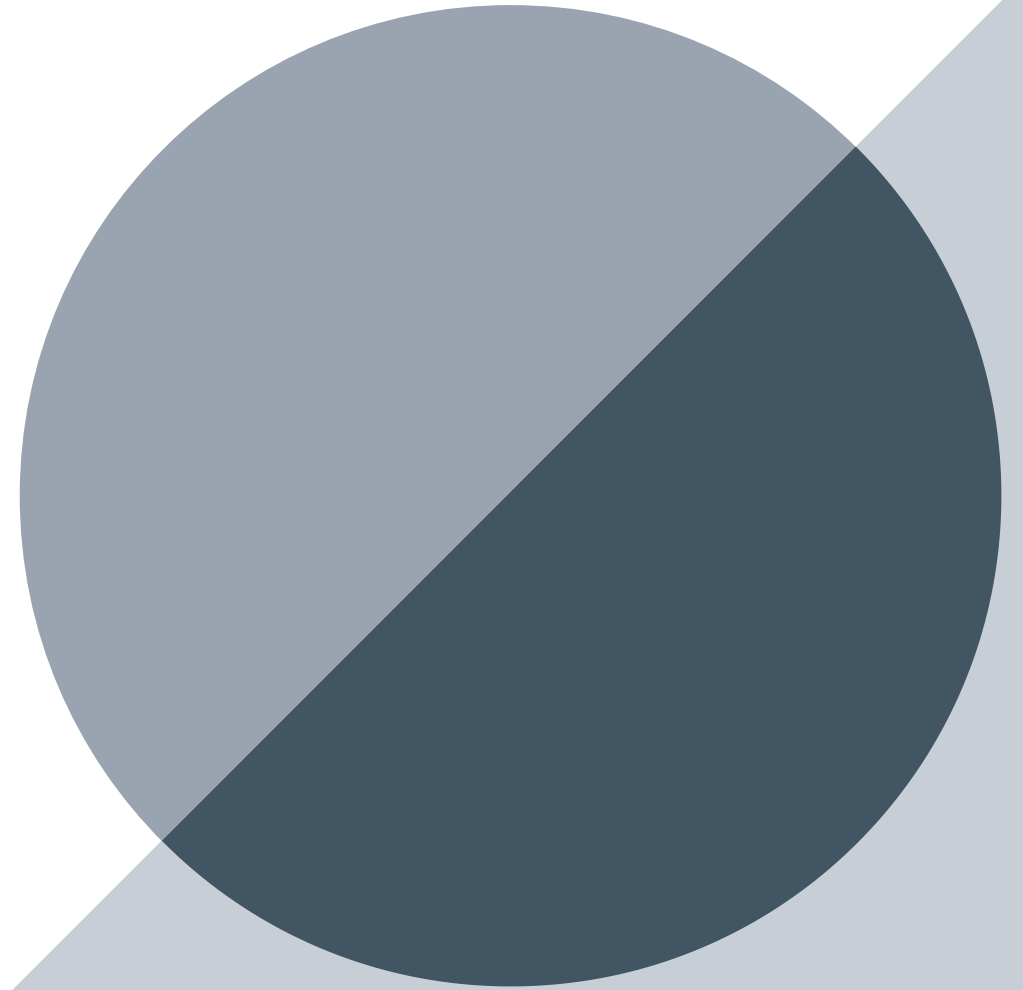


ALLEN & OVERY

# New EU Digital Finance and Retail Payments Strategies

2 December 2020



# Speakers



## **Ben Regnard-Weinrabe**

Partner – London  
Tel: +44 20 3088 3207  
Email: ben.regnard-  
weinrabe@allenoverly.com



## **Filip Van Elsen**

Partner – Antwerp  
Tel: +32 3 287 73 27  
Email: filip.vanelsen@allenoverly.com



## **Joost Elsenburg**

Counsel – Amsterdam  
Tel: +31 20 674 1325  
Email: joost.elsenburg@allenoverly.com



## **Jamie Greenwood**

Associate – London  
Tel: +44 20 3088 2852  
Email: jamie.greenwood@allenoverly.com



