Q&As on IPR implementation

The Instant Payments Regulation (IPR)[1] proposed by the European Commission on 26 October 2022 was adopted by the European Parliament and the Council on 13 March 2024 and published in the Official Journal on 19 March 2024. This regulation amends Regulation (EU) No 260/2012 of the European Parliament and of the Council[2] (SEPA Regulation) and also includes amendments to Regulation (EU) 2021/1230 of the European Parliament and of the Council[3] (Cross-Border Payments Regulation - CBPR), Directive 98/26/EC of the European Parliament and of the Council[4] (Settlement Finality Directive - SFD) and Directive (EU) 2015/2366 of the European Parliament and of the Council[5] (2nd Payment Services Directive – PSD2).

Further to the adoption of the IPR, two online workshops were organised by the Commission Services with Member States authorities and stakeholders, on respectively 30 April and 29 May 2024, in order to discuss a number of the IPR provisions. This document reflects the clarifications provided by DG FISMA services during these workshops on the basis of questions that had been submitted in advance by the stakeholders.

In order to provide the widest possible divulgation to the outcome of these discussions, this document is published on the website of DG FISMA. It does not in any form purport to express in law, or prejudge, the European Commission's position on the interpretation or application of the IPR or any other Union law and is without prejudice to the interpretation that the Court of Justice of the European Union may give to the Regulation.

[1] Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulation (EU) No 260/2012 and Regulation (EU) 2021/1230 and Directive 98/26/EC and Directive (EU) 2015/2366 as regards instant credit transfers in euro (OJ L, 19.3.2024).

[2] 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 (OJ L 94, 30.3.2012, p. 22).

[3] Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (OJ L 274, 30.7.2021, p. 20).

[4] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

[5] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directive 2002/65/EC, Directive 2009/110/EC and Directive 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

List of Abbreviations and Terms

AML – Anti-Money Laundering;

ASPSP – Account Servicing PSP, as defined in point (17) of Article 4 of PSD2;

CBPR – Cross-Border Payments Regulation, i.e., Regulation (EU) 2021/1230 of the European Parliament and of the Council on cross-border payments in the Union;

CFT – Countering the Financing of Terrorism;

CSM – Clearing and Settlement Mechanism;

EBICS - Electronic Banking Internet Communication Standard;

EMD2 – 2nd E-Money Directive, i.e., Directive 2009/110/EC of the European Parliament and of the Council 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;

EMI – Electronic Money Institution;

EPC – European Payments Council, an international not-for-profit association whose members are PSPs or associations of PSPs;

IBAN – International Payment Account Identifier, as defined in point (14) of Article 2 of SEPAR;

Instant payment – instant credit transfer;

IPR – Instant Payments Regulation, i.e., Regulation (EU) 2024/886 of the European Parliament and of the Council 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;

LEI – Legal Entity Identifier, as defined in point (1f) of Article 2 of IPR;

OFAC SDN list- Specially Designated Nationals List of the Office of Foreign Assets Control;

PAD – Payment Accounts Directive, i.e., Directive 2014/92/EU of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features;

PI – Payment Institution;

PISP – Payment Initiation Service Provider, as defined in point (18) of Article 4 of PSD2;

POS – Point of Sale;

PSD2 – 2nd Payment Services Directive, i.e., Directive (EU) 2015/2366 of the European Parliament and of the Council 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;

PSP – Payment Service Provider, as defined in point (8) of Article 2 of SEPAR;

PSR – Payment Services Regulation, i.e., the legislative proposal of the European Commission 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;

PSU- Payment Service User, as defined in point (9) of Article 2 of SEPAR;

SCA – Strong Customer Authentication, as defined in point (30) of Article 4 of PSD2;

SCT – SEPA regular (non-instant) credit transfer in euro;

SCT Inst. – SEPA instant credit transfer in euro;

SCT Inst. Scheme - a set of rules, practices and standards to achieve interoperability for the provision and operation of SCT Inst., agreed at inter-PSP level;

SEPA – Single European Payments Area;

SEPAR – SEPA Regulation, i.e., Regulation (EU) No 260/2012 of the European Parliament and of the Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;

SFD – Settlement Finality Directive, i.e., Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems;

T2 – real-time gross settlement system owned and operated by the Eurosystem;

TIPS - TARGET Instant Payment Settlement, a market infrastructure service of the Eurosystem offering final and irrevocable settlement of instant payments;

VoP – Verification of Payee;

XS2A interface – Access-to-Account interface.

A. QUESTIONS ON THE SCOPE OF THE IPR

1. **Question (Articles 5a and 5c IPR)**
   The IPR is based on euro instant payments. How should be Article 5c understood given that it refers to all "credit transfers" (‘euro’ is not mentioned in Art 5c)? Should it be assumed from the context of the IPR that only "credit transfers" in euro are covered?

Answer

Yes. The scope of SEPAR is set in Article 1(1) – it covers only payment transactions denominated in euro.
When the IPR and SEPAR refer to credit transfers it always means credit transfers in euro (unless stated otherwise).
The words "in euro" were added in some provisions of the IPR to distinguish credit transfers in euro and those denominated in national currency of non-Eurozone Member States.

2. **Question (Article 1(2), point (a), SEPAR)**
Is this provision from the initial SEPAR still valid within IPR?

Answer

The IPR does not amend this provision. The exclusion laid down in that provision is therefore still applicable.

3. **Question (Article 5a(1) IPR and 1(2), point (b), SEPAR)**
Considering the exemption of payment transactions processed and settled through large value payment systems in the SEPAR (Art.1(2), point (b)), will the entities processing their euro transactions only through such systems be also out of the scope of the IPR? I.e., shall PSPs using only T2 be obliged to offer instant payments in euro and provide the service ensuring verification of the payee?

Answer

Article 1(2) of the SEPAR excludes transactions from its scope, not PSPs. Payment transactions processed and settled via large value payment systems (LVPS) are excluded from the scope of the SEPAR. IPR did not modify that. Consequently, PSPs that provide their PSUs with (non-instant) credit transfers, as defined in Article (2), point (1), of the SEPAR, but process and settle all of such non-instant transfers only via LVPS do not have to provide their PSUs with a payment service of sending and receiving instant credit transfers in euro since the non-instant credit transfers' transactions processed and settled via a LVPS are excluded from the scope of the SEPAR. PSPs that provide their PSUs with credit transfers, as defined in Article (2), point (1), of the SEPAR but where such credit transfer transactions are not excluded from the SEPAR as they are not processed and settled via a LVPS, will however have to provide their PSUs with a payment service of sending and receiving instant credit transfers in euro, even if they also settle some of their non-instant credit transfer transactions via a LVPS.
When assessing whether a particular PSP is, or not, obliged to offer a payment service of instant credit transfers in euro due to a specific payment system used by that PSP to process and settle all of its outgoing and incoming credit transfer transactions, it is important for the PSP and its NCA to verify whether that payment system qualify as a LVPS within the meaning of the SEPAR. In that regard, to benefit from the exclusion of Article 1(2), point (b) of the SEPAR, a LVPS must meet the definition laid down in Article 2, point (18), of the SEPAR, meaning to be "*a payment system the main purpose of which*

is to process, clear or settle single payment transactions of high priority and urgency, and primarily of large amounts."

4. **Question (Article 5a(1) IPR)**
We would appreciate the confirmation that the Regulation does not require a transfer in euro to be made specifically as an instant payment, but the customer still has a choice (SEPA, T2, SCT Inst.)? What will be the primacy of the provisions of the IPR over the provisions of the SEPAR, which also forces payments in euro to be directed to SEPA?

Answer

The IPR amends the SEPAR, so there is no hierarchy whatsoever between the provisions already laid down in the SEPAR and those that will be inserted into the SEPAR by the IPR. The amendment (via the IPR) to the SEPAR does not oblige PSPs to offer instant credit transfers only. It merely requires PSPs to offer their PSUs the payment service of sending and receiving instant credit transfers in euro if they offer their PSUs the service of non-instant credit transfers. Where both types of credit transfers are offered, PSUs can freely decide what type of credit transfer in euro they prefer to use. Also, it would not be contrary to the IPR if a PSP decided to offer only instant credit transfers in euro without offering regular credit transfers in euro.

5. **Question (Article 5a(1) IPR)**
Are savings and cooperative banks in the scope of the regulation, which is impacting the go-to-market plans in some specific countries?

Answer

According to Article 5a(1), PSPs that offer to their PSUs a payment service of sending and receiving credit transfers shall offer to all their PSUs a payment service of sending and receiving instant credit transfers. Savings and cooperative banks that are PSPs that offer the service of sending and receiving credit transfers fall indeed under the scope of the IPR and are thus obliged to offer the service of sending and receiving instant credit transfers.

6. **Question (Article 5a(1) IPR)**
Does this Article include fiduciary accounts and pledged accounts or can these be excluded?

Answer

The obligations laid down in the IPR are imposed on PSPs, and not on accounts per se.
A credit transfer in the meaning of the SEPAR (Article 2, point (1)) has to be made from a payment account; the same applies to instant credit transfers. Article 2, point (5), of the SEPAR as amended by the IPR defines 'payment account' as a payment account as defined in Article 4, point (12), of PSD2. That provision defines '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*". The question is thus whether fiduciary accounts or pledged accounts are 'payment accounts' as defined in that provision, which will have to be

assessed on a case-by-case basis and not merely on the basis of a name given to the account.

7. **Question (Article 5a(1) IPR)**
Do PSPs that provide only a savings account to their customers which has one fixed contra current account with another bank, and where beneficiary and originator are the same person, have to comply with the IPR?

Answer

It depends *whether this savings account is a payment account* in the meaning of Article 2, point (5), of the SEPAR as amended by the IPR, which makes a cross-reference to Article 4, point (12), of PSD2. A credit transfer, including an instant credit transfer, in the meaning of the SEPAR (Article 2, point (1)) has to be made from a *payment account*.
In Case C-191/17, the CJEU considered that *"the possibility of making payment transactions to a third party from an account or of benefiting from such transactions carried out by a third party is a defining feature of the concept of 'payment account'."* In that ruling, the CJEU concluded that savings accounts should not be considered "payment accounts" under PSD2 if such payment transactions "*may be made solely by means of a current account*" that is linked to a savings account.

8. **Question (Article 5a(1) IPR)**
Are remittance firms that provide euro transfer services, but do not provide payment account services, in scope?

Answer

No – see Article 1(2), point(e), of SEPAR which excludes from the scope transactions of money remittance as defined in point 22 of Article 4 of PSD2. In such cases no payment account is being credited in the name of the payer or the payee. A credit transfer in the meaning of SEPAR (Article 2, point (1)) has to be made from a payment account; the same applies to instant credit transfers.

9. **Question (Article 5a(1) IPR)**
An EMI offers payment services to its clients that consist of issuance, distribution and redemption of electronic money.
(i) In practice, clients can exchange electronic money or make purchases with electronic money by means of a specific E-wallet, and transactions can only take place between EMI's clients (either consumer to consumer or consumer to business) via the respective E-wallets.
EMI does not provide to its clients the possibility of exchanging funds via an SCT. SCT is only used by EMI itself as a technical payment method in those following particular scenarios:
(ii) Electronic money redemption: EMI performs an SCT to transfer funds from the consumers' E-wallet to their bank account;
(iii) Electronic money issuing: consumers can perform an SCT from their bank account to a EMI's bank account to fund their E-wallet;

(iv) Merchant payout: in the case of customers who run a business (merchants) and use the EMI as a means of payment collection, funds are periodically transferred through an SCT from the merchants' E-wallet to their bank account.
In those cases, SCTs are executed exclusively to or from previously verified IBANs associated with the respective customers' account with EMI.

