

Banking & Finance

Implementation of Directive 2015/2366 (PSD2) and revolution of payment services

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On 13 January 2018, Legislative Decree no. 218 dated 15 December 2017 was published on the Official Gazette. Such Legislative Decree implements the second directive on payment services in the internal market (Directive EU 2015/2366 or "PSD2").

PSD2 has been defined as a "tsunami for the entire banking sector" (cit. Wolfgang Ehrmann, chairman of the EBA Euro Banking Association, during a recent conference).

PSD2 has introduced new payment services which now allow users to avail themselves of third parties (TPPs) to execute payment transactions or perform other activities which previously fell within the sole purview of banks.

The new services introduced by PSD2 which may be provided by TPPs are:

– **Payment Initiation Service:** allows a payer to request entities other than banks (so-called **PISPs**, Payment Initiation Ser-

vice Providers) to execute a payment on its behalf via its bank account;

– **Account Information:** a service which allows holders of multiple accounts or payment cards to interact with a single front end (i.e., the so-called **AISP**, Account Information Service Provider), – through an app or online – to obtain information such as account balances and data regarding banking relationships. Also in this case, the holder of one or more accounts or payment cards can liaise with a third party, other than the bank, to receive information which could only be accessed by using the bank's information services until today;

– **Fund Checking:** a service which allows so-called Card Issuer Credit Providers (**CISPs**) to issue payment cards which can be used on one or more accounts of the card holder held at one or more banks. Once the payment order has been executed through the card issued by the CISP (e.g., for an online purchase), the

latter can directly request confirmation of the availability of funds from the relevant bank, even if there is no contractual relationship between such bank and the CISP which issued the card.

PSD2 does not just regulate these new services. With the aim of increasing customer protection, competition and market standardization, PSD2 has introduced other reforms of particular significance (for a summary of the main innovations see the attached **Summary Report**).

The entry into force of PSD2 marks the beginning of a new era for the entire banking sector.

As a result of the new legislation, **banks and other players in the banking sector (such as payment institutions) will have to make their customer's data available to authorized TPPs**, since transactions on customer accounts and cards, as we have seen, no longer fall within the sole prerogative of banks.

Highlights

The revolution introduced by PSD2 was to a large extent forerun by **technological innovations and integration among digital platforms, new technologies and digital payment systems.**

The key players in the digital world (internet, telephone operators, social networks) have long been involved in the digital payment sector and continue in their path to integration between payments and platforms (social, e-commerce and territorial platforms).

The time is approaching for the banking world to start interacting with other sectors directly. However, recent studies in the field all show that more than half of operators in the Italian banking sector do not believe they are equipped to face the innovations introduced by PSD2. Most banks and payment institutions have only just begun taking their very first steps, and there may well be **delays in the implementation process**, with potential impacts in terms of competition.

As we have seen, the new services introduced by PSD2 are a sign of **disintermediation and the breaking down**

of barriers for FinTech companies. On the one hand, PSD2 breaks down barriers between the banking world and FinTech, but at the same time, the disintermediation process requires all players to carefully analyze newly available opportunities, **which could either increase competition or lead to greater synergy and partnerships.**

From a **legal and contractual** standpoint, PSD2 requires multiple adjustments. Operators, whether banks or TPPs, will have to revise their contractual documents and transparency policies. The amendments to documents will not be marginal, and - in relation to the new services - it will probably be necessary to **rethink the contractual provisions** (starting nearly from scratch).

PSD2 is very likely to generate problems and tensions with other regulated sectors, such as - to name just a few - the **protection of privacy and consumer protection.**

As for the protection of **privacy**, it is worth pointing out that one of the main aspects in which the banking system has fallen behind compared to

the digital world and e-commerce, has to do with its struggle to set up and reap the processes of big data analysis, which is actually particularly useful for digital and e-commerce platform managers. The role - and potential responsibilities - of TPPs go well beyond the simple execution of orders and payment services.

TPPs (in particular PISPs) can liaise directly on behalf of payers (e.g., purchasers) with one or more digital and e-commerce platforms. This will generate **huge volumes of personal data (potentially sensitive data too)** which could subsequently be processed also for commercial and marketing purposes.

Banks and TPPs will thus have to equip themselves from a legal standpoint to operate in the new open banking context, and try to find a compromise between the need for innovative technologies and the need to pay attention to legal compliance and contractual relations with customers.