THE EVOLUTION OF PAYMENT SERVICES AND THEIR REFLECTION IN EUROPEAN REGULATION

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Abstract

This article elaborates on the definition of payment services contained in the European Union (EU) regulation on the matter (PSD2) and then sets forth the various interpretative issues that have arisen in relation to these definitions in recent years. This is followed by a brief description of the new developments related to the identification of payment services introduced by the European Commission's 2023 proposals for a new Payment Services Directive (PSD3) and a new Payment Services Regulation (PSR). Lastly, this article contains brief considerations on electronic money and on the electronic money services included in the PSD3 and PSR.

Keywords: payment services directive, cash deposit, cash withdrawal, payment account, execution of payment transactions, issuance of payment instruments, electronic money account, electronic money tokens.

1 Introduction

The regulation of payment services in the EU has evolved constantly, driven by the need to adapt to technological developments and the demands of consumers and businesses in an increasingly digitalised market.

The Payment Services Directive (PSD) adopted in 2007[1] established a harmonised framework for the creation of an integrated payments market in the EU; it included a list of payment services whose provision was restricted to certain providers; and it introduced a single authorisation for all providers not connected to deposit-taking or electronic money issuance seeking to provide payment services.

The Payment Services Directive adopted in 2015[2] (PSD2) added new payment services, such as account information and payment initiation, and facilitated the entry of new providers into the market, which promoted competition and innovation.

On 28 June 2023, the European Commission published a package of legislative proposals to modernise the regulation of payment services.[3] These include, inter alia, a new Payment Services Directive (PSD3) and a new Payment Services Regulation (PSR), both of which are

1 Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

2 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.

3 Accessible at European Commission (2023a).

intended to replace the current framework contained in PSD2 and also in the 2009 Electronic Money Directive (EMD2).[4] These proposals represent a change with respect to the current regulatory framework. They respond, in no small measure, to the technological innovations that have arisen in the payments sector and that have contributed to offering new ways and solutions to facilitate and speed up payments.

The following sections offer a description of the evolution in the regulation of payment services in the EU in recent years. It starts with the current regulation, contained in PSD2, and describes the amendments proposed in PSD3 and PSR. It concludes with a brief reference to electronic money and electronic money services, the latter being regulated for the first time in PSD3 and PSR. The following Figure graphically illustrates the evolution of the regulation of payment services from PSD through PSD2 to PSD3 and PSR.

The following sections are, therefore, intended to reflect the current situation, the debate on the payment services environment and their foreseeable development in future European regulation. Insofar as these are issues that offer different margins for interpretation and are constantly evolving, this article is limited to the current state of play of this debate.

2 Payment services in PSD2

PSD2 defines payment services by reference to those listed in Annex I thereto (money remittance, credit transfers and acquiring of payment transactions, inter alia). This enumeration is uniform throughout the EU, so that Member States cannot maintain or introduce different payment services in the domestic legislation transposing PSD2. PSD2 does not, therefore, contain a general definition of what a payment service is. However, this has not prevented the Court of Justice of the European Union (CJEU) from finding that the activity of a payment institution which consists in receiving funds from a user of a payment service, where such funds are not immediately accompanied by a payment order and therefore remain available on a payment account operated by that payment institution, constitutes a payment service.[5]

