Editorial: Beyond PSD2: The Next Chapter for EU Payment Services Regulation

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The 2015 Payment Services Directive (or PSD2) is under revision. In summer 2024 the European Parliament and the Council made an agreement on the new legal framework through splitting the PSD2 into two pieces of legislation, namely, the Payment Services Directive (PSD3) and the Payment Services Regulation (PSR). However, neither of them have been published on the Official journal yet. Therefore, legal scholars and regulatory experts are still discussing legislative drafts and not final legislative instruments.

The revision process is interesting because it concerns three aspects of discussion that strive to establish the constitutional framework for money and, therefore, also strive to influence one's sense of community belonging.

The first aspect points to the authorization and prudential supervision regime for the provision of payment services and electronic money services. The PSD3 concerns these aspects. In the forthcoming legal framework, there is no longer the distinction between electronic money institution and payment institition but the European lawmakers still differentiates between the prudential supervision requirements for the issuance of e-money and the operation of payment services. Despite that the 2007 PSD and the 2015 PSD(2) took a pro-competitive approach by way of establishing the payment institutions and by way of opening up the payment service business value chain, the report on the PSD2 application has revealed two regulatory challenges. First, those legal entities operating only information payment services or initiation payment services encountered difficulties in ensuring coverage of associated risks; in addition, payment institutions found difficulties in holding and maitaining the users' funds with the credit institutions, therefore a second option is set out, namely the possibility of holding these funds at the central bank. In the end, the PSD3 attempts to address regulatory competition and the role of platforms and marketplaces.

The second aspect deals with information requirements and the rights and obligations associated with the provision of payment services. The Report on the PSD2 implementation and application has pointed to inconsistencies in the application of PSD2 exemptions across Member States jeopardising the level playing field throughout the internal market. It further highlighted regulatory loopholes on the legal framework for unauthorized payment transactions and the concept of user's consent as well as the proper functioning of open banking that was thought to empower the payment

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account holder to use their own payment transaction data. The PSR strives to meet those (as well as others) regulatory concerns.

The third aspect puts the PSD3 and the PSR in a broader regulatory context that is changing under the influence of technological developments and the pressure of interoperability. How much regulation is needed? The European lawmakers are inclined to over-regulate in order to remove the internal frontiers and establish a single market. There is a close connection between the evolution of crypto-assets performing a payment function, the money laundering framework, and the forthcoming digital euro. Considering the pending definitive adoption of the PSD3/PSR framework this interconnection is thought-provoking and worthy of further exploration.

As editors we have been really delighted to coordinate a distinguished group of legal scholars an regulatory experts in a publication that we consider as just the beginning of an on-going investigation of the evolving legal framework for EU payments. We are grateful to all the authors for having contributed to this special issue with their valuable reflections on some of the more interesting issues emerging in this transition phase from the PSD2 to the PSD3/PSR. We would also like to thank Benjamin Geva for his inspirational contribution and Ruth Wandhofer for her insightful policy testimony, that respectively open and close this special issue.