Answer

There are several different types of payment transactions that an EMI offers to its clients.
As regards the credit transfers referred to in (ii), (iii), and (iv), the obligation to provide the service of instant credit transfers will depend on whether the account held with the EMI is considered to be a payment account (e.g. by taking into account CJEU ruling in case C-191/17).
With respect to the transactions referred to in (i), such EMI does not need to provide internal instant credit transfers transferring e-money, if such transactions result in credit transfers between payment accounts that are not identified by BBAN or IBAN, in line with Article 1(2), point (f) of the SEPAR (as such instant credit transfer transactions would be excluded from the scope of the SEPAR anyway).

10. Question (Article 5a(1), second subparagraph, IPR)

Based on Article 5a(1), if we have non- payment accounts, which do not allow a credit transfer to be sent out of them, but do accept credit transfers into the account (albeit the credit is applied via a batch process at end of day, on business days only), do we need to make those accounts reachable for SEPA instant credit transfers? Or does the fact that they are not a payment account overrule that subparagraph and therefore should not be in scope at all?
These accounts would typically be a mortgage account or loan account (so the funds are credited to reduce the value of the loan) or it might be to a deposit account that has restrictive features, such as notice required to be provided before withdrawal can be instigated (and the withdrawal is initiated by the PSP as opposed to PSU and credited to the PSU's current account).
Also, the credit received may be to pay off the balance on a credit card account for example – so funds are credited to a 'holding' account and then credited overnight to the actual credit card account but customer cannot initiate an electronic payment out of the credit card account – they need their card to withdraw funds/pay for purchases – no transfers as such can be made out of the credit card account.
Based on the fact that they are not payment accounts and also Article 5a(1), first subparagraph, they would be deemed out of scope as we do not send from those accounts, but then the second sub paragraph appears to rule them back in?

Answer

The obligation to offer a payment service of sending and receiving instant credit transfers in euro would depend on whether these accounts qualify as payment accounts.
In Case C-191/17, the CJEU considered that "the possibility of making payment transactions to a third party from an account or of benefiting from such transactions carried out by a third party is a defining feature of the concept of "payment account".

Situations where such payments are done to pay off the balance of a credit card, from which payment transactions to third parties can also be made, may qualify those accounts as “payment accounts”.

11. Question (Article 5a(1) IPR)

Do non time critical customer instructions fall within the scope of the new regulation?

Answer

A non time critical transfer is not a defined term in the IPR or the SEPAR. Some PSPs offer such a credit transfer service currently. Its design provides for immediate execution, 24/7 availability and additional SCT Inst product features, except that the payment will not be rejected for not meeting a specific timeline. Therefore, a payment order for a non time critical transfer is not considered to be a payment order for an instant credit transfer in euro, as its execution may take longer than 10 seconds.
A PSU should be offered a payment service of sending and receiving an instant credit transfer in euro if it is offered a payment service of non-instant credit transfer in euro (the latter may include non time critical credit transfer in euro).

12. Question (Article 5a(1) IPR)

Does the case where both the originator and the beneficiary are the same fall within the scope of the new regulation?

Answer

Yes, if the payment accounts the PSU holds with the two PSPs (or, where relevant, one sole PSP) involved allow for payment transactions to be sent and received to and from third parties.

13. Question (Article 5a(1) IPR)

Are payments to organizations with a payment code (e.g. energy telephony, etc.) – where no recipient payment account is immediately visible - within the scope of the Regulation?
The regulation refers to 'Payment Account-based Payment' with provision of the name by the customer, moreover it is mentioned in the regulation: "The Requesting PSP receives a Payment Account Number, a Name of the Payment Counterparty and potentially in addition an unambiguous identification code about a Payment Counterparty from the Requester".
Although the "vehicle" of the payment is ultimately an SCT, in the case of coded payments the customer provides neither an account nor a name. Both of these figures are drawn either from the corresponding ACH tables (interbank) or from the Bank's systems (bilateral). Therefore, should these payments also be offered as instant?

Answer

Yes, PSUs must be enabled to initiate instant credit transfers in euro via such a payment initiation channel.

14. Question (scope of IPR and PAD)

In light of the IPR, are instant credit transfers to be considered equivalent to non-instant credit transfers for the purpose of art. 17(1), point (d)(iii), of PAD?

If so, should instant credit transfers be included in the minimum number of operations to be offered under the specific pricing rules provided for payment accounts with basic features?

Answer

PAD was not amended by IPR.

However, the obligation set in Article 5a(1) of the IPR is applicable in case of payment accounts with basic features referred to in PAD. Therefore, if a PSP offers to its clients "regular" credit transfers in euro as part of such payment accounts, the clients should be also offered instant credit transfers in euro (see also Recital (7) of the IPR).

15. Question (Recital 7 IPR)

Recital (7) states that PSPs providing the payment service of sending and receiving credit transfers in euro to their PSUs should be required to offer the payment service of sending and receiving instant credit transfers in euro to all of their PSUs. We understand that PSPs referred to are ASPSPs.

Answer

Yes, the obligation to provide the payment service of sending and receiving instant credit transfers in euro applies only to ASPSPs.

Definition of a 'credit transfer' in Article 2, point (1), of the SEPAR states that it is a service provided by the PSP which holds the payer's payment account. Therefore, the obligation to provide a payment service of sending and receiving instant credit transfers in euro lies on ASPSPs that offer "regular" credit transfers in euro to their PSUs, as they are the PSPs with whom PSUs hold their payment accounts.

Payment orders for instant credit transfers in euro can be initiated via PISPs.

16. Question (Article 5a(1) IPR)

PIs and EMIs are now in scope of the IPR - does that mean only PIs and EMIs that have joined payment systems directly or all PIs and EMIs?

Answer

The IPR applies to:

- PSPs located in the Union (also non-EU EEA countries, following transposition of the IPR in the local legislation);
- payments provided in the Union (Article 1(1) of SEPAR); and
- PSPs offering a payment service of sending and receiving regular credit transfers in euro to their clients.

In that context, all EMIs and PIs, as referred in Article 1(1), points (b) and (d), of the PSD2, are within the scope of the IPR, regardless of whether they have become participants of designated payment systems under the SFD.

17. Question (Article 5a(1) IPR)

How shall PSPs which were not able to obtain access to an SFD system (e.g. due to rules of the system) fulfil their obligation to offer instant payments in euro?

The fact that the revised SFD will allow non-banking PSPs to join settlement systems with finality does not necessarily mean that they will fulfil the rules of the system and will join an SFD system. The rules of settlement system are set by the system operator. The rules might be difficult to fulfil for some non-banking PSPs due to several requirements etc. Therefore, it means that only several mostly significant non-banking PSPs will be able to use their right to access = not all non-banking PSPs are expected to join SFD systems and fulfil their obligation under IPR.

Answer

The amendment of the definition of "institution" in the SFD removes a legal obstacle for non-bank PSPs to become participants of designated payments systems.

Non-bank PSPs that choose not to apply for a participation or that do not obtain it may settle credit transfers, both regular and instant, via institutions that are participants in payment systems (see Article 35(3) of amended PSD2). In that context, please also note that Article 35(1) of PSD2 dealing with objective, non-discriminatory and proportionate rules on access, now also applies to designated payments systems under SFD due to the amended Article 35(2) of PSD2.

The obligation to provide a service of sending and receiving instant credit transfers in euro only applies to PSPs that offer their PSUs the service of regular credit transfers in euro.

PSPs which were not able to obtain direct access to an SFD system are also expected to offer instant credit transfers in euro. They can still access this system through indirect means as was the case before the IPR revised the SFD.

18. Question (scope of IPR and SFD)

IPR seems to be applicable also to PSPs which cannot become a participant of SFD systems (small payment institutions and small e-money institutions). How shall these PSPs fulfil their obligation to offer instant payments in euro?

While the IPR sets out obligations for all PSPs, including small payment institutions and e-money institutions, it only ensures access to payment systems for payment institutions and e-money institutions, not those that benefit from the exemption under Article 32 of PSD2 by referring to Article 4(4) of the PSD2 and Article 2(1) of the EMD2 (see Recital (15) and Article 4 of the IPR).

Answer

IPR provisions also apply to 'small' PIs and 'small' EMIs even if those PSPs cannot become participants in systems designated under the SFD.

The obligation for PSPs to provide their PSUs with a payment service of sending and receiving instant credit transfers in euro applies only to those PSPs that offer their PSUs a service of sending and receiving non-instant of credit transfers in euro.

19. Question (Article 5a(2) IPR)

If a central bank (acting as monetary authority) decides to offer instant credit transfers but not on a 24/7 basis, would not it be a breach of the current SCT Inst Scheme rulebook of the EPC?

Answer

A central bank is obliged to offer its PSUs a payment service of sending and receiving instant credit transfers only if:
- it offers its PSUs a payment service of sending and receiving regular credit transfers, and
- it is deemed to be a PSP in accordance with Article 1(1), point (e), of PSD2, i.e., when it is not acting in capacity as monetary authority.

Article 5a(2), second subparagraph, however, allows national central banks, when not acting in their capacity as a monetary authority or other public authority, to limit their offer of a payment service of sending instant credit transfers to the period of time during which they offer a payment service of sending and receiving non-instant credit transfers.
If necessary, the EPC rulebook for the SCT Inst Scheme may need to be adjusted to reflect that provision of the IPR. IPR takes full legal precedence over any Scheme's Rulebook.

20. Question (Article 5a(1) IPR)

Is the scope of the obligation to provide a payment service of sending and receiving instant credit transfers in euro limited to foreign currency payment accounts of EEA countries' currencies, or covers also payment accounts denominated in currencies other than the currencies of EEA countries (e.g., the US dollar)?

Answer

The scope of the SEPAR, which is amended by the IPR, is restricted to credit transfers and direct debit transactions denominated in euro within the Union.
The IPR does not amend the scope of the SEPAR, which means that the IPR, like the SEPAR, will be applicable to credit transfers and direct debit transactions denominated in euro. Article 5a(1) obliges PSPs that offer their PSUs credit transfers in euro to provide also instant credit transfers in euro, regardless of the currency in which the payment account is denominated and regardless of where in the EU (EEA) the PSP is located and, therefore, the obligation is not limited to payment accounts denominated in the EEA countries' currencies.
Recital (7) and Article 5a(1), second subparagraph, specify that PSPs should provide a payment service of sending and receiving instant credit transfers to all payment accounts that PSPs maintain for their PSUs, with respect to which PSPs provide a payment service of sending and receiving regular credit transfers in euro.

21. Question (Article 5a(1) IPR)

Do PSPs in the euro area have to offer instant payments in euro from/to 'non-EUR' denominated accounts 24/7/365?