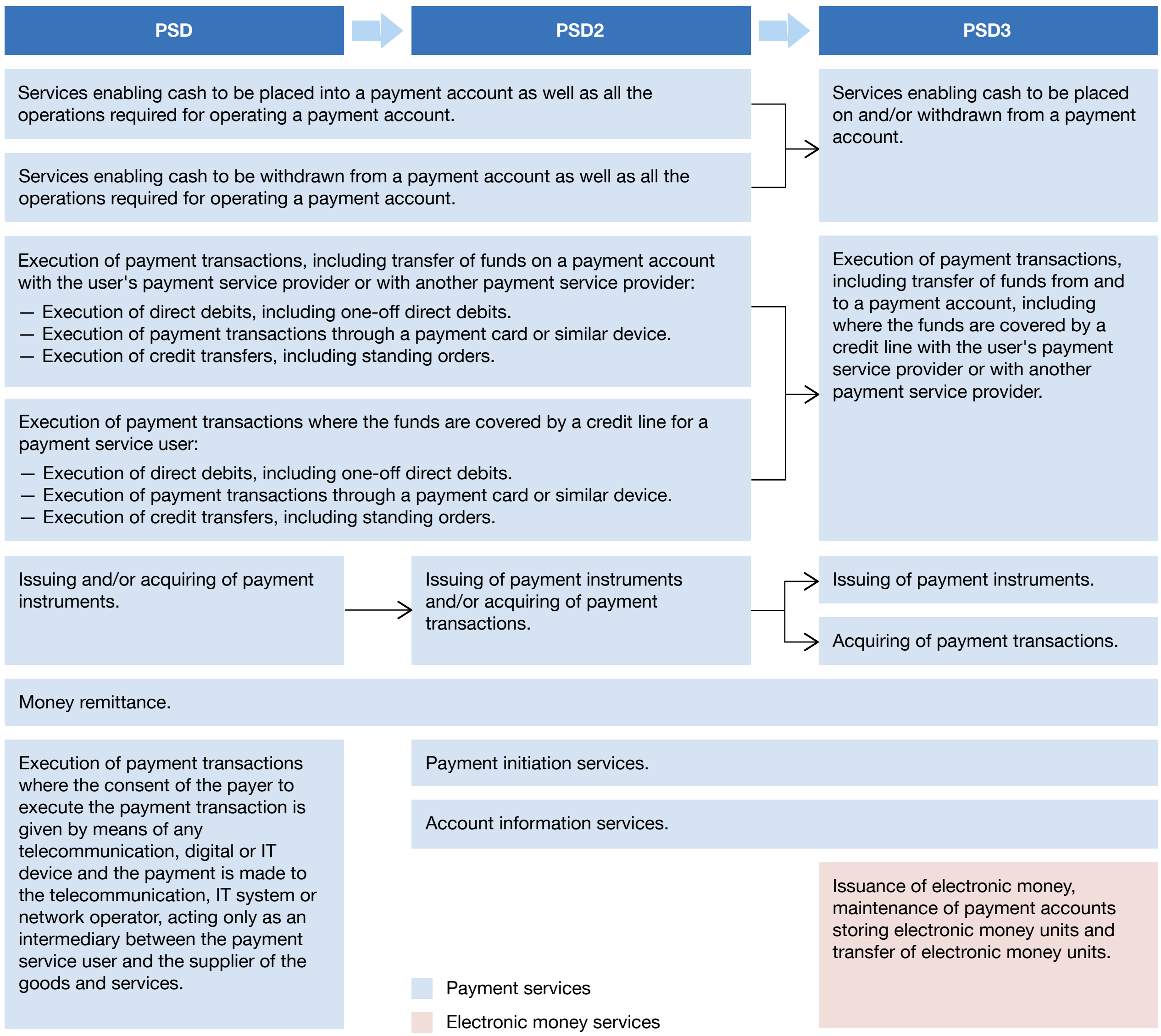
The first two payment services mentioned in PSD2 are those which enable cash to be placed or withdrawn and, in both cases, all the operations required for operating a payment account. Neither cash deposit nor cash withdrawal are defined in PSD2. However, PSD2 provides guidance for outlining both services. A cash deposit would be an act, initiated by the service user, of placing funds into a payment account. A cash withdrawal would allow the service user to receive funds from a payment account to which an amount equivalent to the funds obtained is debited. In this case, his/her provider would not necessarily be the one managing the account to which the amount is debited. PSD2 recognises that there may be

4 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 2000/49/EC.

5 Court of Justice of the European Union (2024a), paragraph 52.

Figure 1

Evolution of payment services in European regulation



SOURCE: Banco de España calculations.

