REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF AUDITORS' SPECIAL REPORT

Digital payments in the EU

Progress towards making them safer, faster, and less expensive, despite remaining gaps

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This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 265 of the Financial Regulation and to be published together with the Special Report.

I. THE COMMISSION REPLIES IN BRIEF

The Commission welcomes this European Court of Auditors' special report on Digital Payments in the EU.

Adopted in 2020, the Retail Payment Strategy[1] (RPS) laid down an ambitious vision for the EU single market for payment services, setting as objectives a more integrated market, more diverse and innovative payment solutions and greater confidence of users in those solutions. Over the last four years, significant progress has been achieved towards those goals. The adoption of the instant Payments Regulation[2] has contributed to the strengthening of the Single Euro Payments Area (SEPA) and provided a framework favourable to the development of innovative payment solutions that can work across borders. The evaluation[3] carried out by the Commission in the context of the review of the rules on payment services has shown that the second Payment Services Directive (PSD2)[4] contributed to promote innovative payment services such as solutions building on Open Banking, while ensuring users' confidence in the security of payments, notably through the introduction of Strong Customer Authentication (SCA).

This European Court of Auditors' special report confirms in many respects the progress made since 2020, particularly with regard to the positive impact that SCA has had in increasing the security of payments against fraud, and the ramping up of enforcement actions related to the prohibition, under SEPA rules, of discrimination based on payment account location ("IBAN discrimination").

Overall, the Commission recognizes the importance of the issues raised in this Special Report, in particular as regards the principle of evidence-backed decision-making, the need to adequately assess the impact of policies, and the importance of appropriate supervisory guidance in ensuring a level-playing field. The Commission notes that work on a large number of issues identified in this report is already underway, in particular in the framework of the ongoing revision of the current regulatory framework for payment services.

[1] COM(2020) 592 final 'Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions on a Retail Payments Strategy for the EU'; available here.

[2] 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

[3] SWD(2023) 231 final 'Commission Staff Working Document Impact Assessment Report Accompanying The Documents Proposal For A Regulation Of The European Parliament And Of The Council on payment services in the internal market and amending Regulation (EU) No 1093/2010 and Proposal for a Directive Of The European Parliament And Of The Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC'; available here.

[4] 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.

Indeed, the proposals for a Payment Services Regulation (PSR)[5] and third Payment Service Directive (PSD3)[6] adopted by the Commission in June 2023 contain several measures that embody key recommendations put forward in this Special Report, notably with a view to improving the legal framework on Open Banking and providing clearer and more detailed guidance on authorization and supervision.

The Commission takes note of the fact that its legislative proposal for a digital euro of June 2023 is excluded from the scope of this audit. In the Commission's view this is an initiative which, once implemented, will have major relevance for retail payments. This initiative on the digital euro was a commitment in the Commission's 2020 Retail Payment Strategy.

II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA

1. Methodology and justification of price interventions[7]

In its assessment of the 'price interventions', the ECA concluded that the reasons for introducing a 'surcharge ban'[8] and price caps for interchange fees[9] were not backed up by sufficient evidence. As regards the assessment of the impact of the surcharge ban introduced with PSD2, the Commission acknowledges that there was limited evidence resulting from the consultations carried out in preparation of the PSD3 and PSR proposals. Most respondents to the Commission's targeted consultation did not respond to the questions on surcharging. As regards the effectiveness of the price caps for interchange fees set in the Interchange Fee Regulation (IFR),[10] the Commission exploited the information which it obtained in the context of its practice enforcing the EU competition rules, as well as the information from national competition authorities.

Surcharging is the practice used by merchants to compensate for the additional costs of card-based payments. The logical link between the fees paid by merchants for accepting consumer card payments and the corresponding fees paid by consumers is, in essence, that payment instruments for which interchange fees have been regulated (i.e., consumer debit and credit cards of four-party schemes) are not surcharged, as they can be accepted by merchants without incurring high fees.