## **Kai Schadtle**

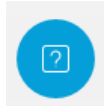
Associate – Frankfurt  
Tel: +49 69 2648 5768  
Email: kai.schadtle@allenoverly.com



## **Heenal Vasu**

Senior Regulatory PSL – London  
Tel: +44 20 3088 1447  
Email: heenal.vasu@allenoverly.com

# Housekeeping notes

- On joining the session your microphone will be muted and your video will be turned off
- To activate the Q&A function click  The Q&A box will appear on the right hand panel
- To submit a question use the Q&A function sending your question to “**All Panellists**”
- You will not be able to enable your video or un-mute your microphone during the session
- If you experience any technical issues and cannot submit these via Q&A please call +44 203 088 7196 or +44 203 088 7450



# European Commission's Digital Finance Package



- Launched on 24 September 2020
- Sets strategic objective for digital finance in Europe and four priorities for the digital transformation of the EU financial sector to be achieved over the next four years.
- EU Digital Finance package comprises:
  1. **Digital Finance Strategy**
  2. **Retail Payments Strategy**
  3. **MiCA** – Markets in Cryptoassets Regulation and Pilot DLT Sandbox Regulation – A&O webinar on 25 Nov
  4. **DORA** - Digital Operational Resilience – next week's A&O webinar

---

# Priority Areas

1

Tackle fragmentation in the Digital Single Market for financial services

2

Facilitate digital innovation in the interest of consumers and market efficiency

3

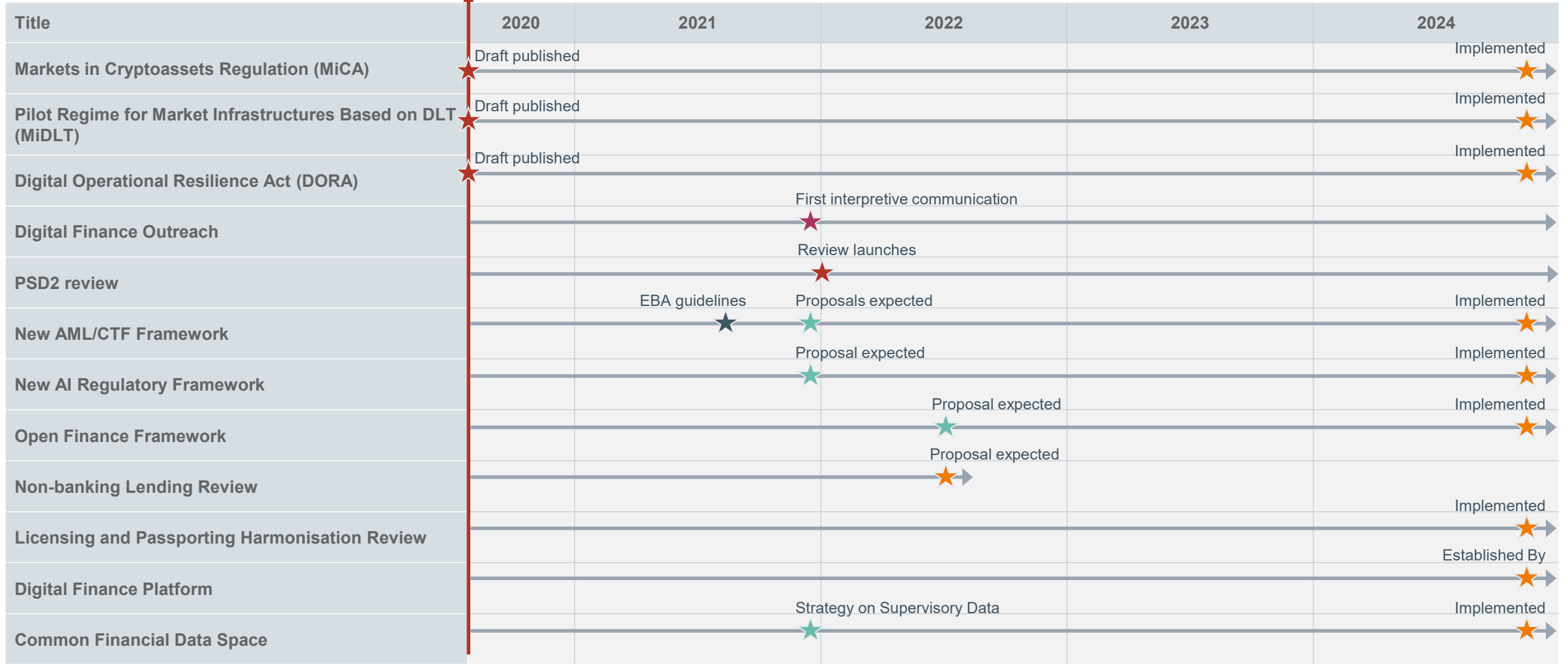
Create a European financial data space to promote data-driven innovation