ATM cash withdrawal service providers which are not party to the framework contract with the consumer withdrawing cash from a payment account.

The concept of the payment account and the transactions necessary to operate it, which are mentioned in PSD2 together with cash deposit and cash withdrawal, have not had an uncontested interpretation in the EU. PSD2 defines a payment account as an account held in the name of one or more payment service users which is used for the execution of payment transactions. This definition has led to questions as to whether certain types of accounts, which could include electronic money accounts linked to prepaid cards, savings accounts, reference accounts or credit card accounts, could be considered payment accounts.[6] In this respect, the CJEU has stated that if payment transactions cannot be made directly from the account in question, but the use of an intermediary account is necessary, the account is not a payment account.[7]

The interpretation of the transactions necessary for the operation of a payment account has also been controversial. On the one hand, there are questions as to whether such a transaction would be a distinct and separate payment service from services enabling cash to be placed or withdrawn, even though it is mentioned after both services. On the other hand, in certain EU Member States, opening and maintaining a payment account requires its provider to obtain authorisation as a payment institution to provide certain payment services, namely those provided for in paragraphs 1 ("Services enabling cash to be placed"), 2 ("Services enabling cash to be withdrawn") and 3 ("Execution of payment transactions", whether direct debits, payment card transactions or credit transfers) of Annex I to the PSD2. In other Member States, payment institutions do not require authorization with this scope to open and maintain payment accounts for users and to provide payment services to them.[8] This lack of clarity has led to the suggestion that the management of a payment account should not be considered a distinct or separate payment service whose provision alone requires an authorisation for the provision of payment services under paragraphs 1 and 2.

The third and fourth payment services consist of the execution of payment transactions, whether the funds are not covered by a credit line for a payment service user (third payment service) or they are covered (fourth payment service). The execution of payment transactions can take the form of direct debits, including one-off direct debits; payment transactions through a payment card or a similar device; or credit transfers, including standing orders. The distinction between these two payment services on the basis of whether or not the funds used for the execution of these payment transactions are covered by a credit line for a payment service user has been considered artificial and, therefore, unjustified, insofar as both services are identical in nature.[9]

Direct debit is a payment service for debiting a payer's payment account initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider. In a direct debit, the payer instructs the payee to initiate regular payments. Subsequent debits are initiated by the payee, without the involvement of the payer, which highlights the similarity of these transactions with card payment transactions initiated exclusively by the payee.[10] It is also worth noting that the CJEU has stated, on the basis of the PSD, that the absence of consent of the holder of the account

6 European Banking Authority (2022c), paragraph 29, p. 12, and European Commission (2023a), pp. 109-110. Difficulties in identifying payment accounts can already be found in studies on the 2007 Payment Services Directive. See London Economics, Institut für Finanzdienstleistungen and PaySys (2013), pp. 95-97.

7 Court of Justice of the European Union (2018), paragraphs 31 and 32. See also European Banking Authority (2021a).

8 European Banking Authority (2022c), paragraphs 10-13, pp. 9-10.

9 European Banking Authority (2022c), paragraphs 14-16, p. 10.

10 European Banking Authority (2019a).

to which the direct debit is debited does not exclude the qualification of the direct debit as a payment service.[11]

Credit transfer is a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer.

The *execution of payment transactions through a card or similar device* is not defined in PSD2. The scope and content of this service are connected to the payment services of the issuing of payment instruments and the acquiring of payment transactions, which are referred to below.

The fifth payment service is the issuing of payment instruments and/or the acquiring of payment transactions. However, these are two different services. The *issuing of payment instruments* is a service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions. A payment instrument is a personalised device or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order.

The issuing of payment instruments has been subject to various interpretations. On the one hand, questions have been raised as to whether the issuing of payment instruments would also include the execution of payment transactions with the issued payment instrument.[12] On the other hand, questions have been raised as to whether the issuer of the instrument should be the same as the party holding and managing the funds that are the subject of the payment transaction or whether it could be a different party.

