**Additional comments to questions 11.2 and 11.3 related to exclusions to PSD2:**

* **Exclusion from Article 3 (i)**

Regarding the exclusion from Article 3 (i), we have received a clarification request regarding the PSD2 application to payment services provided by an investment firm (IF) authorized under the national law transposing MIFID II to provide investment activities. The IF provides payment services related to securities asset servicing and intended to provide also PIS and AIS for its clients.

Following a consultation with the EBA, it informed us that the exemption in Article 3 (i) does not extend to the initiation of payment transactions by the IF from their clients’ accounts held with banks/ASPSPs to the trading accounts held by the IF and that it would need to be authorized/registered to provide PIS and, respectively, AIS. In our opinion, the PIS and AIS activities provided by an IF should be included into the negative scope under Article 3 (i) of the PSD2.

* **Exclusion from Article 3 (j)**

Regarding services provided by “technical service providers” in Article 3 (j), we found that for some business models proposed by Fintech entities, it is difficult to differentiate between regulated payment services, exempted payment services or technical services they provide/intend to provide. Our understanding is that PSD2 applies in relation between PSP and their final customers but the emerging of services “somewhere” in the payment chain provided by a “technical service provider” poses challenge to CA in the process of fitting those services in the legal framework (an example of this is that it is difficult to draw a line between payment initiation services and technical services or a facilitator that holds a collection account with an acquiring bank and enters into the possession of funds – they generally claim to provide acquiring or transfer-credit services).

* **Exclusions from Article 3 (k) and (l)**

Regarding the exemptions from Article 3 (k) and (l), having in mind the experience of the notifications so far, the possibility of bringing them within the scope of PSD should be considered in case COM accounts this to be comesurated with the inherent risks because:

* These services can also be provided by PSPs (based on the provisions of article 37 (2) of PSD2 that refers to “service providers” – term that is not defined in the directive, coroborated with guideline 5 and 6 of *EBA/GL/2022/02 on limited network exclusion under PSD2*) without any means of ensuring the protection of consumers;
* PSD stipulates that the provision of these types of services should be notified to the competent authority (CA), without providing it with the tools to coerce those who provide such services.

Otherwise, in the absence of significant risks posed by these services, these exclusions may be retained without the obligation to notify the CA, clarifying that the addressees are both payment service providers and non-regulated entities.

The application of the ‘exclusion’ under Article 3(k) of the PSD2 (limited network exclusion or LNE), the related notification requirements articulated in Article 37 of the PSD2 and the meaning of Recitals 13 and 14 in the PSD2 diverge significantly between Member States. In order to address this issue, EBA recently published the EBA/GL/2022/02 Guidelines on the limited network exclusion under PSD2. The EBA/GL/2022/02 states, among others, that the assessment of the functional connection between goods and services would be based on a specific category of goods and services with a common purpose as identified by the issuer of the excluded instrument. The EBA also clarified the nature of the assessment indicators that all of them are mandatory for the assessment by the CA and that each can be used as a reason to reject granting the exclusion. We think it would be useful for these elements to be introduced in the directive itself and some quantitative criteria could be useful for the assessment as well, in case the other MS do not favor bringing this exemption within the scope of PSD3.

Regarding the ‘exclusion’ under Article 3(l) of the PSD2, we are of the opinion that the limits are still appropriate.

Article 37 (3) states that MS shall require that service providers carrying out an activity referred to in point (l) of Article 3 send a notification to competent authorities and provide competent authorities an annual audit opinion, testifying that the activity complies with the limits set out in point (l) of Article 3. Having in mind that we received audit opinions based on different standards (ISAE 3000/ISRS 4400), we find it quite challenging to assess which one is proper for this kind of confirmations; therefore, we appreciate that a clarification on the audit standards would be welcomed.

Also, we appreciate necessary to clarify the concepts of payment facilitator and payment processor, mentioning what conditions must be met and what role the entities must have in order to be qualified for exclusions.

**Additional comments to question 20 related to activities listed under article 18:**

We have doubts on the fact that a credit line could be considered ancillary to the payment services and granted exclusively in connection with the execution of a payment transaction, as it is difficult to link the credit line granted ex-ante to the execution of a specific payment transaction that will intervene after (when the client of PI will decide to make a purchase and pay with the credit card or to withdraw money from the credit line using the card at ATMs).

We have the same doubts in the case of the PSPs with the main activity of issuing credits cards.

**Additional comments to question 56:**

Another argument would be the criterion of the source of income for the online marketplaces. The purpose of most platforms is not primarily to achieve their customer's goals or interest (to sell or to buy) - which is of the essence in representation contracts with negotiation powers -, but rather to create a good legal and operational framework for as many transactions as possible to take place. This is because transactions are a main source of profit, and the revenues usually represent a commission related to the volume of transactions on the platform.

Other aspects that are worth mentioning here, based on some situations encountered in practice, are:

* documents to be considered in **evaluating the suitability of persons with qualifying holdings** for the purpose of obtaining the authorisation as a payment institution/ registration as an account information service provider (proposed shareholders).

The legal framework does not contain any particularities for the evaluation process of the suitability of specific entities/persons with qualifying holdings (ex.: entities under the supervision of a competent authority, multilateral developments banks, international organization of those provided in article 118 from CRR or entities under the central government control). As no exceptions are stated by the *EBA/GL/2017/09 on the information to be provided for the authorisation of payment institutions and e-money institutions and for the registration of account information service providers under Article 5(5) of Directive (EU) 2015/2366*, the applicant with such shareholders must submit the entire documentation for all of these entities, according to the point 15 of *EBA/GL/2017/09*. Because such a requirement seemed impossible to be achieved, the authorization process stopped. This requirement is considered costly and excessively burdensome by the applicants that are in this situation, with no practical reason, since the credit institutions are already supervised by a competent authority under stricter requirements. We understand, following a consultation process with the EBA, that it is possible (based on the proportionality principle) for the applicant not to provide all the documents stipulated in the EBA Guidelines, but it is desirable that this situation to be clearly reflected in the legal framework.

* **requirements for governance arrangements and internal control mechanism**

We deem necessary to highlight the necessity to regulate, at a minimum, the requirements for governance arrangements and internal control mechanism of payment institutions so as to differentiate between the different payment services and the level of risk involved.

* **cooperation mechanism between MS**

We consider appropriate the establishment of a quick and easy cooperation mechanism, especially designed for the exchange of views on PSD2 between the competent authorities of the MS, for e.g. a dedicated e-mail address.