4

Address new challenges and risks associated with digital transformation

# Timeline: Digital Finance Package

**24 September, 2020**  
(Publication of the Strategy)



# EU Digital Finance Strategy

# Removing fragmentation in the Digital Single Market I



## Enabling EU-wide interoperable use of digital identities

### The Commission will:

1

propose broader initiative on AML/CFT to harmonise rules on customer onboarding and build on the upcoming review of e-IDAS Regulation to implement an interoperable cross-border framework for digital identities

2

develop technical standards to further define and harmonise customer due diligence requirements to facilitate the use of innovative technologies and allow for seamless cross-border operation

3

engage with European Data Protection Board to clarify all data protection aspects in the context of reusing 'on-boarding' information for other purposes



# Removing fragmentation in the Digital Single Market II



## Facilitating the scaling-up of digital financial services across the Single Market

### The Commission will:

1

The Commission will explore the need to introduce additional harmonised licensing and passporting regimes, work with the European Supervisory Authorities (ESAs) to strengthen the **European Forum of Innovation Facilitators (EFIF)**, and establish an **EU digital finance platform**.



## What is the EFIF and EU digital finance platform?

**European Forum of Innovation Facilitators (EFIF)** (comprising ESAs and national supervisors)

- Established in response to Joint ESA report on regulatory sandboxes and innovation hubs (Jan 2019), (cf. GFIN)
- EFIF provides a forum for supervisors to: (i) share experiences from engagement with firms through innovation facilitators; (ii) share technological expertise; and (iii) reach common views on regulatory treatment of innovative products and business models.
- By mid-2021, Commission, with EFIF, to design procedural framework for launching cross-border testing, to facilitate firms' interaction with different Member States' supervisors

**EU digital finance platform**

- To be established by Commission, in cooperation with EFIF.
- This 'collaboration platform' to offer industry an interface to EFIF and national innovation facilitators and national e-licensing procedures.
- Designed to '**serve as a channel to interact online and on an ongoing basis with new digital finance ecosystem**'.
- In future, platform could be developed into broader platform for cooperation and a data space used by industry / supervisory authorities to test innovation.

# Removing fragmentation in the Digital Single Market III



## Key practical considerations

- Once strategy is fully implemented there will be opportunities for growth and new business propositions.
- However, at the initial stage we anticipate a need for:
  - considerable investment into new technology; and
  - increased costs related to regulatory compliance.



## Key thought leadership insights

- Harmonisation of AML/CTF:
  - no clarity on approach - if not based on widespread practices could result in prohibitive compliance costs
  - no clarity or firm commitment on aligning this with other on-boarding requirements (e.g. suitability of investments)
  - new EBA guidelines - yet to see content and whether these will supersede or co-exist with exiting EU guidelines
- Harmonised licensing and passporting regimes:
  - identifies key issue of discrepancy between national regulatory regimes and between national supervisory authorities' approach to enforcement - Commission encourages ESAs to continue and step up their work to promote cooperation and supervisory convergence
- EU digital finance platform:
  - no firm commitments regarding how EU digital finance platform will be developed

# Adapting Framework to Facilitate Digital Innovation I



## Enabling EU markets in crypto-assets and tokenised financial instruments

1

The Commission has proposed a **new EU legislative framework for crypto-assets**, including asset-referenced tokens (also known as 'stablecoins') and utility tokens (**MiCA**)