The concept of the payment instrument has also generated debate as to its meaning and scope. The requirement that the payment instrument must be a personalised device has led to the argument that prepaid cards on which no identifier of the holder appears could not be considered as payment instruments.[13]

The CJEU has, furthermore, interpreted the scope of the concept of the payment instrument on several occasions. In particular, on the basis of PSD, which contained a definition substantially similar to the definition contained in PSD2, in 2014 the CJEU held that both the procedure for submitting credit transfer orders by means of a payment form with the payer's handwritten signature and the procedure for submitting credit transfer orders online constitute payment instruments.[14] Subsequently, in 2020, the CJEU concluded that, under PSD2, the *Near Field Communication* (NFC) functionality of a personalised multifunctional bank card, by means of which low-value payments are debited from the associated bank account,[15] also

11 Court of Justice of the European Union (2019b), paragraph 48.

12 European Banking Authority (2022c), paragraph 19, p. 11.

13 European Banking Authority (2022c), paragraph 38, p. 14.

14 Court of Justice of the European Union (2014), paragraph 44.

15 Court of Justice of the European Union (2020), paragraph 79.

constitutes a payment instrument. Lastly, in 2024, again on the basis of PSD, the CJEU held that a power of attorney, by which the holder of a bank account authorises an agent to make a disposal of assets, on that account, by means of a payment order, does not, in itself, constitute a payment instrument. However, a set of procedures, agreed between the holder of that account and the payment service provider, which allows the agent appointed in such a power of attorney to initiate a payment order from that account, may be classified as a payment instrument.[16]

Technological innovations have added further complexity to all of the above. This is due, in particular, to the tokenisation of payment instruments, understood as the creation of a value that replaces the payment instrument's *primary account number* (PAN) and serves to initiate a payment order. In view of the token's functionality and autonomy, the question arises as to whether this is merely the provision of a technical service by the creator of the token, or whether it is the issuance of a payment instrument and, therefore, the provision of a payment service.[17]

The acquiring of payment transactions is a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee. In Recital 10, PSD2 qualifies this definition as neutral in order to capture not only the traditional acquiring models structured around the use of payment cards, but also different business models, including those where more than one acquirer is involved. PSD2 also clarifies that technical services provided to payment service providers, such as the mere processing and storage of data or the operation of terminals, should not be considered to constitute acquiring. Lastly, it adds that some acquiring models do not provide for an actual transfer of funds by the acquirer to the payee because the parties may agree upon other forms of settlement.

EU law refers to this payment service as a chain of operations from the initiation of a card-based payment transaction to the transfer of the funds to the payment account of the payee.[18] The acquirer is actively involved in the process of ordering the payment, usually through payment order transmission, validation, etc.[19] As noted above, moreover, the acquiring of payment transactions does not require opening and maintaining payment accounts with the acquirer itself. The acquirer can, for example, merely create internal records, which are not considered payment accounts, in order to ascertain to whom and how many payments and repayments are to be made.[20]

The sixth payment service is money remittance. PSD2 defines it as a payment service where funds are received from a payer, without any payment accounts being created in the

16 Court of Justice of the European Union (2024b), paragraph 47.

17 European Banking Authority (2022c), paragraphs 35 and 85, pp. 13 and 24; Haut Comité Juridique de la Place financière de Paris (2023), p. 66; and European Commission (2023a), p. 104.

18 Paragraph 30 of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

19 London Economics, Institut für Finanzdienstleistungen and PaySys (2013), p. 102.

20 European Banking Authority (2022b).

name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, or where such funds are received on behalf and made available to the payee. Recital 9 of PSD2 connects this service to the service provided by supermarkets, merchants and other retailers to the public enabling them to pay utilities and other regular household bills.