The Commission considers that there is insufficient evidence that interchange fees are no longer the main component of merchant service charges. Therefore, the Commission believes that the rules on surcharges remain appropriate and in line with the competition considerations that led to the regulatory limits on the level of interchange fees. As regards the caps which have been set for interchange fees under the IFR, the justification can be found in the Regulation itself. It is the

[5] COM/2023/367 final 'Proposal for a Regulation Of The European Parliament And Of The Council on payment services in the internal market and amending Regulation (EU) No 1093/2010; available here.

[6] COM/2023/366 final 'Proposal for a Directive Of The European Parliament And Of The Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC; available here.

[7] ECA observations 26 – 42, 102, 104.

[8] Directive (EU) 2015/2366, Art. 62.

[9] Regulation (EU) 2015/751, Art. 3 and 4.

[10] Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions

phenomenon of "reverse competition" which is specific for the payment market and which lies at its root. Competition between payment card schemes to convince payment service providers to issue their cards leads to higher rather than lower interchange fees on the market, in contrast with the usual price-disciplining effect of competition in a market economy. Regulating such fees therefore improves the functioning of the internal market and contributes to reducing transaction costs for consumers.

Considering that instances of price regulation are regarded as exceptional, and to a high degree are case specific, there is currently no common methodology in place covering all situations of price intervention. In individual instances, though, the Commission strives to adequately explain why price intervention is warranted, including through specific criteria.

2. Standardisation and monitoring arrangements in open banking[11]

The Commission acknowledges the lack of independent, comprehensive and trustworthy data and market monitoring regarding the development and success of open banking in the EU. Article 48 of the PSR proposal aims precisely to remedy this by creating a legal basis for competent authorities and the European Banking Authority (EBA) to collect data on open banking from data holders and data users and by imposing a monitoring obligation.

The Commission's analysis of open banking in the impact assessment accompanying the PSR/PSD3 proposals was not based on a very extensive quantitative analysis, because the available data did not permit such an analysis (although some quantitative analysis is done, see for example Annex III of the impact assessment).

As regards allowing charging for access to payment account data, the Commission considers that it has taken account of the views and arguments of open banking data holders and data users equally and fairly. Allowing charging for access to payment account data would have necessitated a more detailed price intervention[12]. Each data holder (bank) has a monopoly on access to the data contained in the payment accounts of its own customers and, without any pricing restrictions or involvement of data users in the price-setting process, it could set access charges at a dissuasively high level, or else include a monopolistically large profit margin in access pricing.

In the Commission's FIDA proposal[13] on financial data access, charging for access will be possible. However, such pricing must be agreed between both sides of the market in « schemes » (FIDA Title IV) and compensation must be both « reasonable » and « directly related to making the data available to the data user and attributable to the request » (FIDA art 10(h)). These rules constitute limitations on freedom of pricing. In FIDA the responsibility for respecting these pricing rules is delegated to data holders and data users collectively in sectoral schemes. The Commission is open on the possibility of integrating in the future account information services (currently regulated under PSD2) into the FIDA framework, should the circumstances justify it (cf. section 3.1. of the review report accompanying

[11] ECA observations 43 - 57, 106

[12] Cf. main observations referred to above in point 1.

[13] COM/2023/360 final 'Proposal for a Regulation of The European Parliament And Of The Council on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554'

the PSR/PSD3 proposals[14]). This would require a FIDA-based open banking scheme to be put in place first, with access pricing agreed between data holders and data users. Compensation for value-added services going beyond PSD2 is also possible in the framework of the SPAA Scheme. [15]

The Commission recognises that the absence of API standardisation in PSD2 has led to the coexistence of different open banking API standards, which results in potential complexity for open banking providers. The choice not to depart from the PSD2 regime of no API standardisation is explained in detail in the PSR/PSD3 impact assessment (section 6.2). Imposing standardisation now that different interface standards effectively exist (and are in fact very largely converging, with one API standard-setting body claiming to account for 80% of open banking APIs[16]) would have imposed excessive costs on those banks which have, since PSD2, implemented an API which would not necessarily meet this new API standard and would have to be modified at potentially high costs.