– covered in A&O webinar on 25 November

### The Commission will also:

2

consider updating the prudential rules for crypto-assets held by financial firms

3

explore how to leverage DLT to improve capital-raising operations of SMEs

4

aim to integrate investment in low or zero emission DLT and the Internet of Things in the sustainable finance taxonomy

# Adapting Framework to Facilitate Digital Innovation II



- Promoting cooperation and the use of cloud computing infrastructure
  - Proposed oversight framework for critical third-party ICT providers to the financial sector, such as cloud service providers (**DORA**)
  - EU cybersecurity agency (ENISA) to develop a cybersecurity certification scheme for cloud services in conjunction with Cybersecurity Act
  - In EU data strategy, Commission to launch European cloud services marketplace by end of 2022 - designed to facilitate access to alternative cloud service providers.
- Promoting investments in software by adapting prudential rules on intangible assets
  - Prudential treatment of software investments differs across jurisdictions
  - Commission will shortly adopt regulatory technical standards currently being developed by EBA
- Promoting uptake of artificial intelligence tools by clarifying supervisory expectations as to application of financial services laws
  - Commission aims to ensure clarity as regards supervisory expectations about how the legislative framework on financial services should apply to artificial intelligence (AI) applications
  - Commission invites ESAs and ECB to explore the possibility of developing regulatory and supervisory guidance on the use of AI applications in finance. This guidance to follow the upcoming proposal for a new regulatory framework for AI planned in 2021.
- Ensuring future proof legislative framework on an ongoing basis
  - Commission to provide guidance through regular interpretative communications - first interpretative communication on the treatment of crypto-assets is expected in 2021

The Commission will aim to remove material regulatory obstacles in financial services legislation that stifle innovation.

# Data I: Establishing a Common Financial Data Space



Facilitating real-time digital access to all regulated financial information and promoting:

- innovative IT tools to facilitate reporting and supervision
- business-to-business data sharing in the EU financial sector and beyond

## The Commission will:

1

amend EU legislation to ensure that publicly disclosed information is available in standardised and machine-readable formats, and will set up an EU-funded infrastructure for public disclosure

2

present a strategy on supervisory data in 2021

3

present a legislative proposal for a new open finance framework by mid-2022

# Data II: Digital Finance Strategy based on EU Data Strategy

EU Data Strategy	Digital Finance Strategy
<ul style="list-style-type: none"> <li>– Plans to create a European financial data space to promote data-driven information including:               <ul style="list-style-type: none"> <li>(i) enhanced access to data; and</li> <li>(ii) data sharing within the financial sector</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– EU already:               <ul style="list-style-type: none"> <li>(i) requires companies to publish comprehensive financial and non-financial information on their operations and products; and</li> <li>(ii) has opened up the sharing of data on payments accounts (N.B. PSD2)</li> </ul> </li> <li>– Commission to take additional steps towards enhanced data sharing and openness across and within sectors, including to:               <ul style="list-style-type: none"> <li>– launch review of PSD2 in 2021, including an assessment of its scope;</li> <li>– propose legislation on a broader open finance framework by mid-2022, building on upcoming initiative focusing on data access, including the upcoming Data Act, and the Digital Services Act.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>– Emphasises the importance for better access to and exchange of data within the EU, hence the aim to establish a common finance data space and a digital single market</li> </ul>	<ul style="list-style-type: none"> <li>– Commission will pursue facilitating real-time digital access to all regulated financial information and efficient data single market by, among other things:               <ul style="list-style-type: none"> <li>– requiring publicly disclosed information to be available in standardised and machine-readable formats by 2024; and</li> <li>– implementing EU infrastructure to facilitate access to all publicly available disclosure relevant to capital markets, as part of CMU Action Plan.</li> </ul> </li> </ul>

# Addressing Challenges and Risks associated with Digital Transformation



- Safeguarding financial stability, protecting investors and consumers, based on the “same activity, same risk, same rules” principle
- Protecting consumers and the public interest
- Strengthening digital operational resilience

## The Commission:

1

will propose by mid-2022 the necessary adaptations to the existing financial services legislative framework with respect to consumer protection and prudential rules, in order to:

- protect end-users of digital finance
- protect the integrity of the EU financial sector
- ensure a level playing field