As noted above, the money remittance service provider does not operate any payment account for either the payer or the payee This conclusion has not, however, done away with the advisability of clarifying whether a money remittance service (rather than the execution of a credit transfer) is involved where the transfer of funds is initiated from a payer's account held with a payment service provider other than the one providing the money remittance, to a payee who does not hold a payment account, or where the payer, who does not hold a payment account, initiates the transfer of funds to the payee's payment account held at a payment service provider other than the one providing the money remittance service.[21]

The seventh payment service in PSD2 is payment initiation. PSD2 defines it as a payment service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider. This service emerges as a payment solution that enables the initiation of transfers to merchants for consumers to pay for the online purchase of goods and services.[22] Along these lines, Recital 27 of PSD2 states that the payment initiation service plays a part in e-commerce payments by establishing a software bridge between the website of the merchant and the online banking platform of the payer's *Account Servicing Payment Service Provider* (ASPSP) in order to initiate internet payments on the basis of a credit transfer. According to Recital 29, payment initiation services enable the payment initiation service provider to provide comfort to a payee that the payment has been initiated in order to provide an incentive to the payee to release the goods or deliver the service without undue delay. Such services offer a low-cost solution for both merchants and consumers and provide consumers with a possibility to shop online even if they do not possess payment cards.

As can be seen, the background to the payment initiation service and the cited PSD2 Recitals link this service directly to e-commerce. However, no such direct link exists in the regulation of this service. The payment initiation service has been regulated more broadly. This has led to questions as to the characteristic element that would enable their identification, and the sending of a payment order from the service user to the ASPSP[23] has been highlighted as such. Distinguishing this service from the service provided by certain companies that virtually replicate a payment instrument (token) may not be straightforward, insofar as these companies control the technical process of initiating the payment order and authenticating the user.[24]

PSD2 provides that the payer of a payment transaction has the right to make use of a payment initiation service provider (PISP) as long as the relevant payment account is accessible online.

21 European Banking Authority (2022c), paragraph 8, p. 9.

22 London Economics, Institut für Finanzdienstleistungen and PaySys (2013), p. 105.

23 Haut Comité Juridique de la Place financière de Paris (2023), pp. 71-75.

24 Haut Comité Juridique de la Place financière de Paris (2023), p. 66, and European Commission (2023a), p. 104.

The PISP can initiate the same payment transactions that the ASPSP offers to its own customers, such as instant payments, batch payments, recurring transactions, international payments or future-dated payments.[25] Furthermore, if the ASPSP allows the payment service user to initiate payment transactions —through the ASPSP's browser environment or a mobile banking app of the ASPSP— using different unique identifiers (including national bank account numbers or IBAN), the user should have the right to initiate the same payment transactions through a PISP by using the same unique identifiers. This should apply regardless of the type of interface used by the PISP to securely communicate with the ASPSP, i.e. a dedicated interface, or the interface used by the ASPSP for authentication and communication with its users.[26]

However, in the view of the European Banking Authority, the conclusion would be different for mobile payments that rely on a mobile phone number as a proxy for the payee's unique identifier, such as an IBAN. Such mobile payments entail an additional service (the use of the payee's mobile number as a proxy for the payee's unique identifier) that is offered by the ASPSP to its users complementary to the underlying transaction that is a conventional transaction, such as a credit transfer. Such additional service is often based on contractual agreements between ASPSPs and a third party operating and maintaining these solutions, including the database of phone numbers. Whilst the ASPSP should enable PISPs to initiate the underlying transactions, PSD2 does not require ASPSPs to allow PISPs to initiate mobile phone transactions of the kind described above. However, market participants can agree to allow PISPs to initiate such transactions, on an industry-wide or a bilateral contractual basis.[27]

Lastly, the provision of the payment initiation service is not dependent on the existence of a contractual relationship between the PISP and the ASPSP for this purpose. However, this does not prevent both providers from entering into agreements. In this regard, certain providers initiate payment orders using secure corporate payment procedures and protocols available to payers that are not consumers and that are based on specific, often bilateral, agreements with the ASPSPs for the provision of those services through a custom-built IT system. In relation to these business models, it has been considered that they would not carry the same level of risk and that, in these cases, it would not be justified for the services provided under such an arrangement to be included within the scope of the payment initiation service.[28]

