

Paving the way for the future of payments

The PSD III package is here: discover its key features

June 2023

On 28 June 2023, the European Commission released its so-called **PSD III package**, which will replace the **PSD II**¹ and the **EMD**². This package is part of a wider set of legislative measures making up the EU retail payments strategy³, which seeks to promote an EU payments market that is competitive, innovative and secure, and that meets the needs and expectations of consumers and businesses. The European Commission based this proposal on the outcome of a **consultation** strategy that it launched in mid-2022 to assess the application and impact of the PSD II⁴.

The new legislative package is expected to apply 18 months after its publication in the *Official Journal of the European Union*.

This note outlines the main aspects of this package according to the current version of the proposal. However, the text of the proposal may change during the EU legislative process.



The PSD III package: a directive, a regulation and upcoming regulatory technical standards that should become applicable in the course of 2025

The PSD III package consists of:

- a draft directive on payment services and electronic money services in the internal market (the **PSD III**)⁵ – which would repeal the PSD II and the EMD; and
- a draft regulation on payment services in the internal market (the **PSR**)⁶.

¹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as amended (**PSD II**)

² Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as amended (**EMD**)

³ Based on the priorities set out by the European Commission in its [2020 Communication on a Retail Payments Strategy](#)

⁴ In the context of this consultation process, the European Banking Authority (**EBA**) issued on 23 June 2022 [an opinion on its technical advice on the review of Directive \(EU\) 2015/2366 on payment services in the internal market \(PSD2\)](#)

⁵ Proposal for a Directive of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending

Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC

⁶ Proposal for a Regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010

The PSD III establishes the licensing and supervisory requirements for payment institutions. The PSR lays down the conduct rules for payment and electronic money service providers (**PSPs**) offering payment and electronic money services in the EU.

The PSD III must be implemented in the national laws of the EU Member States within 18 months of its publication in the Official Journal of the European Union. The PSR is expected to come into force and apply 18 months after its publication in the Official Journal of the European Union.

The PSD III and the PSR will be complemented by Regulatory Technical Standards (**RTS**).



The licensing regime for payment institutions is the main focus of the PSD III

The PSD III mainly updates and clarifies the provisions of Title II of the PSD II. It establishes the licensing regime for payment institutions that provide payment services and electronic money services. Electronic money institutions are a sub-category of payment institutions under this regime.

The PSD III also regulates cash withdrawal services offered by retailers (without a purchase) or independent ATM operators, and amends the [Settlement Finality Directive \(SFD\)](#)⁷.

The PSD III covers the following key topics:

- procedures for an application for a licence and for change of control. These procedures are largely the same as under the PSD II regime, except for certain specific provisions, including:
 - revised initial capital requirements (in particular with increased minimum amounts for certain services);
 - the default use of method B to calculate own funds for payment institutions that provide payment services other than payment initiation or account information services (unless their business model requires otherwise);
 - the use of method D to calculate own funds for payment institutions that only provide electronic money services;
 - harmonised safeguarding rules for the provision of payment and electronic money services and a new requirement to avoid concentration risk for safeguarded customer funds; and
 - the necessity to provide a winding-up plan with the application;
- more detailed rules on internal governance;
- rules on agents, branches, outsourcing and electronic money distributors. These rules are mostly the same as under the PSD II regime, except for an alignment of the rules for agents and distributors;
- rules on the cross-border provision of services by payment institutions and their supervision. These rules are broadly the same as under the PSD II regime, with some clarifications on triangular passporting;
- rules on the designation of competent authorities, their supervisory powers and tools and cooperation with other EU authorities and the EBA (with some clarifications compared to the PSD II regime);
- simplified requirements for payment institutions that only provide account information

⁷ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended (**SFD**)

services with, in particular, a mere registration obligation and the possibility to hold initial capital rather than holding a professional indemnity insurance upon application for a licence;

- optional exemptions for small payment institutions (the same as under the PSD II regime) but with a requirement to be registered in their home Member State;
- exemption from licensing requirements (subject to certain conditions) for retailers that offer cash withdrawal services without a purchase on their premises;
- registration obligation for cash providers via ATMs that do not service payment accounts;
- notification obligations for service providers that benefit from the limited network exclusion under article 2 of the PSR; and
- transitional arrangements for payment institutions or electronic money institutions that started their activities before the PSD III came into force, to allow them to continue their activities for a specified period, subject to the assessment and approval of the competent authorities.