Answer

Yes, if they offer to their PSUs a payment service of sending and receiving credit transfers in euro from / to such payment accounts.

22. Question (Recital (4) IPR)

Given that the IPR introduces amendments to the SFD which might be interpreted to have an effect only on Member States whose currency is the euro and in view of the wording in recital (4), would it be possible to clarify the intention of that recital in relation to the SFD for Member States whose currency is not the euro?

Answer

The IPR, like the SEPAR, applies only to credit transfers and direct debit transactions denominated in euro. Recital (4) of the IPR shall be read as an incentive for Member States whose currency is not the euro to adopt equivalent rules on instant credit transfer transactions denominated in their own currency.
The amendment of the SFD – as well as amendments of SEPAR, the PSD2 and the CBPR – are applicable to all Member States (inside and outside the Eurozone). By amending the definition of "institution" in the SFD, non-bank PSPs located in Member States whose currency is not the euro will be able to become participants in designated payments systems with respect to payments transactions denominated in all currencies in which those payments systems operate.

23. Question (Article 5a(2) IPR)

On which criteria will competent authorities base their assessments of a PSP's access to liquidity in euro? May competent authorities, when making that assessment, consider the impact of non-euro-PSPs' currency exchange risk that this article imposes?

Answer

The IPR does not specify the criteria that the competent authorities will use to assess the PSPs ability to access liquidity in euro. Those criteria will be decided at national level by the competent authorities. The assessment referred to in the IPR focuses on the PSPs ability to access such liquidity, and not on the access' costs. The provision of instant payments in euro on a 24/7 basis will require proactive management and forecasting of liquidity needs, including for PSPs located in the euro area.

24. Question (Article 5a(2) IPR)

Article 5a(2) contains an exception for PSPs located in a Member State whose currency is not the euro to offer the service of sending instant credit transfers in euro beyond a limit per transaction. Does this exception mean that the PSP is not obliged to offer both the service of sending and receiving instant credit transfers in euro or only the service of sending instant credit transfers in euro? Or, should we understand this in the meaning that PSPs are not obliged to offer the service of sending instant credit transfers in euro but they have to offer the service in the currency of the Member State in which they are located?

Answer

Article 5a(2) means that PSPs located in non-Eurozone Member State are not obliged to offer a service of sending instant credit transfers in euro outside business hours above a transaction limit of at least 25 000 EUR (the level of limit and possibility to use it subject to a prior permission of the competent authority). That possibility only applies to payment accounts denominated in the national currency of the Member State in which such PSPs are located. However, Article 5a(2) explicitly refers to the service of sending instant credit transfers in euro beyond that limit, which means that such PSPs are obliged to offer a service of receiving instant credit transfers in euro to such accounts on 24/7 basis without any limits.
There is no obligation to provide instant credit transfers in the national currency in that provision (the scope of the SEPAR, which is amended by the IPR, only covers credit transfers in euro).

25. Question (Article 5a(1) IPR)

Must the scope of application of the definition of "credit transfer" also include recurring credit transfers and must PSUs therefore be offered the possibility of arranging an instantaneous recurring credit transfer?

Answer

According to Article 5a(1), PSPs that offer to their PSUs a payment service of sending and receiving credit transfers shall offer to all their PSUs a payment service of sending and receiving instant credit transfers.
According to the new definition of "instant credit transfer", that is inserted as point (1a) into Article 2 of the SEPAR, instant credit transfers are a type of a credit transfer. Article 2, point (1), of the SEPAR defines 'credit transfer' as "*a national or cross-border payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions (...) based on instructions given by the payer*". Article 5a(3), second subparagraph, specifies that the instant credit transfer might be executed at a specific time in the future, therefore implicitly facilitating execution of repetitive payments.
PSPs that are obliged to offer the service of instant credit transfers in euro shall, therefore, also offer recurring instant credit transfers in euro.

26. Question (Article 5a(1) IPR)

Does the requirement to receive and send instant payments apply to a central bank's own payments, e.g., salary payments, payments for central bank's suppliers, etc. (i.e., when a central bank simultaneously acts both as PSP and PSU)?

Answer

Such payment transactions are not per se excluded from the scope of the SEPAR. With respect to payment accounts of PSUs of such a central bank, what matters is whether the central bank offers its PSUs a service of sending and receiving regular credit transfers in euro within the Union. To the extent that the central bank offers such services, it will also be obliged to offer instant credit transfers in euro to its PSUs.

With respect to central bank's own payments, the obligation applies as well. A central bank acting as a PSU that is a payer may of course decide whether it wants to initiate a credit transfer as an instant or, rather, as a regular credit transfer.
Such implementation would be particularly important to enable instant credit transfers where a central bank acts in the capacity of a PSU that is a payee, allowing payers in such transactions to transfer funds to such a central bank instantly.

27. Question (Article 5a(1) IPR)

We understand that PSU shall have the choice to opt for an instant credit transfer. Can you confirm that the below behaviour is compliant with the regulation:
1 - The PSU requests an instant credit transfer, in this case the ASPSP initiates the payment as an instant only credit transfer. If the payment succeeds the PSU will be notified within 10 seconds; if not, the payment is rejected and the PSU is notified. No further action is taken by the ASPSP and it is up to the PSU to relaunch or not the payment.
2 - The PSU does not request an instant credit transfer. The ASPSP chooses to process the payment as per a default behaviour consisting of initiating an instant credit transfer. If the instant transfer succeeds the transaction is executed and if the instant transfer fails the ASPSP processes the payment automatically as a regular credit transfer without any intervention needed from the PSU.

Answer

As regards the second possibility, it pertains to situations where the PSP provides to its PSUs the payment services of both instant credit transfers in euro and regular credit transfers in euro. The payer's PSP should not unilaterally requalify a payment order from one type of credit transfer (as submitted by the payer) to another type, as this does not correspond with the choice made by the payer (there could be reasons for which the payer has opted to initiate a non-instant credit transfer).
In addition, certain requirements pertaining to the processing of instant credit transfers are different from requirements pertaining to processing of non-instant credit transfers and that may have different implications for the potential liability of the payer's PSP vis-à-vis the payee's PSP and vice versa, in case one of the two PSPs fails to comply with those requirements (for instance, sanctions screening approach for instant vs non-instant credit transfers).

28. Question (Article 5a(1) IPR)

The current situation is, to the best of our knowledge, that many banks offer instant payment as "new normal", with the idea of using instant payments as standard for their customers. This implies of course that there is no choice given to the PSU. According to recital (11), a default instant payment is however possible. To our understanding, IPR does not prohibit a "new normal" approach. Can you please clarify whether the fact that only instant is offered ("new normal" approach) will still be acceptable?

Answer

This approach of offering only instant credit transfers is consistent with the IPR.

IPR requires PSPs to offer instant credit transfers in euro to their PSUs if the PSUs are offered non-instant credit transfers in euro. IPR does not require PSPs to offer non-instant credit transfers in euro to their PSUs if they offer PSUs the service of instant credit transfers in euro.

B. QUESTIONS ON OTHER OBLIGATIONS INCLUDED IN ARTICLE 5A

29. Question (Article 5a(3) IPR)

What is the exact starting time of the 10 seconds mentioned in the IPR? From the payer's PSP (initiation of the payment order) or the payee's PSP side?

Answer

The starting point is the time of receipt by the payer's PSP of a payment order for an instant credit transfer (see Article 5a(4), point (c)). However, that particular moment of receipt might differ depending on the situation (see Article 5a(3)).

30. Question (Article 5a(3) IPR)

Article 5a(3), first subparagraph, states that "Notwithstanding Article 78(1), second subparagraph, of Directive (EU) 2015/2366, the time of receipt of a payment order for an instant credit transfer shall be the moment it has been received by the payer's PSP, regardless of the hour or calendar day".

Please clarify what is meant by the time of receipt, including in view of other articles of the IPR. We understand that the time of receipt is the moment after the customer has entered the amount, the name and the IBAN of the payee, the VoP service has been performed and the customer has confirmed the information, possibly the SCA has been made by the payer's PSP. Is this the correct interpretation?

Answer

Yes, the interpretation is correct. In practical terms, in most situations the time of placing a payment order and the time of receipt will coincide. Exceptions to that principle are laid down in Article 5a(3), second and third subparagraphs.

31. Question (Article 5a(3) and 5c(1) IPR)

Is the time of receipt (for the payer's PSP) the moment when the payer authorises the payment, i.e., after the VoP process?

Answer

Article 5c(1) of the IPR requires the payer's PSP to perform the service ensuring verification of the payee immediately after the payer has provided relevant information about the payee and before the payer is offered the possibility of authorising that credit transfer (see also last sentence in recital (20)). Thus, the time of receipt of a credit transfer comes after the service of ensuring the payee's verification.

32. Question (Article 5a(3), third subparagraph, point (a), IPR)

(i) Do payment orders from telephone banking, by fax, and also bulk payments authorised via paper-based instructions fall into the category of non-electronic payment orders?

(ii) In some cases, the order data are submitted electronically (usually by third party providers) and later authorised by the customer. Is it correct that the time of receipt is to be regarded as the authorisation by the customer?

Answer

On point (i): Yes.

On point (ii): Where payment order data are submitted electronically by third party providers but still require authorisation by the PSU, the time of receipt of such orders is when the payer's authorisation is received by the payer's PSP. Where that authorisation is received in paper form, the time of receipt is when that paper form is introduced by the payer's PSP in its internal system.

33. Question (Article 5a(3), point (b) IPR)

Where a package of payment orders (i.e., pain.001 according to the EPC SCT-Inst C2PSP Implementation guidelines) contains one single payment order, can this be considered as a package in the meaning of the regulation (as, in any case, the unpacking process will be applied on such payments)?

Answer

This cannot be considered as a package, given that Article 5a(7) refers to submission of "*multiple payment orders as a package*".

34. Question (Article 5a(3), second subparagraph, IPR)

Is the service referred to in that subparagraph an added value feature (i.e. offered based on a non-mandatory agreement between the payer's PSP and the payer's PSU)?

Answer

The possibility to submit a future dated payment order for an instant credit transfer in euro shall be available if the PSU can submit a future dated payment order for a regular credit transfer in euro.

This is because the definition of 'payment initiation channel' in Article 2, point (1b), also refers to a method and a procedure through which payers can place payment orders, while Article 5a(4), point (a), requires that PSUs should be able to place payment orders for instant credit transfers via the same payment initiation channels through which they are able to place payment orders for other types of credit transfers.

35. Question (Article 5a(3) IPR)

Generally, can validation checks for outbound SCT Inst transactions such as an account coverage check (etc.) be carried out before the timestamp is set?

Answer

No, see Article 5a(4), point (b).

36. Question (Article 5a(3) and scope of IPR)

For an ordinary credit transfer, when there are insufficient funds on the payer's account, some banks try to re-execute the payment during a couple of days. At the end of this period, the payment is canceled. Could we automatically convert an instant credit transfer in euro to a regular credit transfer in euro and offer this mechanism in case of insufficient funds?