The Commission considers that stipulating detailed requirements for performance and functionality of such interfaces in PSR is a less burdensome means of achieving the same outcome, in line with Better Regulation. And, again, the actual level of convergence between the existing API standards is already quite high. In addition, the market rapidly adapted to the existence of different standards by developing services (such as API hubs or API aggregators) enabling third party providers (TPP) to connect to banks' API designed on the basis ofpotentially different standards.

3. Monitoring the impact of Digital Payments policies

The Commission takes note of the Court of Auditors' concerns about the lack of statistical data or indicators enabling the Commission's own analysis of the impact of its Digital Payments policies.

Overall, all Commission legislative proposals, and other acts accompanied by an impact assessment, have performance indicators laid down in the impact assessment, in line with the Better Regulation framework. Examples of such performance indicators are "percentage of Instant Payments in all EU credit transfers (by volume)", in the impact assessment accompanying the IPR proposal[17], "reduction in percentage of fraudulent digital payments", or "Number of open banking API calls", in the impact assessment accompanying the PSD3/PSR proposals[18]. The Commission will continue with this practice of setting performance indicators in any future legislative and major policy initiatives. The PSR/PSD3 proposals each has a review clause; the performance indicators in the impact assessment will be used as part of the review assessing their impact and effectiveness.

More specifically, the ECA raises concerns about the Commission's ability to track the progress enabled by its digital payments policies towards the G20 goals on speed, cost, transparency and

[14] COM/2023/365 final 'Report From The Commission To The European Parliament, The Council, The European Central Bank And The European Economic And Social Committee on the review of Directive 2015/2366/EU of the European Parliament and of the Council on payment services in the internal market'

[15] The SEPA Payment Account Access (SPAA) scheme adopted in 2023 is a market-led project for value-added payment account access services falling outside the scope of the open banking rules in PSD2, with pricing for data access.

See: https://www.europeanpaymentscouncil.eu/what-we-do/other-schemes/sepa-payment-account-access

[16] 'Berlin Group API Framework is offering support to all prevailing API-based Payment Schemes and Corporate Bank Customer Use Cases and Services'; Press release, 25 May 2023; available here.

[17] SWD(2022) 546 final 'Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Regulation Of The European Parliament And Of The Council amending Regulations (EU) No 260/2012 and (EU) No 2021/1230 as regards instant credit transfers in euro".

[18] SWD(2023) 231 final.

accessibility of payments.[19] The adoption of specific indicators and targets for cross-border payments by the G20 in 2021 reflects the collective commitment, including that of the EU, to improve payment systems globally. The Commission services contribute to and monitor closely the development of the economic and financial regulatory agenda of the G20 and of the Financial Stability Board.

While the European Commission has not set specific EU-level indicators or targets, unlike the G20, its regulations and ongoing initiatives demonstrate its intention to not only meet but even largely exceed the G20's expectations. [20]

As regards the G20's goals on speed and cost, the Instant Payments Regulation will speed up transactions, while also ensuring that charges for instant transfers are not higher than for standard transfers, meeting the G20 objectives.

Regarding the setting of additional targets in terms of speed based on the G20 targets, the Commission notes that the industry is already required by the Instant Payment Regulation (IPR) to offer payment service users the service of sending and receiving euro instant credit transfers within the EU which are executed in less than 10 seconds. Hence, payment service users do have the choice to make payments that are executed instantaneously. The key policy objective of the IPR is to increase the uptake of instant credit transfers in euro by removing obstacles to their widespread supply and demand. The Regulation does not prohibit the use of regular, non-instant, credit transfers and aims to broaden the choice of payment methods available to consumers and businesses. The Commission recognises that instant payments currently account for a relatively small share of euro credit transfers (around 20% in average). The Commission considers that it would be inappropriate to set specific quantitative targets for the overall execution speed of credit transfers or digital payments in the EU, as the evolution of such metrics will be determined by the preferences of payment service users.

