

## ING's key messages on the review of PSD2

While we see diverging numbers in uptake of PSD2 services (e.g. PIS transactions equals to ~1% regular payments), we believe PSD2 has brought benefits to the payments market. It not only introduced new innovative services, but also helped to further reduce fraud and increased security due to SCA. In general terms it has led to more standardization in the market as it has set rules on how PSPs can get access to payment services of banks in a secure matter. PSD2 has stimulated innovation within ING and has set a foundation for further technological advancements, internally and externally.

However, we identify certain difficulties related to PSD2:

- **Lack of supervisory harmonization** – PSD2 and related legislation (both level 1 and 2) contained many ambiguous provisions which have resulted in interpretation issues. NCA's have provided, often diverging, local guidance which has resulted in a very fragmented European legal landscape. This relates to several topics addressed by PSD2 and in particular to access to the account services. This fragmentation has made it very complex for ASPSPs with a presence in multiple EU countries to comply as each country has local specificities and contradictory regulatory requirements banks need to adhere to and host Member State NCAs applying their own interpretation and prioritization in supervision. As a pan-European bank we experience the adverse consequences of this fragmented landscape regularly.
- **The interplay between PSD2 and other legislation** – A clear example is the interplay between PSD2 and GDPR that required additional guidance in relation to multiple issues. For example, the concept of data minimisation under GDPR is contradictory to the requirements of the RTS. PSD2 requires the AS PSP to give access to all data the customer can see in his/her payment account in online channels. Where data minimization under GDPR requires controllers to process no more personal data than what is necessary in order to achieve the specific purpose in question. Another example is the requirement to perform all payment related incident reporting under DORA while the EBA has at the same time came out with revised guidelines on major incident reporting under PSD2 makes the landscape more complex. We also would like to highlight the interplay between AML/TF regulation and the access requirements of article 36 PSD2. Despite the fact that PIs generally lack robust compliance framework and controls, the relevant NCAs (generally not being central banks) expect banks to provide bank account services to such payment institutions and that leads to additional compliance risk. Finally, we see limited cooperation between different relevant authorities on such interplay topics.
- **Absence of a cost recovery mechanism** – The regulatory requirements imposed by PSD2 required large investments and additional run costs for banks which negatively impacts the innovation capabilities by banks. In line with the position of the Dutch central bank we consider that third party service providers shall pay a fair compensation to banks for the use of the technical infrastructure, both to maintain it and keep it secure.
- **There remains an unlevel playing field in the PSD2 ecosystem** – We believe there is an un-level playing field between banks and their non-bank competitors as regulated open access only applies in one direction. While this is partly addressed by other data-related regulation like the DMA, there still lacks a horizontal data sharing framework.

Furthermore not all players in the payment ecosystem are in scope of PSD2. Here the unlevel playing field is mostly related to large online platforms (e.g. bigtech but also large merchants) acting as payment institutions without a PSD2 license. We believe these players also need to be included in the scope of PSD2.

- **Lack of standardisation** – We see many local divergences in access specifications. This results in varying levels of protection and security across the EU and prevents PSD2 from being a ‘plug and play’ experience for third parties (TPPs). We believe that the market should adopt the use of more secure forms of access like e.g. standardised API Frameworks (preferably the one from the now already dominant Berlin Group) and parameters sets as this allows TPPs to access data in a uniform way. Having clear standards will help TPPs to create scalable solutions, and will bolster security and efficiency for customers. Such standards should be market driven and any revision of PSD2 should leave sufficient room to move towards more efficient and secure solutions in the future.
- **Uncertainty for the customer** – We fear that PSD2 has made payment services more complicated due to the fact that more parties are involved in the payment chain, further terms and conditions have been added and more privacy concerns have arisen. Due to the complexity of the ecosystem, it is not always clear and transparent to customers what they exactly consent to and which party to address any concerns to. This specifically relates to AIS, customers may not know which data is being retrieved and processed.
- **Address the challenges and uncertainties of PSD2 before moving towards a broader product scope and Open Finance** – We believe that Open Finance has the potential to foster innovation and competition and can provide opportunities for both industry and consumers, but it is important to keep the lessons learned of PSD2 in mind before moving on to an Open Finance framework. Fair compensation and clear standards for the APIs are important, furthermore all financial service providers should be in scope. We believe a Regulation would be more beneficial as opposed to a Directive in order to ensure a more harmonised approach across the EU. Finally, given the low uptake of the access to account services and lacking a clear overview of lessons learnt, we are of opinion that it is too early to introduce open finance.