Answer

No, it cannot be automatically converted. In case of insufficient funds, the payer would have to be informed that the transaction amount has not been made available to the payee, in line with Article 5a(4), point (e).
However, the payer may consider averting such outcome by placing a payment order for an instant credit transfer in euro whose execution time is linked to the moment when the payer has put sufficient funds at the disposal of the payer's PSP. In that regard, Article 5a(3), second subparagraph, provides that such moment shall be used as the basis by the payer's PSP for determination of the "time of receipt" of that payment order.

37. Question (Recital (13) IPR)

Please clarify what is meant by the text "taking into account any capacity constraints of a retail payment system", included in this recital.

Answer

According to Article 5a(4), point (c), within 10 seconds from the time of receipt of the payment order by the payer's PSP, the payee's PSP shall make the amount of the payment transaction available on the payee's payment account. According to Article 5a(3), third subparagraph, point (b), the time of receipt of an individual payment order for an instant credit transfer belonging to a package is the moment when the ensuing payment transaction is unpacked by the payer's PSP. According to Article 5a(3), third subparagraph, point (b), the payer's PSP shall start unpacking a payment package into individual payment transactions immediately after the payment package has been placed by the payer with its PSP and is to complete that conversion as soon as possible.
If a payment system informs a PSP about capacity constraints of that system, the PSP may adjust its conversion process accordingly to enable sequential unpacking of very large bulk payment orders and their smooth processing by such payment system. Such capacity constraints need to be communicated to the payer's PSP in advance. The entire unpacking process has to be completed as soon as possible and the implicit policy expectation is that payment systems should work on ensuring that there are no capacity constraint issues and, if such issues arise, that they are only temporary and limited, so as not to create permanent bottlenecks for a quick processing of instant credit transfers submitted via packaged payment orders.

38. Question (Recital (13) IPR)

Please clarify what is meant by the text "without prejudice to possible solutions to be provided by retail payment systems which allow for the conversion of multiple payment orders for instant credit transfers as packages into individual instant credit transfer transactions".

Answer

The rule on the time of receipt referred to in Article 5a(3), third subparagraph, point (b), pertains to situations where unpacking is carried out by the payer's PSP, before sending out an individual instant credit transfer transaction into the inter-PSP space (in line with the current practice). The mentioned part of the recital implies that the Regulation is without prejudice to possible solutions to be developed by retail payment systems, where unpacking of a package would be done by the payment system, instead of the payer's PSP.

39. Question (Article 5a(3), third subparagraph, point (c), IPR)

In case of an instant credit transfer in euro initiated from an account that is not denominated in euro (e.g., US dollar), by when must the payment transaction be executed?

Answer

As a first step, the PSP will have to carry out currency conversion, immediately after the payment order has been placed by the payer. As a second step, the instant credit transfer in euro will have to be executed within 10 seconds from the time of receipt of the payment order, where the time of receipt shall be the moment when the amount of the payment transaction has been converted into euro.

40. Question (Article 5a(3), third subparagraph, point (c), and Article 5a(4), point (c), IPR)

There is no distinction stated between currencies of European Union countries and others. Should we offer currency conversion for incoming euro instant credit transfers towards accounts in all currencies?

Answer

The scope of Article 5a(3), third subparagraph, point (c), or Article 5a(4), point (c), is not limited to EU currencies. Therefore, the obligation to offer a payment service of sending and receiving instant credit transfers in euro applies to payment accounts in any currency, provided that the PSPs offer also a payment service of sending and receiving "regular" credit transfers in euro with regard to those payment account (Article 5a(1)).

41. Question (Article 5a(3), third subparagraph, point (c), and Article 5a(4), point (c), IPR)

Do we have to provide the currency conversion on incoming euro instant transactions within the 10 seconds of the instant payment?

Answer

According to Article 5a(3), third subparagraph, point (c), the currency conversion in case of sending an instant credit transfer shall take place immediately after placing the payment order. As for receiving instant credit transfers, the time limit of 10 seconds set in Article 5a(4), point (c), applies.

42. Question (Article 5a(3), third subparagraph, point (c), and Article 5a(4), point (c), IPR)

Are we allowed to reject the incoming euro instant transaction if the currency conversion can not be done within the 10 second timeframe (i.e. due to liquidity in the other currency, opening hours of the markets)

Answer

That would constitute a breach of the obligation to provide a the payment service of receiving instant credit transfers in euro, imposed by Article 5a(1), and of the obligation to perform a conversion as required by Article 5a(4), point (c).

43. Question (Article 5a(4), point (a), IPR)

If a PSP currently does not offer any digital channels, would the regulation require this PSP to setup a new (digital) channel? Is 24/7 availability fulfilled if at least one channel is available 24/7?

Answer

No, the IPR does not require a PSP to provide instant credit transfers electronically if it does not offer non-instant credit transfers via electronic channels.

44. Question (Article 5a(4), point (c), IPR)

What impact does a currency conversion have on the 10-second period (regulated in Article 5a(4), point (c)) until the payment amount is available on the payee's account? If a payment account in foreign currency is accessible for incoming non-instant credit transfers in euro, it shall be accessible for instant credit transfers in euro.

In that context, if there is a currency conversion between the euro and a currency of a non-EEA country (e.g. the US dollar), the payment amount is not to be made available within 10 seconds. The credit (booking) may be delayed by the reasonable duration of the conversion process in accordance with Art 87(2) PSD2.

Answer

With respect to payment accounts denominated in non-EEA currencies, the scope of the IPR is broader than that of the PSD2 as it is not limited to payment transactions referred to in Articles 82 and 87 of PSD2.

For payment transactions referred to in Article 87 of PSD2, the requirement included in the IPR may be different and stricter, as signified by the introductory phrase 'notwithstanding Article 83 and Article 87(2) of Directive (EU) 2015/2366' in Article 5a(4), point (c), of the IPR.

45. Question (Article 5a(4), point (b), IPR)

The provision implies that we reserve the amount while getting back to the payer for further information that a paper-based payment order may lack before we can send the instant credit transfer transaction in euro, impacting PSU available funds. Please clarify.

The rule provides for a check of the execution requirements including the required account funds and immediate sending to the payee´s PSP. Are we correct in assuming that these times can be added to the execution time of 10 seconds or has the execution time to be reduced?

Answer

The time needed to carry out a check of execution requirements cannot be added to the 10 second limit. The SCT Inst Scheme rulebook will have to be modified to align with Article 5a(4), point (b). If the information in a paper-based payment order for an instant credit transfer in euro is incomplete, the payment order cannot be fully introduced into the system, therefore the time of receipt of such payment order has not yet occurred (see Article 5a(3), third subparagraph, point (a)).

46. Question (Article 5a(4), point (e), IPR)

How can the obligation to immediately inform the payer whether the amount of the payment transaction has been made available on the payee's payment account be met in case of instructions where the payer is not present and, therefore, not available for the information to be shared in real-time with the payer (see in particular Article 5a(4), point (e))?

Our interpretation is that for transactions initiated by the payer where the payer is not present nor waiting for confirmation (for instance paper-based, electronic asynchronous connection, or future dated transactions), the usual ways the PSP provides (or makes available to) the payer with the information required according to PSD2's information requirements for payment services should be considered as adequate for that purpose.

Answer

In case of paper-based initiated instant credit transfers, the confirmation does not need to be provided to the payer immediately if the payer is not present at the time of receipt of the payment order (similar logic to that in Article 5c(4) dealing with the provision of service ensuring verification of payee).

For future dated transactions, it should be possible to provide such confirmation, unless those transactions are carried out on the basis of paper-based payment orders and the payer is not able to receive a confirmation electronically.

47. Question (Article 5a(4), point (c), and Article 5a(4), point (e), IPR)

The SCT Inst scheme (at least currently) does not envisage the confirmation by the PSP of the payee to the PSP of the payer that the funds have been credited to payee's account. However (as per current practice) the PSP of the payee shall confirm prior to the interbank settlement to the CSM that it will credit the payee's account (upon successful settlement). Furthermore, some CSMs (e.g. TIPS) notify both PSPs (of the payer and of the payee) on

the successful settlement. Can the aforementioned notification on successful settlement be understood as a confirmation of the completion of the payment transaction to the payer's PSP (Article 5a(4), point (c)) and as a confirmation of the PSP of the payee, that the funds were made available on the payee's payment account (Article 5a(5))?

Answer

Article 5a of the IPR does not include obligations for payment systems. Notification by a payment system, carried out on behalf of the payee's PSP, could be a way to provide the confirmation referred to in Article 5a(4), point (c), or Article 5a(5). This is a matter of implementation approach to be developed and agreed by the industry. However, the legal obligation to provide the confirmation within 10 seconds from the time of receipt and, therefore, the associated ultimate liability, lies with the payee's PSP.

48. Question (Article 5a(4), point (c), IPR)

With regard to informing the payer, is it sufficient to make the information available to the payer to be collected at his discretion (like it is done today in case EBICS is used) or does it have to be actively sent?

Answer

With regard to informing the payer on whether the amount of the payment transaction has been made available to the payee, Article 5a(4), point (e), implies an 'active' provision of such information by the payer's PSP to the payer as the payer is not expected to look for it at the end of 10 seconds while he/she is making a purchase at the POS.

49. Question (Article 5a(4), point (e), IPR)

How should the obligation of immediate information of the payer by the PSP be interpreted in case of execution of multiple transfers in the form of a package through interbank corporate banking?

Answer

Confirmation of execution pertains to individual instant credit transfer transactions. The package of multiple payment orders is unpacked before the time of receipt is determined for an individual instant credit transfer transaction (see Article 5a(3), third subparagraph, point (b)) and before that transaction is sent to inter-PSP space for execution. Therefore, depending on the composition of the package, the confirmation that will be sent by the payer's PSP may be based on information received by the payer's PSP from multiple payee's PSPs.

50. Question (Article 5a(4), point (e), IPR)

Regarding the PSU notification within 10 sec, is the ASPSP required to notify the PSU via the same channel from which the instant payment was initiated or can this be done via other channels available to all PSUs (web / mobile banking).

This question aims at clarifying the notification requirements especially for corporate dedicated channels such as EBICS via which corporates initiate large payment files and

receive dedicated statements. It is not clear which benefit corporates might have in receiving thousands of instant execution notifications instead of one global file with the execution status of all the initiated transactions which cannot be sent within 10 sec.

Answer

From Article 5a(4), point (e), it is clear that the payer has to be informed as to whether the amount of payment transaction has been made available on the payee's payment account. In case of multiple payment orders submitted as a package, the payer may prefer that he or she is informed on the status of execution of all payment orders that are included in one package via one global notification.
That possibility is not specifically provided for in the IPR, but it could be agreed by the payer and its PSP in a framework contract. In case of 'sequential' unpacking of large packages of payment orders, where the time of receipt of individual payment transactions differ, such global notification should be sent within 10 seconds of the last individual payment transaction that has been unpacked from the package. Each individual instant credit transfer transaction still needs to be executed, in line with Article 5a(4), point (c), within 10 seconds from the time of receipt as determined in accordance with Article 5a(3), third subparagraph, point (b).

51. Question (Article 5a(4), point (e), IPR)

Can the channel used to inform the payer that the amount of the instant credit transfer transaction has been made available on the payee's account ('the CONFIRMATION') be different from the delivery channel? Example: payer channel for instant credit transfer is paper based; CONFIRMATION channel: electronic. In our view, this should be possible, depending on the access of PSUs to the channel. If a PSU is reachable electronically, an electronic confirmation on discretionary basis is ok, so the usage of a different channel for the CONFIRMATION is ok. If the payer cannot be reached immediately after the funds have been credited, then the payer does not have to be informed immediately. This probably will have to be reflected in the PSP's T&Cs (Terms and Conditions).