The last payment service covered by PSD2 is the account information service. This is an online service to provide consolidated information on one or more payment accounts held by the Payment Service User, either with another payment service provider or with more than one payment service provider. This service therefore allows the Payment Service User to have an overall view of its financial situation immediately at any given moment. However, it is not necessary that its provider (AISP) provides the consolidated information to the user in order to

25 European Banking Authority (2018), paragraph 29, p. 6, and European Banking Authority (2022a).

26 European Banking Authority (2021b).

27 European Banking Authority (2021b).

28 European Banking Authority (2022c), paragraphs 21 and 22, p. 11. On this issue, see European Banking Authority (2019b).

identify this service, as the AISP may transmit it to a third party with the user's explicit consent.[29]

3 Regulation of payment services in the European Commission's 2023 legislative package

On 28 June 2023, the European Commission published several legislative proposals to modernise the regulation of payment services. These proposals include a new Payment Services Directive (PSD3) and a new Payment Services Regulation (PSR). These proposals are intended to introduce certain new features to the payment services listed in PSD2 and briefly described in the previous section.

The first payment service mentioned is identified as the service enabling cash to be placed on and/or withdrawn from a payment account. As is already the case in PSD2, these two services remain undefined in PSD3 and PSR. Since they are similar in nature, as they require the use of cash, the two services (cash deposit and cash withdrawal) have been grouped together in a single payment service.[30] However, the reference in PSD2 to the performance of all the operations required for operating a payment account has been removed. Recital 7 of PSD3 and Recital 8 of PSR note in this respect that it is appropriate to separate the service of withdrawing cash from a payment account from the activity of servicing a payment account, as the providers of cash withdrawal service providers do not necessarily service payment accounts.

In relation to the latter issue, the definition of a payment account is amended, in line with the CJEU (in its judgment of 4 October 2018). A payment account is defined as an account at a payment service provider in the name of one or more payment service users which is used for the execution of one or more payment transactions and allows for sending and receiving funds to and from third parties. Thus, if payment transactions cannot be executed directly from the account in question, but require the use of an intermediate account, that account is not a payment account. Recital 9 of PSD3 and Recital 20 of PSR specify in this respect that savings accounts are excluded from the definition of payment accounts.

The second payment service mentioned is the execution of payment transactions, including transfers of funds from and to a payment account, including where the funds are covered by a credit line with the user's payment service provider or with another payment service provider. The distinction in PSD2 between two payment services on the basis of whether or not the funds used for the execution of payment transactions are covered by a credit line for a payment service user is therefore eliminated. The separate reference to direct debit, credit transfer and execution of payment transactions through a payment card or similar device is also removed from the identification of this payment service.

29 European Banking Authority (2019c).

30 European Banking Authority (2022c), paragraph 13, p. 10.

The definitions of direct debit and credit transfer remain substantially similar to those in PSD2, albeit with certain differences worth noting. Direct debit is defined as a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of a mandate (in PSD2 it is consent) given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider.[31] Transfer is defined in the same way as in PSD2, but it is added that this payment service includes instant credit transfers, i.e. credit transfers which are executed immediately, regardless of the day and time, in line with the regulation of such credit transfers published in 2024.[32] Instant credit transfers are, therefore, a type of credit transfer.

The third payment service is the issuing of payment instruments. This retains its definition as a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions. However, the definition of payment instrument is amended. The payment instrument is an individualised device or devices (in PSD2 it is personalised) and/or set of procedures agreed between the payment service user and the payment service provider which enables the initiation of a payment order. Recital 12 of PSD3 and Recital 23 of PSR state that, since there are pre-paid cards where the name of the holder of the instrument is not printed on the card, the identification of a payment instrument as a personalised device could leave those cards outside this definition. The replacement of the qualifier "personalised" by "individualised" is intended to avoid this result.