Regarding cost, the second Cross-Border Payment Regulation (CBPR2)[21] was a big step forward as it made sure that the costs of cross-border payments in the EU are the same as corresponding national transactions. As regards transparency, CBPR2 has made currency conversion for transactions in euro much clearer. Service providers have to show all costs before and after a transaction, helping consumers make informed choices. This aligns with the G20's goals for transparency. Additionally, electronic messages detailing currency conversion charges after transactions give consumers real-time information, making it easier to compare services. The Regulation also ensures that charges for cross-border payments in euros are fair and protects consumers from high currency conversion fees. By expressing these charges as a percentage over the ECB's reference rates, the EU has set a clear standard for comparison. Performance indicators stemming from G20 commitments will be taken into account when reviewing and evaluating the CBPR2.

The PSD3/PSR legislative proposals further demonstrate the Commission's efforts to address the G20 goals, notably as regards transparency and accessibility of payments. During its evaluation of PSD2 the Commission identified issues where improvements would be necessary for consumers rights or protection when making payments, contributing to meeting G20 goals. These issues were related, in particular, to unclear information presented to users on the name of the payee on account statements, insufficient transparency of fees for ATM usage, currency charges and execution times

[19] G20 Roadmap for Enhancing Cross-border Payments: Consolidated progress report for 2024; https://www.fsb.org/2024/10/g20-roadmap-for-enhancing-cross-border-payments-consolidated-progress-report-for-2024/ .

[20] As evidenced in the November 2024 Scoreboard released by WISE. 5bb623298baac995ceff98b605fd8dea-G20 Report - FINAL UPDATE.pdf

[21] Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union.

for international operations outside the EEA etc. The proposed PSD3/PSR will, when adopted, constitute significant improvements on all these issues.

4. The Commission's actions to eliminate discrimination based on payment account location

The Commission recognises that discrimination based on payment account location (so-called "IBAN discrimination") persists more than 10 years after the entry into force of the SEPA Regulation, which provides that a payer making a credit transfer to a payee holding a payment account located within the Union, or a payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union, shall not specify the Member State in which that payment account is to be located[22]. Without minimising the importance and adverse impacts of what is often called 'IBAN discrimination', the Commission however notes that this appears not to be an EU-wide phenomenon, as it is limited to payments in euro and it is reported mostly in a few Member States[23].

As highlighted by the ECA,[24] the Commission has, in the past years, intensified its efforts and is strongly committed to fully eliminating IBAN discrimination. However, the Commission wishes to emphasise that the effectiveness of its actions depends to a large extent on the determination of the relevant national authorities to implement and enforce dissuasive and punitive measures at national level.

The increasing prevalence of 'virtual IBANs', as outlined in the ECA report[25], has been evaluated and observed at both EU and national levels. In May 2024, the European Banking Authority (EBA) published a comprehensive report on virtual IBANs[26], describing the potential risks and challenges that virtual IBANs may present. The recently adopted Regulation and Directive on Anti-Money Laundering (AMLR/AMLD)[27] introduced provisions on virtual IBANs, notably a definition and a transparency requirement, whose aim is to address the concerns raised by AML supervisors about virtual IBANs.

5. The Commission action to create a level playing field for businesses within the EU

As regards the actions taken by the Commission towards the RPS goal of establishing a 'future-proof supervision and oversight of the payments ecosystem', the report recognises that the streamlining

[22] Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009.

[23] According to the 'Accept my IBAN' initiative, in 2023 most of alleged cases of IBAN discrimination are related to Germany (142), Spain (140), France (92) and Italy (67): IBAN discrimination-EFIP Secretariat

[24] Observation 93.

[25] Observation 95.