Answer

Yes. For paper-based payment orders, where the payer is not present at the time of receipt of a payment order, the information referred to in Article 5a(4), point (e), can be provided to the payer by the payer's PSP via another channel. This would have to be agreed between the PSU and the PSP in the framework contract.

52. Question (Article 5a(4), point (e), IPR)

If the customer issues an instant credit transfer in paper form, can at least the execution confirmation also be agreed for collection/retrieval in the form and frequency agreed for account statements (as provided for in Article 57(2) of PSD2) instead of for each payment transaction by letter? Often the reason for this agreement is that there is no electronic communication channel for actively contacting the customer (app, SMS, email, etc.) and the customer does not want this information to be provided as a single message by post. It is sufficient for the customer to be informed specifically about the non-execution.

Answer

Information requirement referred to in Article 5a(4), point (e), is in addition to requirements of Article 57 of PSD2.

53. Question (Article 5a(4), point (e), IPR)

In case of PISPs or the use of non-PISP "payment platforms" which are independent from the PSP, is the immediate confirmation of the execution to the PISP or such platform enough to be compliant with that requirement (i.e., no direct active confirmation to the payer).

Answer

No, both the payer and the PISP have to be informed.

54. Question (Article 5a(4), point (e), IPR)

Does this provision require ASPSPs to implement changes to their dedicated interfaces for PIS with real-time notifications on execution, if they do not already do this?

Answer

If implementation of changes to dedicated interfaces is necessary to comply with the requirements laid down in Article 5a(4), point (e), then yes. Normally, dedicated interfaces should enable the same data availability as customer interfaces. In that context, it should be noted that the same provision requires the payer's PSP to also inform the payer as to whether the amount of transaction has been made available on the payee's payment account.

55. Question (Article 5a(4), point (e), IPR)

Automatic 'downgrade' from an instant payment to a non-instant SEPA credit transfer:
The provisioning of timely information to the PSU - about the success or failure of an instant payment – is regarded as a critical part of the payment process and therefore as a critical success factor in the increasing usage of instant payments by the PSUs.
(i) instant payments via online channel:
A PSU who initiates an instant payment online, can be instantly informed about the success or the failure of the transaction and can choose to react on this information as the PSU sees fit.
(ii) instant payment via offline channel – PSU reachable via online channel:
A PSU who can be reached directly via an online channel (e.g., a smartphone application) could get timely information about the success or the failure of the transaction and react accordingly. However, there is no guarantee that this information will be acknowledged by the PSU in time: The PSU might not recognize the information (e.g., not look at the phone, have no internet connectivity, etc.). Furthermore, if authorizations by two different PSUs are needed to initiate the transaction (4 eye principle), the PSU might not be able to re-initiate the transaction in time to satisfy the PSU's needs.
(iii) instant payment via offline channel – PSU not reachable via online channel:
A PSU who cannot be reached directly via an online channel has no option of getting timely information about the success or the failure of the transaction.

Therefore, we would like to suggest the following:
During the instant payment initiation process, the PSU may opt into a 'non-instant fallback option' for the corresponding payment(s) – (at the sole discretion of the PSU). This would result in an automatic 'downgrade' of the instant payment to a non-instant SEPA credit transfer, should the instant payment be not successful. As non-instant payments allow for manual intervention by both payer's and payee's PSP, the chance of a successful transaction is relevantly higher than for an instant payment. Thereby, the payer would have a better chance that the desired payment is processed in the fastest possible way, even if the information about the unsuccessful instant payment is not recognized by the PSU in time. Would the above suggested option be in line with the IPR?

Answer

The IPR does not provide for an automatic 'downgrade' of a payment order for an instant credit transfer, in case it cannot be executed within 10 seconds, into a payment order for a non-instant credit transfer in euro. For the processing of a payment order for an instant credit transfer in euro, all the requirements included in Article 5a have to be complied with.
It is not clear why it is assumed in the question that there would be a higher probability of execution of a non-instant credit transfer compared to execution of an instant credit transfer if all requirements of the IPR and the EPC's scheme rulebooks (once SCT Inst Scheme rulebook is aligned with the IPR) are complied with it. Issues linked to rejections of instant credit transfers arising in the context of sanctions screening are addressed by the requirements included in Article 5d of the IPR.

56. Question (Recital (11) IPR)

To ensure that all PSUs have access to instant credit transfers in euro, there should be no difference in terms of the payment initiation channels through which PSUs can place payment orders for instant credit transfers and other credit transfers. We understand that PSPs referred to in this recital are all regulated PSPs, including PISPs.

Answer

This Recital and the related provision in Article 5a(4), point (a), intend to enable the use of the same payment initiation channels by the user, irrespective of whether the payment order concerns an instant credit transfer or a regular credit transfer in euro. The obligations in Article 5a(4) pertain to PSPs that carry out instant credit transfers (as per introductory sentence). In that regard, the notion of 'carrying out a credit transfer' should be understood as pertaining to payer's PSP and payee's PSP that maintain the payment account of the payer and the payee, respectively (i.e., ASPSPs).
However, even if Article 5a(4) does not apply to PISPs, payment orders for instant credit transfers in euro can be initiated via PISPs and it is assumed that PISPs would be incentivised to provide such services with respect to instant credit transfers due to the underlying characteristics of instant credit transfers.

57. Question (Article 5a(5) IPR)

(i) We note that the obligation of the payer's PSP is triggered by the non-receipt of the confirmation by the payee's PSP within 10 seconds and thus in a situation of uncertainty as

to the correct execution of the transaction. The reference to Article 89 of PSD2 seems to be sufficient to regulate the cases in which the payment transaction was not actually executed.
(ii) However, we wonder what rules should apply if the funds have nevertheless been made available on the account of the payee, but confirmation has not been received within 10 seconds; that is, in the case of a mere delay of confirmation. Indeed, such a case does not seem to be covered by Article 89 of PSD2. In such situations can the payer's PSP recover the funds from the payer's account and, if so, by what procedures? If not, there would be an unjustified enrichment of the payer. Is the payee's PSP liable towards the payer's PSP for the delay? However, the delay could also be due to factors unrelated to both the payer's PSP and the payee's PSP. Finally, there may be also the risk of unintended duplications, e.g., when the payer, relying on the (apparent) non-execution of the first payment, has ordered a new payment.

Answer

On point (i):
The fact that the amount of the instant credit transfer is not available on the account of the payee within 10 seconds of the time of receipt of the payment order by the payer's PSP will constitute a non-execution of the instant credit transfer in euro. A reference to Article 89 of PSD2 would in such case not be sufficient or appropriate with respect to instant credit transfers, because that Article considers the payer's PSP not to be liable if it can prove that the payee's PSP received the amount of the payment transaction in accordance with Article 83(1) of PSD2, i.e., by the end of the following business day from the time of receipt.
Also, in cases where the payer's PSP is considered to be liable for non-execution, Article 89 of PSD2 requires to refund the payer the amount of the non-executed payment transaction 'without undue delay', whereas the intention of Article 5a(5) of the IPR is that this occurs 'immediately' following a non-execution within 10 seconds from the time of receipt. Therefore, Article 5a(5) of the IPR contains stricter requirements for the payer's PSP in case of non-execution of an instant credit transfer and a mere reference to Article 89 of PSD2 is not sufficient.
On point (ii):
It is the payee's PSP that needs to confirm a completed transaction (Article 5a(4), point (c)). In case the confirmation is sent within 10 seconds of the time of receipt by the payee's PSP but delay occurs in transmitting the confirmation, resulting in restoring the payer's payment account by the payer's PSP, the rules on liability can be included in the rulebook of the payment scheme (or, liability be determined on the basis of contract law / civil law).

58. Question (Article 5a(5) IPR)

Under the current SCT Inst Scheme rulebook, when the originator (i.e., the payer) PSP has not received any confirmation message from the beneficiary (i.e., the payee) PSP the latest after 25 seconds, the originator PSP cannot unilaterally reject the transaction. The originator PSP needs a confirmation from the beneficiary PSP, received via the intermediary CSMs or from the intermediary CSMs themselves, about the settlement status of the payment transaction. Article 5a(5) is not in line with the current approach of SEPA Inst Scheme rulebook.
A way forward to close this gap could be to set an appropriate timeline for the originator PSP after the 10 seconds to enquire the actual settlement status.

Answer

The proposed solution is not consistent with Article 5a(5) which requires restoring of the payment account of the payer immediately if the payer's PSP has not received a message confirming completion of the payment transaction within 10 seconds from the time of receipt. It is also not consistent with the logic of Article 5a(4), point (e), which requires that the payer is informed by its PSP within 10 seconds from the time of receipt of the payment order whether the instant payment transaction has been made available to the payee's payment account. Based on such information, the payer may decide to initiate another instant payment transaction or use another payment method (e.g., cash or card) at the POS.
Hence, if the implementation of Article 5a(5) would allow for additional time after 10 seconds for the payer's PSP to enquire about actual settlement status with a CSM, the payer may end up paying twice, in case the CSM confirms that settlement has taken place (and on that basis the payer's PSP would not restore the account balance) while the payer could have made another payment already on the basis of information received in accordance with Article 5a(4), point (e).
Where individual obligations included in Article 5a have the same limit of 10 seconds from the time of the receipt of the payment order by the payer's PSPs, they should be considered 'in totality' and implemented in a coherent manner by the industry that delivers compliance with all of them.

59. Question (Article 5a(4), point (a), IPR)

Please clarify whether the reference to "other credit transfers" means transfers in euro (non-instant SEPA credit transfers) and not, e.g., credit transfers in the national currency in the case of non-euro zone Member States.

Answer

Yes, reference to "other credit transfers" is to be understood as "corresponding credit transfers in euro".

60. Question (Article 5a(5) IPR)

After the payee's PSP has credited the transfer to the payee, it is possible for various reasons that the confirmation does not reach the payer's PSP within the 10 seconds. The EPC has outlined the associated problems and risks in its document EPC 287-23. The requirement included in this Article is not covered by the existing procedure of the EPC. In exceptional cases, the current procedure provides for the payer's PSP to maintain the reservation of the amount until clarification.
We therefore understand this regulation to mean that, as a rule, the payer must be informed of the execution within 10 seconds of the time of receipt.
If the payee's PSP fails to provide feedback, restoring of the payer's payment account, in accordance with the current EPC rulebook, is to be assessed as an immediate refund once the transaction has been clarified within few minutes. Have we interpreted this requirement correctly?

Answer

No. The obligation is to restore the payer's payment account immediately, if within 10 seconds of the time of receipt the payer's PSP has not received a message from the payee's PSP confirming that the funds were made available to the payee.

61. Question (Article 5a(5) IPR)

If PSP executes all payment orders received from PSU as instant credit transfers on a basis of a contractual agreement between PSP and PSU, can PSP resend instant credit transfers that were rejected due to a technical reason (e.g., reason code AB05) by the payee's PSP.