Recital 11 of PSD3 and Recital 22 of PSR also clarify that the NFC functionality of a card, which enables payments to be made, is not a payment instrument, but rather a functionality of a payment instrument. This addresses the criticisms levelled in relation to the conclusions reached by the CJEU in its judgment of 11 November 2020, which considered the NFC functionality to be a payment instrument. Given that this qualification gives rise to interpretation problems regarding the payment services regulation, while this NFC functionality can be considered, rather, as a means of communication between the POS terminal and the card, PSD3 and PSR opt to exclude this NFC functionality from the qualification as a payment instrument.[33]

Lastly, with regard to payment instruments, Recital 13 of PSD3 and Recital 24 of PSR also distinguish between *pass-through wallets* and *staged wallets.* The former involve the tokenisation of an existing payment instrument, e.g. a payment card. They are not payment instruments, but rather payment applications, i.e. computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders.[34] Their creation is considered a technical service and not the issuing of

31 PSR defines the mandate as the expression of authorisation given by the payer to the payee and, directly or indirectly through the payee, to the payer's payment service provider, allowing the payee to initiate a payment transaction for debiting the payer's specified payment account and to allow the payer's payment service provider to comply with such instructions.

32 Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro.

33 European Banking Authority (2022c), paragraph 36, p. 14; European Commission (2023a), p. 112, and Haut Comité Juridique de la Place financière de Paris (2023), p. 70.

34 Article 2(21) of Regulation (EU) 2015/751.

a payment instrument. Staged wallets are prepaid electronic wallets where funds are stored for future online transactions. They are considered as payment instruments and their creation is an issuing of a payment instrument.

The fourth payment service is the acquiring of payment transactions. This service is separate from the issuing of payment instruments, but retains the same definition, i.e. a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee.

The fifth payment service is money remittance. It is defined in much the same way as in PSD2. It is a payment service that enables funds to be received from a payer without any payment account being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, or receiving funds on behalf of the payee and making them available to the payee. Along the same lines as Recital 9 of PSD2, both Recital 14 of PSD3 and Recital 27 of PSR state that in some EU Member States, supermarkets, merchants and other retailers provide a service to the public enabling them to pay utilities and other regular household bills. These services should be treated as money remittance.

However, it does not contain any indication as to whether it is a money remittance service (as opposed to the execution of a credit transfer) when the remittance of funds is initiated from an account of the payer held at a payment service provider other than the one providing the money remittance, to a payee that does not have a payment account; or when the payer, which does not have a payment account, initiates the remittance of funds to the payment account of the payee held at a payment service provider other than the one providing the money remittance.

The sixth payment service is payment initiation. Its definition differs with respect to the identification of this service in PSD2. Payment initiation service is defined as a service consisting of placing[35] a payment order at the request of the payer or the payee (in PSD2 it is at the request of the payment service user) with respect to a payment account held at another payment service provider.

It seems to follow from PSD3 and PSR that the payment initiation service can be provided to the payer, but also exclusively to the payee. This interpretation is supported in Recital 54 and Article 36(4)(a) of PSR, which acknowledge that a PISP may instruct a direct debit to an ASPSP, i.e. a payment transaction which, by the very definition of the debit, is initiated by the payee. However, it should also be noted that the payee can only initiate a debit if it has the consent (in PSD2) or mandate (in PSR and PSD3) of the payer. In view of the latter, the question arises as to whether the payment initiation service can be defined as a service in the absence of any involvement of the payer.

35 In PSD2, the term is "*initiate*".

The seventh and last payment service is the account information service. Like payment initiation, this service also differs with respect to PSD2. PSR notes the existence of business models where the AISP provides aggregated information on a consumer's payment account to a third party in order for the third party to provide other services (e.g. credit, evaluation of creditworthiness) to that consumer using these data. In view of these business models, PSR considers it necessary to clarify that the information aggregated by the AISP may be transmitted to a third party to enable that third party to provide another service to the user, with the user's permission. The account information service is thus defined as an online service of collecting, either directly or through a technical service provider, and consolidating information held on one or more payment accounts of a payment service user with one or more account servicing payment service providers.