[26] EBA/Rep/2024/08, 'REPORT ON VIRTUAL IBANs', May 2024; available here.

[27] Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing; Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849

and alignment of the authorisation and supervision regimes for different categories of service providers (i.e. Electronic Money Institutions and Payment Institutions) via the merging of the second Directive on Electronic Money (EMD2)[28] and PSD2, as outlined in the proposals for PSR/PSD3, will likely constitute a significant step towards a clearer and more harmonised framework. Further specification of requirements for applicants for authorisation to provide payment services is expected to be achieved via a number of technical standards proposed under the PSD3.

The Commission also remains, in light of fast paced technological developments, in evaluation mode towards technical services such as processors or digital payments wallets, which are not currently covered by licensing requirements. The Commission has proposed to the co-legislators (in the PSR and PSD3 proposals) that this issue of scope be reviewed after 3 years of the entry into force of the PSR. The Commission did not deem appropriate to propose such a change in the scope of the payments legislation, notably in light of the extension, via the PISA framework,[29] of the Eurosystem's own oversight framework to some of such technical service providers. The efficiency of this oversight would have to be assessed first.

The Commission acknowledges the importance of appropriate visibility and monitoring over the different roles in which large technology companies can be present in the payments ecosystem, e.g. as providers of payment solutions, as providers of critical technology services, or in providing "gatekeeper" platform services. Whereas the importance of this issue is acknowledged, the Commission recalls that other legal frameworks such as the Digital Operational Resilience Act[30] and the Digital Markets Act[31] have recently come into force which lay down rules and obligations for such entities which are expected to improve visibility over cross-sectoral dependencies, introduce risk mitigation measures, and address competition concerns. The Commission notes that there are already actions at EU level to improve the exchange of information between NCAs and other relevant authorities (e.g., data protection, competition and consumer protection authorities) involved in the monitoring of BigTechs' activities which the ECA report calls for, for example via the work carried out by the European Supervisory Authorities (ESAs) within the framework of the European Forum for Innovation Facilitators (EFIF).

[28] 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 2000/46/EC.

[29] Eurosystem oversight framework for electronic payment instruments, schemes and arrangements; cf here.

[30] Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/101.

[31] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

III. COMMISSION REPLIES TO THE RECOMMENDATIONS OF THE ECA

Recommendation 1: Set out the criteria for price interventions in the area of digital payments and carry out periodic reviews

The Commission should

1(a): set out criteria for determining under what circumstance which types of price intervention are justified, if needed by initiating a legislative proposal

1(b): carry out periodic reviews of price interventions in the payments market (such as the interchange fee cap and the surcharge ban).

1(c): address the limitations caused by non-disclosure agreements to be able to collect data regarding the costs of price interventions such as the interchange fee cap and the surcharge ban, if needed by initiating a legislative proposal.

Target implementation dates: (b) first review should be determined on a case by case basis, but not later than 2028; (a, c) end of 2027

The Commission **accepts sub-recommendation 1(a).** The Commission acknowledges that, currently, universally applicable criteria for price interventions do not exist. The reason for this is linked to the fact that price interventions (in particular in the area of competition policy) are case specific and should be exceptional . These circumstances plead against the identification of generally applicable Commission criteria for all possible instances of price interventions. In individual cases the Commission already seeks to adequately explain its choice for price intervention, in line with the obligations imposed by the Commission Better Regulation framework. Therefore, the Commission does not consider that a detailed document or legislative proposal would be warranted. Instead, the Commission could reflect on the usefulness of setting out in general and high-level terms the circumstances under which different types of price interventions in digital payments would be justified, while emphasising the case-specific nature of such interventions and their infrequent use.