Answer

No. Articles 5a(4), point (e), and 5a(5) have to be complied with. The payer has to be informed about any non-executed transaction and the balance of its payment account has to be restored. A new payment order for an instant credit transfer would have to be resubmitted by the payer, if he / she chooses to do so.

62. Question (Article 5a(6) IPR)

Is this obligation of service only for instant euro credit transfers or should we also implement it for non-instant euro credit transfers?

Answer

This provision only applies to instant credit transfers in euro (see first sentence of the provision).

63. Question (Article 5a(6) IPR)

The regulation did not mention at which level this customer limit could be setup by the PSU:
- at the PSU level (i.e., customer level);
- at the payment account level (as a PSU could have multiple payment accounts).

Can you confirm that both options are authorized by the regulation?

Answer

Both alternatives are possible and could be implemented by PSPs.

64. Question (Article 5a(6) IPR)

Regarding the ability for the payer to set a maximum amount limit (daily or per transaction) for instant credit transfers, will this limit apply in total to all available SCT Inst payment channels or may it be different per payment channel?

Answer

One daily limit or transaction-level limit applies to all payment initiation channels.

65. Question (Article 5a(6) IPR)

If limits are applied to IBAN (instead to a client), can a client with two or more IBAN's (in one PSP) set two kinds of limits:
a) IBAN A – daily limit
b) IBAN B – transaction level limit?

Answer

This depends on how Article 5a(6) is implemented by a PSP. If limits are applied at the payment account level, then the proposed approach is possible. If limits are applied at the client level, both payment accounts would have to have the same type of limit (either daily, or transaction-level limit).

66. Question (Article 5a(6) IPR)

Currently we offer clients the possibility to set daily and monthly limits for a maximum amount that can be transferred via any credit transfer type (intra-bank, instant, SEPA, SWIFT). This gives clients the possibility to control their spending and ensures that money will not be stolen by fraudsters using any payment type. Is such functionality sufficient to be compliant with the new regulation? Or, should separate limits be developed by PSP only for instant payments?

Answer

Such functionality is not sufficient. Article 5a(6) requires PSPs to offer PSUs a possibility to set limits for instant credit transfers specifically (either on daily or transaction basis).

67. Question (Recital (19), Article 5a(6) IPR)

Today the SCT Inst Scheme allows transfers up to €100,000 per transaction but the PSPs have the possibility to set their own limit. However, a default maximum amount is not at all mentioned in the Regulation. It means the limit will be the amount of € 999 999 999,99?
If our understanding is correct, that implies implicitly that the PSPs should be able to cap the amount per transactions and per day as security measures for their payment service users? Indeed, the PSPs may typically set different caps based on their risk policies and customer needs.

Answer

The regulation does not set any transaction-level limits for instant credit transfers in euro. That reflects the co-legislator's position that there should be no 'default' transaction-based limits (like the €100,000 limit in the current rulebook of the SCT Inst Scheme) set by PSPs specifically for instant credit transfers in euro. According to Article 5a(6), only PSUs can determine a maximum amount that can be transferred by means of instant credit transfers (either transaction-based or daily limits, but not both).
Also, where there is a possibility for PSPs to use transaction-based limits with respect to instant credit transfers in euro under the IPR, those cases are specifically mentioned in the regulation, see Article 5a(2) in which case the application of a transaction limit by a PSP is to be approved by the competent authority.

Article 68(1) of PSD2 deals with spending limits on payment transactions executed through a payment instrument whereby that instrument is used for giving consent. Therefore, limits, if any, that are set by PSPs on the basis of PSD2 should be common for regular credit transfers in euro and instant credit transfers in euro.

68. Question (Article 5a(6) IPR)

Can PSPs apply cooling-off periods for the changes to come into effect as a fraud prevention mechanism?

Answer

Recital (19) of the IPR sets out that PSUs should be able to modify and lift individual limits with immediate effect. The PSU may however decide, if such a possibility is offered by its PSP, to voluntarily opt for a delayed effect of a newly set spending limit. This would be on contractual / bilateral basis. In such cases, the PSU should be able without difficulty and with immediate effect to opt out from such contractually agreed cooling-off period.

69. Question (Article 5a(6) IPR)

No threshold is mentioned anymore in the regulation. Should we interpret it as a removal of any external threshold for SCT Inst (or, an alignment with the SCT threshold)? Can we confirm that it impacts not only the PSP and that in order for PSP to adapt, the limitation at CSM level will also need to be adapted?

Answer

Applying a transaction-level limit of a CSM specifically with respect to instant credit transfer transactions would constitute the application of a limit imposed by the PSP due to its choice of a payment system and, therefore, would not be consistent with the spirit and requirements of the Regulation. Any such limits should be common for instant credit transfers in euro and regular credit transfers in euro.

70. Question (Article 5a(6) IPR)

PSPs have, for security reasons, amount limits put by initiation channel and possibly type of customer. Please confirm that the limit the PSU can request will take place within the limits put by the PSP? E.g., if a PSP set a maximum of €5,000 per transaction for an initiation made by the PSP's app, a payer cannot set a limit of €10,000 per transaction.

Answer

Any spending limits set by PSPs have to be common for instant credit transfers and regular credit transfers (e.g., in accordance with Article 68 of PSD2, when a payment instrument is used to give consent). However, based on Article 5a(6) of the IPR, a PSU may request to set a higher limit for instant credit transfers since that provision does not impose a constraint of a limit that had been set by the PSP.

71. Question (Article 5a(6) IPR)

In accordance with Article 5a(6), the PSP shall offer a PSU the possibility of determining a maximum amount that is able to be transferred by means of instant credit transfer. How does this work in practice? How can the PSU indicate its request to change the limit? What are the security measures/safeguards in a context of fraud prevention?
When the PSU places an instant payment order and he does not mention a request to change the maximum amount (i.e. in case of silence from the PSU), does this mean that the last limit previously set is still valid?

Answer

A request to create or modify a maximum limit should work in similar way as today when a PSU, e.g., requests to modify a daily limit for credit transfers. The same means could be used to validate limits set for instant credit transfers in euro. It should be possible to modify/lift such limits at any time and without difficulty (see recital (19)).
Maximum limits that have been set by a PSU apply until they are modified or lifted, with an immediate effect (see reply to Question 68 above). Limits referred to in Article 5a(6) can be either transaction-based or daily, but not both.

72. Question (Article 5a(6) IPR)

Should the possibility to determine a maximum amount be granted to the PSU through any channel via which an instant credit transfer in euro can be initiated? Or, can the PSP identify a single channel through which limits can be set (e.g., internet banking)?

Answer

According to Article 5a(4), point (a), PSPs shall ensure that payers are able to place a payment order for an instant credit transfer through all of the same payment initiation channels as the ones through which those payers are able to place a payment order for the other credit transfers. It follows that all payment initiation channels for instant credit transfers should be treated in the same way. Also, recital (19) clarifies that PSUs should be able to modify or lift individual maximum limits at any time and without difficulty (see reply to Question 68).

73. Question (Article 5a(6) IPR)

The article introduces the possibility for the customer to set a maximum transferable limit. The customer could then set this maximum amount to zero, independently and at any time, e.g., from home banking. However, in case a fraudster got hold of the payer's credentials, he could change this limit in a similar way. To prevent such a risk, in order to protect the PSU, the question arises whether – if the customer does not want to dispose of the SCT Inst service in any way – it is possible for the ASPSP to proceed to disable (even temporarily or in any case always revocable) this service.

Answer

If it is upon request of the PSU, then yes. The IPR does not provide for such right for the PSP.

74. Question (Recital (19) IPR)

Is the obligation to enable PSUs to set individual limits intended for ASPSPs or would it also apply to PISPs that do not handle payment accounts?

Answer

This obligation is intended for ASPSPs who maintain payment accounts. Moreover, in practical terms, it would not be possible for PISPs to implement daily limits, because a PSU can initiate instant credit transfers via different payment initiation channels.

75. Question (Recital (13) IPR)

In our Member State the CSM that processes instant payments also processes instantly non-instant SEPA credit transfers (as an Additional Optional Service). These non time critical payments are for 99.9 % processed within 10 seconds. The only difference with instant payments is that there is no hard time-out deadline applicable based on which any of the parties is to reject the instantly processed non-instant SEPA credit transfer for any of the specified cases as mentioned in the SEPA Inst Scheme rulebook. When a PSP receives multiple payment orders for instant credit transfers as a package, will it be allowed to send these payments as individual non time critical payments?

Answer

If the payer sends a package of multiple payment orders for regular (non-instant) credit transfers, these can be processed as swiftly as its PSP desires, but at the latest by the next business day. However, if the payer sends a package of multiple payment orders for instant credit transfers, they should be processed in accordance with Article 5a of the IPR. Instant credit transfers in euro that are submitted as a package are to be executed within 10 seconds from the time of receipt of an individual payment order included in that package, as specified in Article 5a(3), third subparagraph, point (b).

76. Question (Article 5a(4), point (a), IPR)

We would appreciate specifying in detail the rules for the operation of the service during transitional periods, especially when the ordering party is in the euro zone and the completing party is located outside the euro zone. What is the deadline for adjustment?
Does this include pain.001 messages transmitted via SWIFT? How should the order execution deadlines be calculated (how should the "time of receipt" for such an order be treated, and can it be considered a "non-electronic payment order"?)

Answer

PSPs located in the euro area will be required to provide a payment service of sending instant credit transfers in euro by 9 October 2025 and a payment service of receiving credit transfers by 9 January 2025. PSPs located outside the euro area will be required to provide a payment service of receiving instant credit transfers in euro by 9 January 2027 and a payment service of receiving credit transfers by 9 July 2027.
Instant credit transfer transaction in euro initiated by a PSP located in the euro area after 9 October 2025 and before 9 January 2027 will not be possible if a PSP located outside the

euro area has not yet started to provide the service of receiving instant credit transfers in euro.
For credit transfer transactions included in the scope of the IPR and SEPAR, the message format used is ISO 20022 XML (in line with Article 5(1), points (b) and (d), and the Annex to the SEPAR).

77. Question (Article 5a(7) IPR)

In the bank we have a bulk payment platform which currently only sends simple SCTs and not instant payments. In the current situation, files are received in specific time periods with specific cut-offs (from 9 am till 8 pm in working days only). With the advent of the new Regulation, where we will also provide mass instant payments, should the receipt of the file and its processing (with the unpacking of instant payments) be done 24/7?

Answer

Yes, it should be done 24/7.

78. Question (Article 5a(8) IPR)

Does it mean that if we join SEPA Inst. Scheme this year, we will need to be aligned with the current rulebook?

Answer

It depends on the rules of SEPA Inst. Scheme. PSPs will have to comply with the IPR by the deadlines set in Article 5a(8) at the latest. It is expected that by then the SCT Inst. Scheme rulebook will be aligned with the requirements of the IPR.

79. Question (Article 5a(8) IPR)

Is it correct to understand that payment service providers who already offer, execute and receive real-time credit transfers for their payment service users, e.g., in online banking, must already comply with and apply the requirements of the IPR for these today and therefore before 9 January 2025 and before 9 October 2025? In other words, does the IPR only grant the regulated implementation deadlines for the implementation of the amendments to the SEPAR if, as long as and to the extent that the specific payment service provider has not yet actually implemented the requirements? And do the transposition deadlines for the transposition measures already implemented by the payment service provider lapse (successively) prematurely at the moment that it has implemented them?