2

has also proposed a new EU framework for strengthening digital operational resilience (**DORA**) – next week’s webinar

# EU Retail Payments Strategy



---

# The Retail Payments Strategy



- Launched on 24 September 2020
- Sets out the Commission's strategic regulatory and legislative initiatives for EU retail payments over the next four years
- Supplemental to the Digital Finance Strategy
- To a degree, rehearses existing announcements and initiatives
- Also some new proposals
- Usefully consolidates initiatives to help with horizon scanning

# Market Trends and Structural Concerns

'BigTechs' becoming active in payments

Changing consumer preferences – digitalisation of payments

Central bank digital currencies (CBDCs)

Crypto-assets / DLT

## Structural Concerns:

Lack of innovation in payment instrument

Absence of widely adopted cross-border EU payments system

# Strategy Aim and the Four Pillars

A clear vision for the expected direction of travel in retail payments, setting out the Commission's future actions under a single, coherent and overarching policy framework

1

Increasingly digital and instant payment solutions with pan-European reach

2

Innovative and competitive retail payments markets

3

Efficient and interoperable retail payment systems and other support infrastructures

4

Efficient international payments, including remittances

# Consumer Experience & Consumer Protection



- Legislative proposal for open finance – mid 2022
- Review of PSD2 – end 2021

## Example considerations of PSD2 review:

### SCA

- Review impact of SCA on the level of payment fraud in the EU
- Potential for additional measures to address new types of fraud

### Contactless payments

- Encourage merchants to accept digital payments, including contactless payments
- No expected increase of the current EUR 50 limit
- Potential for consumers to set their own max limits (under EUR 50)

### Transparency

- Beneficiaries of payments on statements not recognised by consumers
- Makes fraud detection more difficult
- PSD2 review to take account of Euro Retail Payments Board's recommendations

# Payments Infrastructure

## Outsourcing

- Risk of provider's technical failure or insolvency e.g. Wirecard
- Providers not directly subject to regulation
- Review PSD2's:
  - mitigation of outsourcing risks - including direct supervision of service providers by regulators
  - exemptions (e.g. technical service provider exemption)
  - prudential, operational and consumer protection requirements

## Access to technology

- Inability to access proprietary technology e.g. NFC, biometric identity readers such as fingerprint or face scanners, app stores, SIM cards and core components of points of sale terminals.
- Recent competition proceedings regarding access to NFC on mobile devices
- Potential legislation for right of access under fair, reasonable and non-discriminatory conditions

# Instant Payments: I – The new normal?



Euro denominated payment schemes must ensure that the participants in the scheme (i) constitute a majority of PSPs within the EU and (ii) represent a majority of PSPs within a majority of EU Member States (Article 4(1) SEPA Regulation)



As of November 2020, 2.264 PSPs in the EU have joined SCT Inst., accounting for 62% of PSPs (57% in all SEPA countries)



Only in 6 EU Member States a majority of PSPs participate in SEPA Inst.



Only about 4% of PSPs are direct participants to a pan-European CSM (RT1/TIPS), while 96% are only indirect participants, i.e. reachable parties

Country	SCT Inst	SCT	Percentage of SCT Inst scheme participants vs SCT scheme participants
<b>Euro</b>	<b>2.256</b>	<b>3.309</b>	<b>68%</b>
Austria	433	476	90%
Belgium	22	50	44%
Cyprus	1	18	5%
Estonia	6	11	54%
Finland	5	8	62%
France	123	267	46%
Germany	1.251	1.436	87%
Greece		24	0%
Ireland	2	207	1%
Italy	256	426	60%
Latvia	6	18	33%
Lithuania	24	81	29%
Luxembourg	3	66	4%
Malta	5	30	16%
Netherlands	9	38	23%
Portugal	16	36	44%
Slovakia		18	0%
Slovenia	5	16	31%
Spain	89	118	75%
<b>Non-Euro</b>	<b>8</b>	<b>204</b>	<b>3%</b>
Bulgaria	3	24	12%
Croatia		21	0%
Czech Republic		21	0%
Denmark	1	52	1%
Hungary		26	0%
Poland	1	27	3%
Romania		23	0%
Sweden	3	10	30%
<b>Grand Total</b>	<b>2.264</b>	<b>3.513</b>	<b>62%</b>

