



HM TREASURY CONSULTS ON THE IMPLEMENTATION OF PSD2

FEBRUARY 2017



On 2 February 2017, HM Treasury published a consultation paper on the implementation of PSD2 explaining the scope and key changes compared to PSD. The consultation outlines the Government's proposed approach to implementation and requests input from stakeholders. The consultation closes on 16 March 2017.

On 2 February 2017, Her Majesty's Treasury (**HM Treasury**) published a [consultation paper](#) on the implementation of the revised European Union (**EU**) Directive [2015/2366](#) on payment services in the internal market (**PSD2**). PSD2 must be implemented in the United Kingdom (**UK**) by 13 January 2018. In order to keep the transition as smooth as possible, the Government aims to finalise and present the final version of the relevant regulations before Parliament in early 2017.

KEY CHANGES

In its consultation paper, HM Treasury explains the scope of PSD2 and highlights its key changes compared to the first Payment Services Directive (**PSD**). The types of Payment Service Providers (**PSPs**) covered in PSD2 include payment, credit and e-money institutions.

PSD2 preserves PSD's exemption on transactions executed by means of telecommunication, digital or IT devices. PSD2 updates this exemption to permit providers of electronic communication networks or services to provide certain goods, such as music and digital newspapers, without authorisation or registration.

PSD2 also provides clarification regarding the limited network exemption by making explicit that the exclusion can only apply to transactions where the payment instrument can be used within a specified retailer/retail chain, and where the payment instrument is regulated for specific social or tax purposes. For example, store cards, fuel cards and public transport cards would fall within this exemption.

Likewise, PSD2 continues to exempt independent ATM operators from authorisation but will require independent ATM operators to be subject to the same transparency requirements for services provided as banks and other PSPs.

Additionally, the geographical scope of PSD2 transparency and conduct of business requirements has been extended to apply to 'one-leg' transactions (payments to and from third countries, where one of the PSPs is located in the EU) and to transactions in non-EU currencies which have at least one leg in the EU.

PROPOSED APPROACH TO IMPLEMENTATION

The Government outlines its proposed approach to PSD2 implementation in the consultation paper. Appendix B contains a draft version of the Payment Services Regulations 2017 (**PSRs 2017**), the statutory instrument that the government will use to implement PSD2 in the UK.

The Government's intention is to build on the existing framework in order to ensure consistency with the European framework, but also to keep the payment services regime as tailored to the UK payment market as possible. For this reason, the draft PSRs 2017 largely reflect the Payment Services Regulations 2009 provisions

but with changes to capture PSD2 modification. Consequential amendments to other pieces of legislation, such as the Electronic Money Regulations 2011, may also be required, but these amendments will be included in the final draft of the PSRs 2017.

The consultation paper notes that the Financial Conduct Authority (**FCA**) will remain the relevant competent authority and produce supervisory procedures for passporting, registration, settlement of disputes and any non-compliance, including precautionary measures.

The consultation paper also provides the proposed responsibilities of firms seeking full authorisation, in respect of issues such as capital requirements and safeguarding funds received by a payment institution in the course of executing payment transactions.

Notably, the consultation paper also provides new rules to ensure that credit institutions provide access to payment account services (including to new market entrants) on a proportionate, objective and non-discriminatory basis. The government proposes to keep the same conditions for the exemption for Small Payment Institutions regarding authorisation.

The consultation also outlines new rules for Account Information Services and Payment Initiation Services, noting that 'the PSD II obligations are closely aligned with the government's vision for enhancing competition in the retail banking market through the delivery of an Open Banking Standard'. These new services introduced by PSD2 represent some of the most important changes to the payments industry, and have the potential to significantly alter competition within the industry.

The consultation paper also outlines transparency and information requirements for PSPs and new conduct of business rules.

Appendix A of the consultation paper provides a list of questions for stakeholders to provide their input to the Government's approach. Stakeholders can submit their responses to PSD2consultation@HMTreasury.gsi.gov.uk by 16 March 2017.

DLA Piper's financial services regulatory and payments teams can provide you with tailored advice on the implications of PSD2 on your business. Please contact Michael McKee, Stewart Plant, Ben Johnson and Chris Whittaker on the details overleaf for further information.

AUTHORS

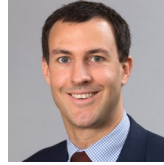


Michael McKee

Partner

T +44 (0)20 7153 7468

michael.mckee@dlapiper.com



Ben Johnson

Partner

T +44 (0)161 235 4536

ben.johnson@dlapiper.com



Stewart Plant

Partner

T +44 (0)161 235 4544

stewart.plant@dlapiper.com



Chris Whittaker

Associate (Australian Qualified)

T +44 (0)20 7796 6035

christopher.whittaker@dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved. | JAN 17 | Ref: 25180265