Answer

The application deadlines in Article 5a(8) apply to all PSPs, also including those that already offer the payment service of sending and receiving instant credit transfers in euro. That is because the characteristics and features of instant credit transfers in euro offered by PSPs currently may not comply with all the requirements of Article 5a.

80. Question (Article 5a(8) IPR)

According to the IPR, e.g. in the euro-zone, the implementation by PSPs of all additional obligations laid down in Article 5a(3) to (7) and related to the service of receiving instant credit transfers would be subject to the 9-months term referred to in Article 5a(8), and all additional obligations related to the service of sending instant credit transfers would be subject to the 18-months term referred to in the same Article 5a(8).
While the above is a straightforward assessment for the obligations that are clearly imposed on either the originator PSP or the beneficiary PSP, certain IPR provisions (such as Article 5a(5)) include mixed obligations entailing the participation of both PSPs. With respect to such provisions, we would welcome clarification as regards implementation deadlines.

Answer

The implementation by PSPs (located in the euro area) of additional obligations included in Article 5a(3) to (7) which are related to the provision of the payment service of receiving instant credit transfers in euro are subject to the 9-month application deadline reflected in Article 5a(8). The implementation by PSPs (located in the euro area) of additional obligations included in Article 5a(3) to (7) which are related to the provision of the payment service of sending instant credit transfers in euro are subject to the 18-month application deadline reflected in Article 5a(8). Article 5a(8) requires PSPs to offer the payment service of receiving and sending instant credit transfers in euro 'as laid down in this Article', i.e., by complying with such additional obligations, by the above specified application deadlines.
With respect to the obligation referred to in Article 5a(5), requiring to restore the payer's payment account (if the payer's PSP has not received a message from the payee's PSP confirming that the funds were made available to the payee), it pertains to the payer's PSP and therefore should be construed as an integral part of the service of sending an instant credit transfer in euro, which PSPs located in the euro area are obliged to provide to their PSUs 18 months from the date of entry into force of the regulation.

81. Question (Article 5a(8) and 5a(4), point (c), IPR)

When will the obligation referred to in Article 5a(4), point (c), have to be complied with? After 9 months, when mandatory receiving of instant payments applies, or after 18 months, when mandatory sending of instant payments applies?

Answer

In that case, the deadline of 9 months from the date of entry into force of the IPR shall apply.

82. Question (Article 5a(6) IPR)

What is the interplay between the provision of Article 5a(2) and the deadline set in Article 5a(8), third subparagraph and, more precisely, are payment service providers outside the eurozone allowed to offer instant credit transfers in euro below the €25,000 transaction limit before the deadline set in Article 5a(8), third subparagraph?

Answer

Before the deadline set in Article 5a(8) third subparagraph, a PSP located in a Member State whose currency is not the euro may decide, on a discretionary basis, to provide the service of sending instant credit transfers in euro outside business hours from accounts denominated in the national currency. Provision of such service could also include a transaction limit below €25,000 (but only until the deadline referred to in Article 5a(8), third subparagraph). However, a PSP offering instant credit transfers in euro in such a way will not be considered as compliant with the IPR ahead of the deadline of 9 June 2028, referred to in Article 5a(8), third subparagraph.

83. Question (Article 5a(8) IPR)

The regulation provides for different deadlines for implementation:

- 18 months for Member States with euro currency (instant payments can be commissioned via all channels); and
- 33 months for Member States with other national currencies (passive accessibility for instant payments).

How should the different deadlines be handled to avoid rejections, discrepancies, timing out and lack of confirmation? Example: If an instant payment is ordered to a recipient who is not yet reachable via instant payments, the order is rejected with corresponding information to the payer.

Answer

An instant credit transfer in euro is feasible only when both the payer's PSP and the payee's PSP provide their PSUs with a payment service of sending and receiving instant credit transfer, respectively. Where the payee's PSP does not yet provide the service of receiving instant credit transfers in euro, the Regulation does not prescribe the manner in which the payer would have to be informed of this. Such situations should not be new, as currently there is no mandatory obligation to provide instant credit transfers.

84. Question (Article 5a(8) IPR)

Is it correct to assume that, for example, in a non euro area Member State, the deadline for implementing the service of sending instant payments in EUR from accounts denominated in EUR, NOK, SEK, etc on a 24/7 basis and in the national currency of the Member State (only during working hours) is 39 months from the date of entry into force of the IPR, and only from accounts denominated in the national currency (outside business hours) is it 50 months from the date of entry into force of the IPR?

Answer

Yes, the interpretation is correct. The general application deadline to provide the service of sending instant credit transfers in euro is 39 months from the date of entry into force of the IPR (9 July 2027). But PSPs located in a Member State whose currency is not the euro will have a discretion to comply with this obligation, with respect to sending instant credit transfers in euro from payment accounts denominated in the national currency of that Member State outside business hours, 50 months from the date of entry into force of the IPR (9 June 2028). As per Article 5a(8), third subparagraph, discretion will apply only with

respect to payment accounts denominated in the national currency of a non-euro area Member State.

85. Question (Article 5a(8) IPR)

Shall the payer's PSPs comply with the obligations set in Article 5a(4) and (5) as from the deadlines indicated in Article 5a(8)? Or, will these provisions enter into force as from the date when a PSP decides to offer the service of sending or receiving instant payments, if at an earlier time than the deadlines indicated in Article 5a(8)?

Answer

A PSP may choose to comply early (ahead of application deadlines referred to in Article 5a(8)) with its obligation to provide a payment service of receiving and sending instant credit transfers in euro as laid down in Article 5a.

86. Question (Article 5a(8) IPR)

When considering a PSP that operates as a branch in a Member State whose currency is the euro, but the head office is a PSP located in a Member State whose currency is not the euro, which time limit is applied to the branch?

Answer

In that case, the deadlines applicable to PSPs located in a Member State whose currency is the euro will apply (the Member State of geographical location of a branch). Please note that Article 5(8) uses the term 'located' and not the term 'established'.

87. Question (Article 5a(8) IPR)

According to the proposed regulation, all EMIs within the eurozone should be able to receive and send instant payments within 36 months (36/39 months for receiving/sending respectively for non-eurozone EMIs) from the date of entry into force of the Regulation. However, from the text of the law, it is not clear the exact timeline for the implementation of the rest of the obligations (i.e., pricing, sanctions screening and payee verification system) set forth therein.

Answer

Article 5b(3), Article 5c(9) and Article 5d(3) set implementation periods for PSPs. Those articles do not distinguish between bank and non-bank PSPs. Therefore, application deadlines referred to in those articles apply to non-bank PSPs that already provide the service of instant credit transfers in euro to their PSUs.
For example, Article 5d applies to all PSPs from all Member States from 9 January 2025. Some PSPs will not be obliged to provide instant credit transfers in euro at that time; but if they decide to do so, they will have to comply with this provision.

88. Question (Article 5a(8) IPR)

What about PIs and EMIs that already only receive (but not send) instant payments? Are they submitted to the same requirements and calendar as credit institutions? Will they be

supposed to provide a service of sending instant payments after 18 months or after 36 months from the date of entry into force of the IPR?

Answer

Non-bank PSPs from Eurozone Member States that already provide a service of receiving instant credit transfers in euro will be obliged to offer a service of sending instant credit transfers in euro from 9 April 2027. Non-bank PSPs from non-Eurozone Member States that already provide a service of receiving instant credit transfers in euro will be obliged to offer a service of sending instant credit transfers in euro from 9 July 2027. For non-bank PSPs form non-Eurozone Member States, until 9 June 2028 discretion referred to in Article 5a(8) third subparagraph may be used.

89. Question (Article 5a(6) IPR)

SCT Inst Scheme of the EPC has defined a maximum transaction amount of €100,000. This IPR does not define any maximum amount. When will the removal of the maximum amount apply to PSPs?

Answer

This provision applies on the date applicable for sending of instant credit transfers in euro – primarily from 9 October 2025 (for PSPs located in Eurozone Member States). Once the payment scheme rules are modified, in practice, they will apply to PSPs located in the non-euro area that choose to comply with the IPR ahead of the applicable application deadline for providing a payment service of sending instant credit transfers in euro of 9 July 2027.

C. QUESTIONS ON THE SERVICE ENSURING VERIFICATION OF THE PAYEE (ARTICLE 5C)

90. Question (Recital (20) IPR)

What would be the conditions for a PSP to be allowed to reject an instant payment due to fraud suspicion?

Answer

IPR does not contain conditions or specific rules under which a rejection of an instant credit transfer due to suspicion of fraud would be allowed. The payee verification service provides the payer with information about whether the name of the payee and the IBAN of the payee match. But it is the payer who takes the decision on whether to proceed with a payment order.

PSD2 contains some rules on the refusal to execute payment orders, but those rules do not appear to allow to reject an instant credit transfer in euro on grounds of fraud suspicion. For instance, Article 79 of PSD2 does not allow to refuse a payment order where all the conditions set out in the payer's framework contract are met. Article 68(2) of PSD2 does provide for the possibility to block the use of payment instrument on grounds of fraud

suspicion, but only if that possibility is agreed in the framework contract, and only where the fraud pertains to the use of payment instrument concerned (and not where fraud pertains to a payment transaction.)
The possibility of blocking a transaction on fraud suspicion grounds is currently being discussed by the co-legislators in the context of the PSD2 revision by PSR.

91. Question (Recital (21) IPR)

In respect with the GDPR, the names of natural person are sensitive data. However, recital (21) does not comply with the GDPR because in the case of an 'almost match', the payer's PSP should provide the name of the payee. As a result, the GDPR should not then apply in first instance?

Answer

Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR) applies to the processing of personal data in the context of providing credit transfers in euro. This is recalled in recital (32) IPR, which states that GDPR applies to processing of personal data in the context of providing credit transfers, the service ensuring verification or verifying whether PSUs are persons or entities subject to targeted financial restrictive measures. The processing of the names and payment account identifiers of natural personal for the purposes of complying with the legal obligations laid down in the IPR is proportionate and necessary to prevent fraudulent transactions and ensure compliance with targeted financial restrictive measures.
In the context of services ensuring verification, as clarified in recital (21), in cases of an 'almost match', that is when the name of the payee provided by the payer and the name associated with the account identifier which was provided by the payer do not match exactly, the provision of the full name of the payee who is a natural person should be carried out in the manner which ensures compliance with GDPR.
GDPR only applies to the processing of personal data. Article 4(1) of GPDR defines personal data as any information relating to an identified or identifiable natural person clarifying that an identifiable natural person is one who can be identified, directly or indirectly, in particular, by reference to an identifier such as a name. Article 9(1) of the GDPR defines special categories or 'sensitive' of personal data as revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. This means that the name and IBAN are personal data when associated with a natural personal. However, name and IBAN are not considered to be 'sensitive' data as referred to in Article 9(1) of GDPR.
You can learn more about the processing of personal data and the GDPR here: https://commission.europa.eu/law/law-topic/data-protection_en .