# Instant Payments: II – What is an instant payment?

**10  
seconds**

Target maximum execution time for a payment transaction and for making funds available to the beneficiary

**100,000  
EUR**

Maximum amount per instruction that can be processed

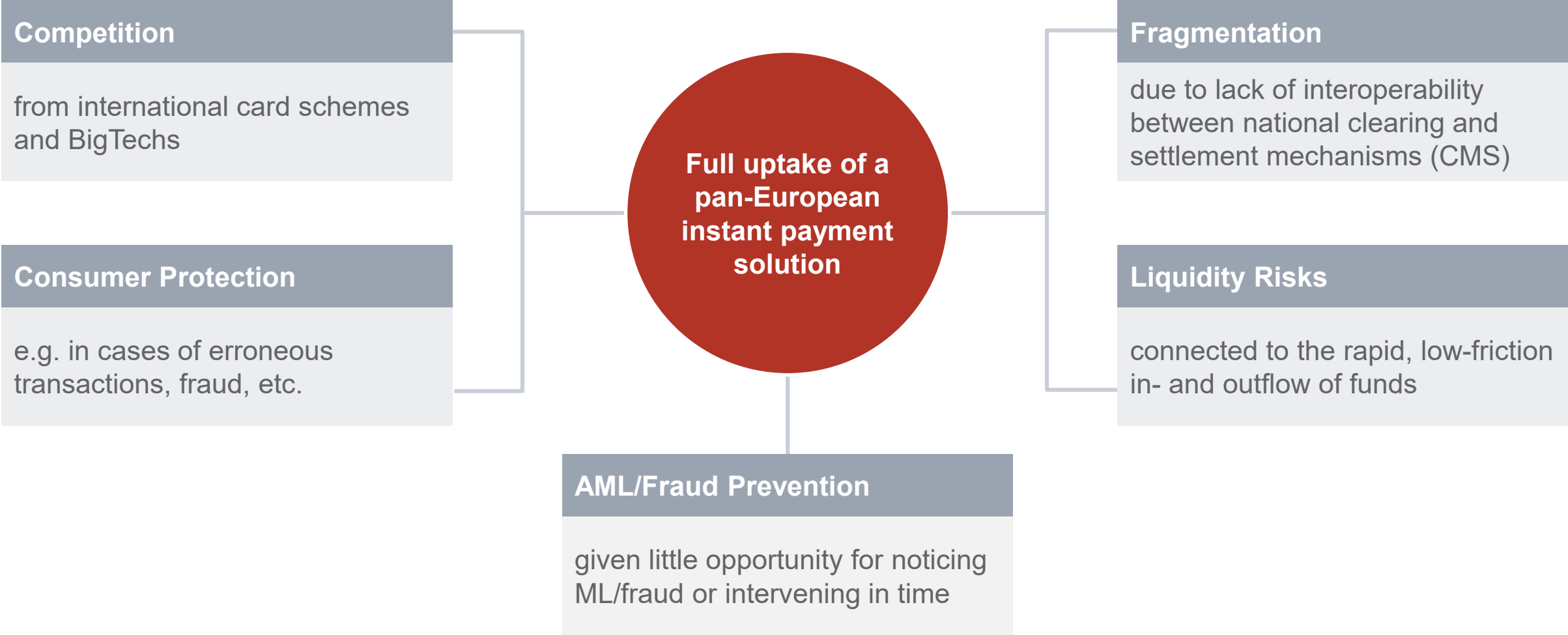
**24/7/365**

Availability of the system for 24 hours a day and on all calendar days of the year

**Irrevocability**

Successful payment transactions are final, i.e. they cannot be recalled after execution

# Instant Payments: III – Drivers and Challenges





# Instant Payments: IV – Key action points identified by the EU Commission

## Overcoming the lack of uniform rules

Legislation making participation in SEPA Inst. Mandatory by end 2021

Requiring adherence to additional SEPA schemes and functionalities (e.g. Request-To-Pay)