4 Electronic money and electronic money services

Electronic money is not regulated in PSD2, but in EMD2. It is defined as electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, as defined in PSD2, and which is accepted by a natural or legal person other than the electronic money issuer. Electronic money is not a payment service, a deposit or a debt security. It is a monetary asset separate from the funds received,[36] which, according to Recital 13 of the EMD2, is a surrogate for coins and banknotes for use as a means of payment.

PSD2 and EMD2 do not define electronic money services. The issuance of electronic money and electronic money distribution and redeemability do not qualify as **electronic money services**, nor do electronic money payment transactions. These transactions are payment services which, where applicable, are linked to the issuance of electronic money if the provision of these services triggers the issuance or redemption of electronic money in a single payment transaction.[37] The fact that electronic money payment transactions involve the use of electronic money accounts —a figure which is covered by Recital 8 of EMD2 but has no definition of its own distinct from that of the payment account— does not alter the above conclusions. Rather, this raises the question as to the justification for maintaining a regulatory separation between electronic money accounts and payment accounts.[38]

In this situation, PSR and PSD3 opt for an approach in which electronic money and certain related activities are incorporated into payment services legislation. Electronic money retains its definition as an electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by other natural or legal persons than the issuer of electronic money. Electronic money accounts, however, are not mentioned.

36 Court of Justice of the European Union (2024a), paragraphs 47 and 48.

37 Court of Justice of the European Union (2019a), paragraph 30.

38 European Banking Authority (2022c), paragraph 100, p. 27.

Also, PSR and PSD3 identify electronic money services separately from payment services. Electronic money services are the issuance of electronic money, the maintenance of payment accounts storing electronic money units and the transfer of electronic money units. However, these services are not individually defined. In addition, the redemption of electronic money is not included among electronic money services, which may give rise to certain critical considerations, since the issuance of electronic money unconditionally and automatically confers entitlement to redemption.[39] The European Central Bank has pointed out in this respect that the definition of electronic money services should be revised to include the withdrawal and redemption of electronic money, but only to the extent that these are not part of the payment transaction itself.[40]

Lastly, PSD3 and PSR take into account Electronic Money Tokens (EMTs) regulated in the Markets in Crypto-Assets Regulation (MiCAR).[41] MiCAR defines EMTs as a type of crypto-asset that, in order to maintain a stable value, is referenced to the value of one official currency. MiCAR subsequently states that EMTs shall be deemed to be electronic money. On this basis, EMTs are included, as electronic money, in the definition of funds (Recital 16 of PSD3 and Recital 29 of PSR). The PSD3 and PSR impact assessment report further adds that payment transactions using EMTs would be considered as falling within the scope of payment services regulation, and this latter issue has still to be clarified definitively.[42]

5 Conclusions

PSD3 and PSR represent an evolution in, and an update of, the regulation of payment services. Payment services are not substantially altered. The identification of certain payment services remains essentially unchanged (e.g. money remittance and the deposit and withdrawal of cash from a payment account). The definition of other payment services undergoes some change, mainly due to the emergence of different business models (account information) or technological innovations (issuance of payment instruments).

Notably, PSD3 and PSR incorporate electronic money into payment services legislation and regulate electronic money services for the first time. The definition of electronic money remains unchanged, while (new) electronic money services are identified with the issuance and holding of payment accounts storing electronic money units and the transfer of electronic money units. Any mention of electronic money accounts disappears. Lastly, PSD3 and PSR include EMTs, as electronic money, in the definition of funds.

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39 Court of Justice of the European Union (2019a), paragraph 28.

40 European Central Bank (2024), paragraph 6.1.1.

41 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.

42 European Commission (2023c), pp. 56, 172-173.

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