

Our position

Payment Services Regulation (PSR) amendments

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

Driven by the digital revolution, new services and players have been progressively shaping the market since the introduction of the second Payment Services Directive (PSD2), bringing more choice, efficiency and inclusion to payments. The PSD2 brought significant disruptions to the market and the regulatory framework, with a strong emphasis on fraud prevention. While safeguarding this *acquis*, the PSR and the third Payments Services Directive (PSD3) should emphasise an outcome-based approach, allowing the industry to innovate and improve the consumer experience. In this spirit, the ECON Committee should continue to push for progress on strong customer authentication (SCA), but beware of the Digital Markets Act (DMA)-related provisions threatening to create an asymmetric regime.

A future-proof SCA

Recommendation to support: AM 137, 141, 182, 456, 457, 459, 462, 467, 496, 500, 506, 516 and 518.

Recommendation to oppose: AM 517

The industry shares the policy makers' objective of ensuring SCA effectiveness, while also taking into account the need to maintain comprehensive customer journeys. The implementation of SCA under PSD2 was challenging and resource-consuming for the payment industry, merchants and EU and national competent authorities. As proposed by the EP in several amendments, the industry needs a risk-based, technology-neutral and outcome-based approach to foster the development of innovative payment services while maintaining a high level of protection and adjusting to increasingly elaborate fraud schemes. Amendments to foster the adoption of exemptions, such as TRA (transitional risk analysis) are equally positive to encourage a smoother consumer journey.

Undiscriminated access to Open Banking

Recommendation to oppose: AM 277

Such amendment would prevent any gatekeepers designated under the DMA to seek Open Banking license and operate in that space. The rationale for this significant regulatory intervention is speculative and not fact-based. Licensed entities are already subject to strong safeguards against any misuse of customer data: Account Information Service Providers (AISPs) cannot use, access or store data for any other purpose than providing account information services. The carryover of the gatekeeper concept in such a different context raises serious concerns, since it bears no relationship to the market position of designated companies in the financial services space. In fact, it is conceivable that incumbents have a strong market position, thus creating the risk of reducing competition, running against the very objectives set by the regulation. From a user perspective, this provision arbitrarily limits consumer choice and access to innovative services. This provision could also be interpreted as a differentiated treatment between domestic and non-domestic companies, potentially raising questions of compatibility with the General Agreement on Trade in Services (GATS) and trade implementations.

Fair and effective liability framework to address fraud

Recommendation to support: AM 124

Recommendation to oppose: AM 32, 72

The EP would like to support extending the definition of telecom service providers to include entities under the DMA and/or the Digital Services Act (DSA). This proposal raises concerns both in terms of

scope and intent. First, the DMA's focus on contestability and narrow scope does not align with the consumer protection objectives of the PSR. The proposed amendments would create a differentiated treatment when the same payments fraud issues apply irrespective of size, and there is no objective justification for target asymmetrical obligations and liability risks. This would set an unreasonable unlevel playing field versus non-Gatekeeper designated companies and would create disproportionate costs to serve customers without driving better customer protection outcomes. Secondly, the amendment puts the emphasis on 'preventing' user exposure to fraud. This would require disproportionate proactive monitoring, which runs counter to the principle of the DSA. Instead, the emphasis should be on mitigating risks of user exposure to fraud.

Proportionate and coherent approach across the ecosystem

Recommendation to support: AM 94, 141, 143, 388, 389, 524, 525, 526, 527, 528

Recommendation to oppose: AM 29, 71, 81, 82, 183, 184, 390, 450, 451

Some amendments seek to single out e-wallets, currently considered as Technical Services Providers (TSPs). This risks creating a fragmented and asymmetric approach for some TSPs, while duplicating obligations and potentially leading to inconsistencies with the Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (PISA framework) introduced by the European Central Bank. On a more positive note, there is significant number of amendments that appropriately recognises the limited role of TSPs and the subsequent need for proportionality with regards to liability and financial damage. However, the obligation of entering into outsourcing agreement for all SCA methods involving other parties constitutes a disproportionate burden. In fact, it will likely create entry barriers for new entrants on the market, therefore stifling innovation.

Merchant Initiated Transactions (MIT)

Recommendation to support: AM 139, 432

MITs already benefit from high levels of consumer protection, including by benefiting from a right for refund when the amount of the executed transaction exceeds what would be reasonably expected. For the majority of MIT use cases an unconditional refund right - as proposed under article 62 (1) - risks incentivising abuse refund, severely impacting merchants especially on digital marketplaces and e-commerce. ECON members should further consider some of the tabled amendments that have not been included yet in the compromise amendments.