The Commission **partially accepts sub-recommendation 1(b).** PSD2 required the Commission to report on the implementation of the rules on surcharging within 3 years after the date of application of the Directive[32]. The Commission's proposal for a PSR lays down the same reporting obligation within 5 years after the date of application of that Regulation. The future rules on surcharging would be directly applicable in Member States, thus avoiding delays in their implementation and in the review process. As regards the interchange fee cap, the IFR imposes a one-off obligation on the Commission to review its application. In its report to the European Parliament and Council of 2020[33], positive feedback from the market was reported as regards the effects of the caps and compliance

[32] The conclusions of this analysis can be consulted in Annex 5 of the Impact Assessment accompanying the Commission's proposal for a PSD3 and PSR; SWD(2023) 231 final..

[33] SWD(2020) 118 final 'Commission Staff Working Document Report on the application of Regulation (EU) 2015/751 on interchange fees for card-based payment transactions; available here.

therewith by market participants. While a subsequent study published in February 2024[34] suggested that merchant service charges may be on the rise, this was based, as the study itself recognises, on incomplete data.

The Commission acknowledges that, in line with principles of good public administration, a periodic review of instances of price intervention is warranted. The Commission believes that informed reviews of the rules on prices should take place at a realistic interval, determined on a case-by-case basis to enable the collection of comprehensive qualitative and quantitative market information. For this reason, the Commission does not accept a prescribed limit date for the carrying out of the first such review.

The Commission **does not accept sub-recommendation 1(c)**. The Commission acknowledges the importance of robust data collection as highlighted by ECA in its recommendation 1(c). The Commission cannot, however, make specific commitments, at this stage, as to the content of future legislation. The Commission also notes that the collection of information for the preparation of the Commission's regulatory policy initiatives should be balanced against the legitimate interest of stakeholders in the protection of their business secrets and the limitations resulting from other constraints, such as data protection, intellectual property or other legal provisions. As regards the capacity for the Commission to overcome the limitations identified by the ECA, it should be noted that the Commission already possesses strong investigative tools in the area of competition policy which allows it for the purpose of its antitrust investigations to collect information from stakeholders, even if this information is confidential or subject to non-disclosure arrangements.

Recommendation 2: Develop and implement a data monitoring strategy in the area of digital payments

The Commission should develop and implement a data monitoring strategy in the area of digital payments (particularly with regard to price interventions and open banking) to determine what types of data are needed for informed policy decisions, the sources of such data, the frequency of data collection, and the requirements to collect data effectively and efficiently.

(Target implementation date: end of 2027)

The Commission **accepts** this recommendation. As regards price intervention, the Commission notes, in line with its replies to Recommendation 1(a) and (b) above, that the types and sources of data, as well as the methodology and frequency of data collection, should be determined on a case-by-case basis for each specific price intervention, reflecting the principle that price interventions are case specific and should be exceptional[35]. As regards the Interchange Fees Regulation, particularly, it should be noted that Art. 13 (6) IFR, in conjunction with Article 3(5) of that Regulation, empowers National Competent Authorities to require all information they deem necessary from card schemes

[34] European Commission: Directorate-General for Competition, Hausemer, P., Patroclou, N., Bosch Chen, I., Gorman, N. et al., *Study on new developments in card-based payment markets, including as regards relevant aspects of the application of the Interchange Fee Regulation – Final report*, Publications Office of the European Union, 2024, https://data.europa.eu/doi/10.2763/03803.

[35] This approach is already reflected in the review commitments under the Instant Payments Regulation. In Article 1(4) amending Article 15 of SEPA Regulation, the IPR details the type of data to be collected from PSPs by the NCAs and reported to the Commission for the purposes of its review report on remaining obstacles to the availability and use of instant credit transfers, which should consider also the impact of the rules on pricing for instant credit transfers on the level of charges for credit transfers, instant credit transfers and payment accounts. Moreover, paragraph 5 of that Article mandates the EBA to develop Implementing Technical Standards specifying uniform reporting templates, instructions, and methodology on how to use those reporting templates for the purposes of that reporting.

and Payment Service Providers to verify compliance with the caps on interchange fees for consumer debit cards and consumer credit cards. This process functions satisfactorily, as evidenced by the Commission Report of 2020 on the application of the IFR. As regards open banking data and monitoring, if adopted by the co-legislators, Article 48 (7) and (8) of the PSR proposal will address this recommendation by providing the legal basis for NCAs and EBA to start collecting data on open banking for monitoring purposes[36]. Finally, the Commission also notes that, for most aspects of digital payments, adequate data sources already exist, notably in the context of the ECB's periodic reporting of payment statistics and the EBA's reporting on aggregated data collected from NCAs (e.g. fraud data).