## Increasing trust in and usage of instant payments

Developing a “brand” for eligible pan-European payment solutions

Requiring that fees are not higher than for regular credit transfers

Endorsing the European Payment Initiative

Introduction of specific measures to mitigate liquidity risks and AML/fraud risks

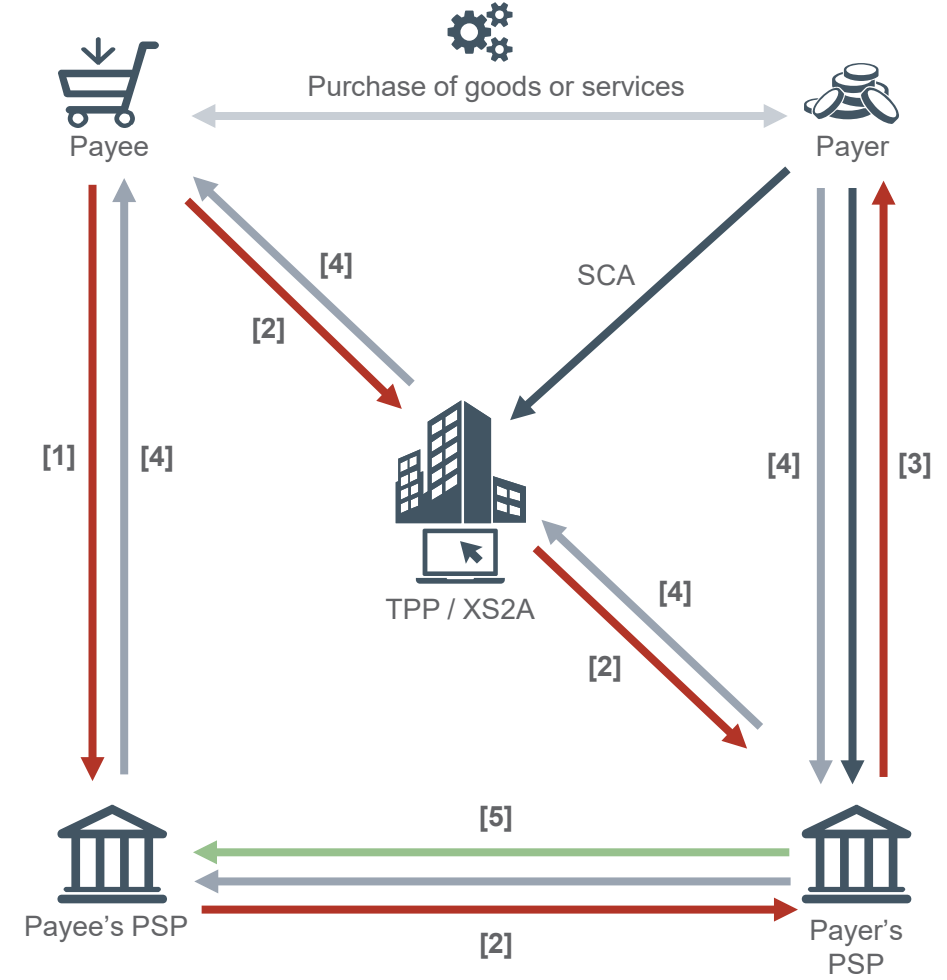
## Supporting the interoperability of CSMs and other infrastructures

Implementation of TIPS by end 2021

Extending the scope of Settlement Finality Directive (**SFD**) to include PIs and EMIs

# SEPA Request to Pay

- 1 RTP Initiation**  
Payee creates RTP from transaction data
- 2 RTP Transmission**  
RTP sent to payee's RTPSP and forwarded to payer's RTPSP
- 3 RTP Presentment**  
Payer receives RTP on agreed channel or device
- 4 RTP Acceptation/Refusal**  
Payer accepts/refuses RTP; message to payee
- 5 Payment Initiation**  
If RTP is accepted, payment will be initiated



---

# Questions?

These are presentation slides only. This document is for general guidance only and does not constitute advice.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [allenoverly.com/global/global\\_coverage](https://allenoverly.com/global/global_coverage).

© Allen & Overy LLP 2020