Annex I and Annex II to the PSD III list the payment services and electronic money services respectively.

The PSD III also makes a targeted amendment to the SFD to include payment institutions in the list of institutions that can be direct participants of a designated payment system under the SFD.



The PSR lays down the rules that govern how all PSPs provide payment and electronic money services

The PSR is a regulation that updates and clarifies the provisions of Title III and IV of the PSD II. It sets out the transparency and information requirements for payment and electronic money services in the EU and the rules on the rights and obligations of the parties involved in such services. The European Commission aims to further harmonise these requirements across all EU Member States by adopting a regulation that is directly applicable in each Member State.

The PSR applies to all PSPs (including banks, payment institutions, electronic money institutions, etc.), not only to payment institutions as is the case with the PSD III. Moreover, the PSR covers both payment and electronic money services under the concept of payment services.

The PSR addresses the following key topics:

- clarification of certain concepts, such as introducing, for instance, definitions of Merchant Initiated Transactions (**MITs**), Mail Orders and Telephone Orders (**MOTOs**) and remote payment transactions;
- payment transactions and services excluded from the scope of the PSR (which are largely the same as under the PSD II regime);
- the scope of application of the PSR requirements depending on the location of the payer's and payee's PSPs and currency of the payment transaction;
- disclosures to be made by a PSP to payment service users before and during the contractual relationship (with some exceptions for low-value payment instruments and electronic money), as well as on amendment or termination of contractual arrangements. Some provisions are similar but clarified compared to the PSD II regime, while others are new (for example, the obligation to provide an estimate of the

execution time and conversion charges for credit transfers and money remittance from the EU to a non-EU country);

- charges that may be levied by a PSP (in this respect, the surcharging prohibition is extended to credit transfers and direct debits in all EU currencies);
- rights and obligations of the parties involved in payment and electronic money services, such as authorisation of payment transactions, use of payment instruments, liability of the payment service users and PSPs for unauthorised or incorrectly executed payment transactions, execution of payment transactions (with some exceptions for low-value payment instruments and electronic money). The PSR introduces some changes, such as:
 - aligning the rules for MIT and direct debit (in particular regarding consumer protection);
 - requiring the payee's PSP to offer a name/IBAN matching service upon request of the payment service user⁸; and
 - liability of PSPs for social engineering frauds;
- rules on the issuance and redeemability of electronic money;
- ensuring that payment service users (including users who are disabled or otherwise challenged) can access and use their payment accounts through dedicated interfaces that are secure, reliable, and user-friendly. The PSR incorporates some of the provisions of the [RTS](#) adopted under the PSD II on strong customer authentication (**SCA**) and open banking⁹;
- guaranteeing accessibility of payment accounts to account information service providers and payment initiation service providers and the possibility for the payment service users to monitor and manage such accesses by these third-party service providers. In this respect, the PSR imposes to have a dedicated interface for Open Banking data access and removes the requirement on account servicing PSPs to maintain permanently a 'fallback' interface (save in exceptional circumstances);
- improving SCA features and accessibility to prevent fraud and increase security. In particular, the conditions of application of SCA to MITs and MOTOs are clarified. It is also clarified that a payer shall not bear any loss in case the PSP of the payer or of the payee applies an exemption to SCA. Furthermore, a new liability regime is introduced for technical service providers and operators of payment schemes that fail to support SCA. Where a technical service provider provides and verifies the elements of SCA, the PSP must enter into an outsourcing arrangement with that provider;
- cooperating and exchanging information with other PSPs and competent authorities to detect and prevent fraud, money laundering, and terrorist financing, while respecting data protection rules; and
- rules on accessibility of payment systems and access (opening and closing) by a payment institution to an account with a credit institution (the rules being reinforced compared to the PSD II regime).