Recommendation 3: Propose performance indicators and set targets for digital payments

To assess the effectiveness of EU payment policies, the Commission should define indicators to measure the costs, speed, transparency and accessibility of digital payments and set specific targets for them at EU level.

(Target implementation date: end of 2025)

The Commission **does not accept** this recommendation. The Commission does not agree to set EU level quantitative targets, notably as regards the cost and speed of digital payments. More specifically, fixing a percentage maximum for the cost of cross-border transactions that fits all EU Member States would not be possible as production/internal costs vary from one country to the other. On speed, while the key policy objective of the IPR is to increase the uptake of instant credit transfers in euro by removing obstacles to their supply and demand, the Regulation does not prohibit the use of regular, non-instant, credit transfers and effectively broadens the choice of payment methods available to consumers and businesses. Therefore, it would be inappropriate to set specific quantitative targets on speed via the uptake of instant payments or for the overall execution speed of credit transfers in the EU, as the evolution of such metrics will be dictated by the preferences of payment service users. The Commission notes, however, that it already determines indicators (both qualitative and quantitative), linked with the specific objectives and stages of each policy initiative, in order to assess progress achieved by that initiative towards its objectives, in line with its rules on Better Regulation.

Recommendation 4: Fight discrimination based on payment account location with better enforcement rules and analyse virtual payment accounts

The Commission should:

(a) propose to include a reference to the SEPA Regulation in Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

(b) propose to include the enforcement of the SEPA Regulation within the scope of the EBA's activities.

[36] Article 48(8) requires the EBA to develop draft RTS specifying the data to be provided to competent authorities as well as the methodology and periodicity to be applied for such data provision.

(c) comprehensively assess whether virtual IBANs require further action at EU level, taking into account among other things the risk identified in the EBA report.

Target implementation dates: end of 2027 (a, b); end of 2025 (c)

The Commission **accepts sub-recommendation 4(a)** and emphasises that the inclusion of the SEPA Regulation in the Annex to Regulation (EU) 2017/2394 is one of the issues which have already started being assessed as part of the review of that Regulation.

The Commission **accepts sub-recommendation 4(b)** and points out that the Instant Payments Regulation, published on 13 March 2024, already gives a specific mandate to the EBA to develop Implementing Technical Standards (ITS), which, pursuant to Article 1(2) of Regulation (EU) No 1093/2010, which will entrust EBA with tasks under the SEPA Regulation. This change will further support the work of the Commission and the Member States in eradicating IBAN discrimination.

The Commission **partially accepts sub-recommendation 4(c)** to assess the necessity and impact of further action at EU level with respect to virtual IBANs beyond the recently adopted AMLR/AMLD, which already contain some provisions on virtual IBANs, notably a definition and a transparency requirement, whose aim was to address concerns about virtual IBANs raised by AML supervisors. However, the Commission considers that a timeline for this assessment can only be considered once the ongoing revision of PSD2 is finalised.

Recommendation 5: Strengthen efforts to achieve a level playing field in authorisation and supervision

The Commission should:

(a) provide detailed interpretation on the authorisation and registration of payment service providers to national competent authorities.

(b) update its guidance on the freedom to provide services to reflect current technological requirements.

(c) assess the need to introduce measures to enhance the intragroup transparency of large technology companies and establish an information exchange among national competent authorities for a more effective supervision at member state level.

