many other firms and sectors in the 'scams ecosystem' (e.g. online platforms, telecommunications firms) play a major role in facilitating and enabling scams, so policymakers should consider how these sectors should be required to help prevent scams at their source. This would represent a shift from managing and preventing unauthorised fraud in financial services, to a broader effort to prevent APP fraud with many sectors required to take preventative action to reduce the APP fraud at its source – i.e. outside the FS sector

We note that PSD2's existing liability construct for fraud stemming from open banking PISP payments are too limited in scope. While ASPSP's are theoretically able to claim back fraud losses from PISPs, in practice, the threshold test for such claims is unworkable. We therefore recommend that these provisions are reconsidered with a view to being extended. More background on this is provided below.

Open Banking Payments are currently constructed in a manner whereby a customer payment journey is shared between two parties (the PISP and the ASPSP), however, fraud controls are only mandated on one of these parties (the ASPSP). Furthermore, the liability for any fraud that takes place also sits primarily with only one party (the ASPSP). We believe that this imbalance needs addressing, to ensure that all parties are mandated and incentivised to prevent fraud.

Barclays therefore recommends placing necessary and appropriate mandatory controls on PISPs (aligned to those placed on ASPSPs), to ensure that there is a consistent approach being taken by all firms – reducing the opportunity for fraudsters to identify and exploit ‘weak links’ which may not have as strong fraud controls. For example: ensuring the same level of KYC due diligence; PISPs to share certain data points with the ASPSP relating to the payment, to support fraud profiling for these payments. However, mandatory controls may not alone be sufficient, given the current construct of the liability model in place today. Under PSD2, the responsibility for refunding customers who have experienced unauthorised transactions falls to the ASPSPs. There is an opportunity for the bank to ask the PISP to prove that deficiencies with their processes did not affect the “payment transaction”, however this can be viewed as being limited to the PISP merely having to prove that there has not been failings with its execution of the “payment transaction”, therefore excluding factors such as inadequate KYC/AML and Fraud processes. This imbalance of liability means that PISPs are not incentivised to introduce the necessary controls to prevent fraud and protect customers. Therefore, in addition to mandatory controls, a new liability model needs to be introduced that seeks to ensure that the party at fault is the party that is liable to reimburse the victim of fraud.

ADR procedures for the settlement of disputes and penalties

Article 57(7)b requires that, for framework contracts, Member States ensure that information on ADR procedures is provided to the payment service user.

48. Should this information also be made available for single payment transactions?

- Yes /no
- Don't know / **no opinion** / not applicable

Please explain your answer

49. Should the PSD2 be amended with regard to sanctioning powers and penalties? Please consider the following suggestions and indicate whether you think the suggestion should be implemented or not:

	Yes	No	Don't know - No opinion - Not applicable
PSD2 should be amended to lay down specific investigatory powers (e.g. to make on-site inspections, to request documents) for NCAs to detect breaches of rules		//	
PSD2 should be amended to provide for a minimum set of sanctioning powers (e.g. to impose administrative sanctions and measures, to publish the sanctions adopted) to the NCAs		//	
PSD2 should be amended to provide a minimum list of applicable sanctions (e.g. administrative penalties and fines, periodic penalty payments, order to cease and desist) available to all NCAs		//	

49.1 In case you are of the opinion that PSD2 should be amended to provide a minimum set of sanctioning powers, investigatory powers or a minimum list of sanctions available to NCAs, please explain and include drafting proposals for amendments: 5000 character(s) maximum

50. Should any other changes be made to the provisions and/or topics dealt with under Title IV?

- Yes /**no**
- Don't know / no opinion / not applicable

Please explain your answer, being specific and if possible, offering textual proposals: 5000 character(s) maximum

Title V: Delegated acts and regulatory technical standards

According to this title, the European Commission is empowered to adopt specific delegated acts in view of microenterprises and inflation rates (see in detail Article 104). The European Commission is furthermore obliged to produce a leaflet, listing the rights of consumers (see in detail Article 106).

51. In your view, are the PSD2 requirements on delegated acts and regulatory technical standards adequate?

- **Yes** /no
- Don't know / no opinion / not applicable

Please explain your answer, being specific and if possible, offering textual proposals: 5000 character(s) maximum

52. Do you see it as appropriate to empower the European Commission in further fields to adopt delegated acts?

- Yes /no
- Don't know / **no opinion** /not applicable

If you do see it as appropriate to empower the European Commission in further fields to adopt delegated acts, please specify which fields and why? 5000 character(s) maximum

If you do not see it as appropriate to empower the European Commission in further fields to adopt delegated acts, please explain why: 5000 character(s) maximum

53. Do you see a need for the European Commission to provide further guidance related to the rights of consumers?

- Yes /no
- Don't know / **no opinion** /not applicable

If you do see it as appropriate to empower the European Commission in further fields to adopt delegated acts, please specify which fields and why? 5000 character(s) maximum

If you do not see it as appropriate to empower the European Commission in further fields to adopt delegated acts, please explain why: 5000 character(s) maximum

54. Should any other changes be made to the provisions and/or topics dealt with under Title V?

- Yes /**no**
- Don't know / no opinion / not applicable

Please explain your answer, being specific and if possible, offering textual proposals: 5000 character(s) maximum

Title VI: Final provisions

The final provisions in Title VI include, amongst others, the provision on full harmonisation (see also question 8), the review clause, transitional provisions and amendments to other pieces of EU legislation.

55. In your view, are the final provisions listed in Title VI still adequate? Please indicate to which extent you (dis)agree with the following statements:

	1 (strongly agree)	2 (somewhat agree)	3 (neutral)	4 (somewhat disagree)	5 (strongly disagree)	Don't know - No opinion - N/A
The provisions on full harmonisation (Art. 107) are still adequate		//				
The transitional provisions (Art. 109) of the PSD2 are adequate		//				
The amendments to other Directives and regulation (Art. 110, 111, 112) were adequate		//				

Please explain the reasoning of your answer to question 55 and provide arguments for your views, including possible suggestions for changes to the provision (if any).

In case you are of the opinion that the amendments to other legislation were not adequate, for example because they omitted something, please specify the inadequacy and why this posed an issue: 5000 character(s) maximum

Looking retrospectively at the implementation of PSD2, we believe there was regulatory uncertainty for market participants regarding certain critical issues where Member States did not have explicit views or they did not feel they could provide a perspective on top of EU regulation. This led to some delays in implementation and uncertainty for firms. PSD2, in addition, was highly complex and this was not reflected within the transitional period which was too short. This led to an extension to minimise disruption.

55.1 In case of a revision of PSD2, would you have suggestions for further items to be reviewed, in line with the review clause (Art. 108) of the PSD2?

- Yes / **no**
- Don't know / no opinion / not applicable

Please explain what further items you suggest to review and why you think they should be reviewed: 5000 character(s) maximum

55.2 Do you see any other issues to be considered in a possible revision of PSD2 related to the final provisions?

- Yes / **no**
- Don't know / no opinion / not applicable

Please explain what other issue(s) should be considered in a possible revision of PSD2 related to the final provisions: 5000 character(s) maximum – same as above

Any other issues

56. Are there any other issues that have not been raised in this questionnaire that you think would be relevant for the review of PSD2 and its possible revision?

- Yes / **no**
- Don't know / no opinion / not applicable

Please explain what are these other issues that have not been raised in this questionnaire. If these are specifically relevant for particular stakeholder(s), please make this known in your answer: 5000 character(s) maximum