The PSR also includes provisions on the designation of competent authorities as well as their supervisory powers and tools to supervise and enforce the compliance of PSPs with the PSR, and to impose administrative sanctions and measures for breaches of the PSR.

The EBA can also intervene in the payment market by prohibiting temporarily the sale of certain payment products which would present certain risks, subject to certain conditions and safeguards.

⁸ This will also permit to ensure consistency with the regime set out in the [European Commission proposal on instant payments](#)

⁹ Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication



What are the next steps?

The PSD III package requires existing payment institutions to check that they satisfy the new prudential requirements for maintaining their license.

This PSD III package will also entail revisions to the internal policies and procedures and contractual documentation of PSPs.

Accordingly, we advise PSPs to begin identifying the internal measures they will need to implement the PSD III package, even though the proposal may undergo changes during the EU legislative process.

To support this task, we will be publishing a series of client bulletins that analyse the main requirements of this new legislative package in more detail.

For further information on the topic, please reach out to your usual A&O contact, or any of the below relevant contacts.

Luxembourg



Baptiste Aubry

Counsel

Tel +352 44 44 5 5245

Baptiste.Aubry@AllenOverly.com

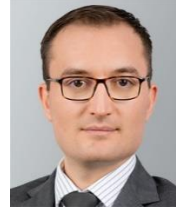


Carole Schmidt

PSL Counsel

Tel +352 44 44 5 5275

Carole.Schmidt@AllenOverly.com



Andrei Costica

Senior Associate

Tel +352 44 44 5 5342

Andrei.Costica@AllenOverly.com

Belgium



Sylvia Kierszenbaum

Partner

Tel +32 3 287 7409

Sylvia.Kierszenbaum@AllenOverly.com



Axel de Backer

Senior Associate

Tel +32 3 287 7402

Axel.deBacker@AllenOverly.com

France



Mia Dassas

Partner

Tel +33140065539

Mia.Dassas@AllenOverly.com



Pauline Robin

Associate

Tel +33140065145

Pauline.Robin@AllenOverly.com

Germany



Alexander Behrens

Partner

Tel +49 69 2648 5720

Alexander.Behrens@AllenOverly.com

Italy



Luca Di Lorenzi
Senior Associate
Tel +39 06 6842 7542
luca.dilorenzi@allenoverly.com



Giulia Ghiandai
Associate
Tel +39 06 6842 7446
giulia.ghiandai@allenoverly.com

Netherlands



Ellen Cramer-de Jong
Partner
Tel +31 20 674 1179
Ellen.CramerdeJong@AllenOverly.com



Daphne van der Houwen
Counsel
Tel +31 20 674 1257
Daphne.vanderHouwen@allenoverly.com



Pien van Vliet
Associate
Tel +31 20 674 1475
Pien.vanVliet@AllenOverly.com

Spain



**Salvador Norberto
Ruiz Bachs**
Partner
Tel +34 91 782 99 23
Salvador.RuizBachs@AllenOverly.com

United Kingdom



Nikki Johnstone
Partner
Tel +44 20 3088 3599
Nikki.Johnstone@AllenOverly.com



Ben Regnard-Weinrabe
Partner
Tel +44 20 3088 1209
Ben.Regnard-Weinrabe@AllenOverly.com



Anna Lewis-Martinez
Senior PSL
Tel +44 20 3088 1333
Anna.Lewis-Martinez@allenoverly.com

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 LLP 2023. This document is for general guidance only and does not constitute advice.