(Target implementation date for a) and b) end of 2027 and c) mid 2028**)**

The Commission **accepts sub-recommendation 5(a).** The Commission notes that article 3 of the PSD3 proposal grants a mandate to the EBA to develop Regulatory Technical Standards on applications for authorisation, including on the information to be provided to NCAs in the application for the authorisation of payment institutions, a common assessment methodology for granting authorisation or for registration, what can be considered as a comparable guarantee to professional indemnity insurance and the criteria to be used to stipulate the minimum monetary amount of professional indemnity insurance or a comparable guarantee. It should also be noted that the EBA has issued Guidelines on the information to be provided by applicant payment service providers to NCAs for authorisation or registration[37], and on the application of the criteria used to specify the minimum monetary amount of the professional indemnity insurance or other comparable

[37] EBA/GL/2017/09, 'Guidelines 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'

guarantee[38]. If PSD3 is adopted by the co-legislators, the RTS to be developed by the EBA and adopted by the Commission under Article 3 would provide more detailed guidance to NCAs, also by taking into account the experience acquired in the application of the EBA's Guidelines.

The Commission **accepts sub-recommendation 5(b)** and acknowledges that further clarity may be needed as to when a financial service (including but not limited to payment services) offered online should be considered to be provided or not within the territory of a given EU Member State, to avoid divergent approaches across Member States, taking into account also current technological developments. However, the Commission notes that this issue is a cross-sectoral one, exceeding the area of payment services. Therefore, the Commission cannot commit at this stage to update its 1997 Interpretative Communication on the freedom to provide services and the interests of the general good in the Second Banking Directive [39], but will further consider this point once the ongoing revision of PSD2 is finalised. The Commission also notes that clarifications on the concept of establishment have been introduced in the recently adopted AMLR, which now includes a definition of establishment (Art. 2(1) point (18)), as a related recital (recital 27) further explaining this concept. Furthermore, the EBA Opinion (EBA-Op-2019-03) on the nature of passport notifications regarding agents and distributors under Directive (EU) 2015/2366 (PSD2), Directive 2009/110/EC (EMD2) and Directive (EU) 2015/849 (AMLD) has provided further guidance to the market and competent authorities regarding the criteria deriving from the ECJ case-law for delineating between the freedom to provide services and the right of establishment.

The Commission **accepts sub-recommendation 5(c)**, noting that it is in line with the requirement included in the Commission's PSR/PSD3 proposal to review the scope of PSR/PSD3, notably with respect to the possibility of extending the rules concerning licensing and supervision to certain services which currently fall outside the scope of such requirements, including to the provision of technical services such as the operating of digital wallets, as explained above under section II.5.

With regard to the recommendation to establish an information exchange among national competent authorities, the Commission notes more generally that, in the context of its 'Strategy on supervisory data in EU financial services'[40], it has adopted a proposal to amend the regulations establishing European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB)[41]. This proposal aims at facilitating the sharing of reported data between authorities overseeing the EU financial sector, where both authorities already have the right to collect the data.

With regard to large technology companies in particular, as explained above, the Commission notes that there are other actions at EU level to improve the cross-sectoral exchange of information between relevant financial and non-financial regulators and supervisors involved in the monitoring of BigTechs' activities, in particular competition and data protection authorities, following the entry

[38] EBA/GL/2017/08 'Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of Directive (EU) 2015/2366'.

[39] Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)

[40] COM/2021/798 final 'Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Strategy on supervisory data in EU financial services'; available here. On 29 February 2024, the European Commission published a report on the implementation of its strategy on supervisory data in EU financial services, taking stock of the Commission's progress when it comes to modernising EU supervisory reporting.

[41] COM/2023/593 final 'Proposal for a Regulation Of The European Parliament And Of The Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support'; available here.

into force of the Digital Markets and Digital Services Acts, for example via the work carried out by the ESAs within the framework of the European Forum for Innovation Facilitators (EFIF).