92. Question (Article 5c(1) IPR)

Considering recital (6) of the SEPAR which states that 'internally processed payments […] should not fall within the scope of those rules since those payment services are not comparable to credit transfers or direct debits'

do PSPs have to apply the IPR, e.g., offer the service ensuring verification of payee, in relation to the 'on-us' credit transfers?

Answer

The 'on-us' credit transfers, i.e., transfers where both payer's PSP and the payee's PSP are the same, are included in the scope of the SEPAR, in accordance with Article 1(1) of that Regulation. Moreover, such credit transfers can also be subject to risk of social engineering fraud. Therefore, those credit transfers are not excluded from the scope of application of Article 5c of the IPR, which is amending the SEPAR.
It should also be noted that the service ensuring verification of the payee needs to be provided before a payment order for a credit transfer is authorised. In other words, it is not part of a credit transfer transaction per se. Hence, recitals that are relevant for the application of this service are those that are included the IPR as opposed to the ones in the original SEPAR whose focus was primarily on rules for credit transfer and direct debit transactions.

93. Question (Article 5c(1) IPR)

Do PSPs have to apply VoP to whitelisted beneficiaries for which the payer has already made payments in the past (before the entry into force of the IPR)? Does the PSP have a possibility not to apply VoP to whitelisted beneficiaries, i.e., apply VoP only once?

Answer

IPR requires that the payer's PSP ensures the verification of the payee for every credit transfer, including instant and non-instant credit transfers. That is clear from the wording of the introductory wording of Article 5c(1), which for the situations referred to in points (a) to (d) of that article requires a provision of service:
(i) to the payer in relation to his/her intention to send a credit transfer;
(ii) to be performed by the payer's PSP immediately "*after the payer provides relevant information about the payee and before the payer is offered the possibility of authorising that credit transfer*".
In addition, recital (21) states that the provision of the VoP service is always linked to a specific credit transfer transaction, as it states that the PSP should provide the payer with the name of the payee associated with the IBAN (in situations of "almost match"), in order to "*facilitate the payer's decision whether to proceed with the intended transaction*". Article 5c(5) states that provision of the VoP service should "*not prevent payers from authorising the credit transfer concerned*".
Exclusions from a general rule are included in the IPR and shall be interpreted narrowly. The only possibilities not to provide this service to PSUs are set out in Article 5c(4) and (6) and are circumscribed to cases where:
(i) in the case of payment transactions initiated on the basis of paper-based payment orders, the payer is not present at the time of receipt of that payment order, or
(ii) the PSU that is not a consumer opts out from receiving the service ensuring verification when submitting multiple payment orders as a package. However, such PSU has the right to opt in to receiving the service at any time.

94. Question (Article 5c(1), point (d), IPR)

What is the mandatory point in time at which validation must take place: should it be understood as immediately prior to ordering the execution of each payment order or can a validation serve for future payment orders to the same payee? Article 5c(1), point (d), states that the payer must validate the payee before authorizing the credit transfer, but it is not entirely clear whether this wording implies a prior validation for each payment order or whether it can be for several payment orders to the same payee.

Answer

IPR requires that the payer's PSP ensure the verification of the payee for every credit transfer, including instant and non-instant credit transfers. That is clear from the introductory wording of Article 5c(1), which requires a provision of service:
(i) to the payer in relation to his/her intention to send a credit transfer;
(ii) "*after the payer provides relevant information about the payee and before the payer is offered the possibility of authorising that credit transfer*".
Also, Article 5c(5) states that the provision of the VoP service should "*not prevent payers from authorising the credit transfer concerned*".

95. Question (Article 5c(1) IPR)

How does this entire Article 5c combine with the requirements of Articles 50 and 57 of the legislative proposal for PSR and possible requests to EBA's RTS? We think that this whole subject should be taken out of the PSR.

Answer

With respect to credit transfers (regular and instant) in euro, the rules laid down in the IPR will apply. The legislative intention of Articles 50 and 57 of the Commission's legislative proposal on a Payment Services Regulation (PSR) is to cover credit transfers denominated in other currencies (see Articles 50(8) and 57(6) of the proposal).

96. Question (Article 5c(1) IPR)

Is it allowed for PSPs outside the EU and SEPA to participate in the VoP system for cross-border transfers? If yes, do they also have to support VoP as responding PSP (answering requests from SEPA banks)?

Answer

IPR (like the original SEPAR) covers only payment transactions in euro between two PSPs located in the Union, or where the sole PSP involved in the payment transaction is located in the Union. The IPR is also a legislation with EEA relevance. Hence obligations included in the IPR apply only to PSPs located in the EU and, after implementation of the IPR in the EEA countries, to PSPs located in the EEA countries.
In practice, there might be different technical solutions enabling PSPs to provide the service of payee verification. Also, the EPC is currently in the process of developing a VoP scheme. It will depend on the operator of a particular solution or rulebook of the scheme whether

and which non-EU / non-SEPA area entities will be allowed to participate in the respective solutions or schemes.

97. Question (Articles 5c(1) and 5c(8) IPR)

As regards SEPA countries which do not belong to the EEA (the UK, Switzerland, etc.), what will be the responsibility of the payer's PSP which sends a credit transfer to a payee's PSP outside the EEA without having been able to carry out the VoP?

Answer

Such transactions are outside the scope of the IPR and SEPAR. Hence, obligations in Article 5c of the IPR do not apply.

98. Question (Article 5c(1) IPR)

Is the VoP service an obligation for PIs and EMIs? If both the bank and the PI or EMI facilitate the transaction, whose responsibility is it?

Answer

The obligation to provide the service ensuring verification of the payee, as referred to in Article 5c(1), applies also to non-bank PSPs such as PIs and EMIs when the payer is their customer. PIs and EMIs may also be subject to obligations of Article 5c where they act in the role of a payee's PSP.

99. Question (Article 5c(1) IPR)

Article 5c of the amended SEPAR obliges a PSP to provide the payer with a service that enables verification of the payee's name. Is it sufficient if this verification of the payee is provided to the person who authorizes the payment order?
Background to the question: In Article 5c of the IPR, the person to whom a PSP must offer the verification of the payee is referred to as the payer or payment service user (PSU). According to the definition in Article 2(3) of SEPAR, a payer is "a natural or legal person who holds a payment account and authorizes a payment order from that payment account or, if there is no payer's payment account, a natural or legal person who gives a payment order to a payee's payment account". In line with this, Article 2(9) of this Regulation defines a payment service user as "a natural or legal person who makes use of a payment service as payer or payee". Based on the definition of the payer, it follows that the verification of the payee must therefore be provided for the account holder ("holder of an account"). Accordingly, even if a payment order is authorized by an authorized signatory or another person authorized by the account holder, only the account holder should be able to obtain information about the verification of the payee. However, this would make it impossible to effectively verify the payee in cases where a payment transaction is not carried out by the account holder but by an authorized signatory or another person authorized by the account holder.

Answer

A person who has been legally authorised by the payer to place and authorise a payment order from the payer's payment account must be understood as a "payer" in the context of providing the service ensuring verification of the payee. Also, Article 5c(1) requires payer's PSP to provide the service of the VoP "*regardless of the payment initiation channel used by the payer to place a payment order for the credit transfer*". 'Payment initiation channel' as defined in Article 2, point (1b), of the IPR is "*any method, device or procedure through which payers can place order with their PSP for a credit transfer* (…)". Authorising another person (e.g., via a notarised power of attorney) to place and authorise payment orders on behalf of the payer could be deemed to constitute "a procedure", covered under the definition of the "payment initiation channel".

100. Question (Article 5c(1) IPR)

If a payer provides commercial trade name of the payee, should verification of payee service include the verification of trade name against the actual trade name?

Answer

The 'name of the payee' is defined in the IPR (Article 2, point (1d)), in respect of a legal person, as "the commercial or legal name". Therefore, the payer, when placing a payment order for a credit transfer in euro, may choose to provide either the commercial or legal name of the payee.

Article 5c(1), point (a), describes in detail the obligations of the payer's PSP and the payee's PSP, in the context of providing the payer with the service ensuring payee verification. It states, for instance, that "*the payee's PSP shall verify whether the payment account identifier specified in point (1)(a) of the Annex and the name of the payee provided by the payer match*". That means that when the payer provides the commercial name of the payee, the verification should also be provided with regard to such name.

Therefore, in order for the service to be provided, the PSP shall collect the commercial names of payees. In practical terms, that will be key to minimise the rate of false "no match" notifications, which otherwise would dissuade payers to proceed with the placement of 'safe' payment orders.

101. Question (Article 5c(1) IPR)

When provisioning "verification of the payee" service – can a PSP, in order to comply with Article 5c, query a local or global database of all account holders, instead of requesting the PSP of the payee to verify that the IBAN and name of the payee match?

Answer

From the wording of Article 5c(1), it is clear that the explicit obligation to verify whether the name of the payee (or alternative data elements) and the IBAN of the payee match lies with the payee's PSP. In that regard, Article 5c(1) requires that rules included in points (a) to (d) need to be applied. Article 5c(1), point (a), specifies that in cases where the information about the payee has been provided by the payer, the information regarding non-match that is sent back to the payer shall be '*based on information provided by the payee's PSP*'. That implies that the payee verification service is based on info exchanged between payer's PSP and payee's PSPs.

As recalled in recital (32), GDPR applies to processing of personal data in the context of the service ensuring verification. Compliance with the GDPR means that principles of processing of personal data, such as the principles of data minimisation and purpose limitation are respected. Data protection by design and by default further provides that appropriate technical and organisational measures must be implemented to meet the requirements of the GDPR and protect the right of individuals. The processing of personal data must be designed to implement data protection principles and by default only personal data which are necessary for each specific purpose of the processing are processed. This obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility.
The compliance with the GDPR will have to be ensured by the industry once it puts in place its specific payee verification solutions (like it was done in case of solutions that are already offered). The national data protection authorities and courts are competent to assess that compliance of the measures taken to provide payee verification solutions with the GDPR.
See also answer to Question 91.

102. Question (Article 5c(1) IPR)

In case of a 'close match', the payer must be informed of the correct name of the recipient who is the account holder of the specified IBAN. If the recipient account is a joint account, is one name sufficient or must the names of all account holders then be transmitted in this case?

Answer

In case of an 'almost match', indicating one name is sufficient for the service of verification under the IPR with regard to a joint account.

103. Question (Article 5c(1), point (a), IPR)

If a central bank (acting as monetary authority) decides to offer instant payments, is it also obliged to, first, provide the VoP service and, second, also in both directions?

Answer

A central bank is obliged to offer its PSUs a payment service of sending and receiving instant credit transfers only if (i) it offers its PSUs a payment service of sending and receiving regular credit transfers, and (ii) it is deemed to be a PSP in accordance with Article 1(1), point (e), of PSD2,i.e., when it is not acting in capacity as monetary authority.
All PSPs that provide their PSUs with a payment service of sending instant or regular credit transfers fall under the obligation to provide those PSU with the service of ensuring verification of the payee. Such central banks should also comply with the obligations of the payee's PSP laid down in Article 5c, when they act in the capacity of the payee's PSP.

104. Question (Article 5c(1), point (a), IPR)

What qualifies as an "almost match"? Retail mass market payments are managed by IT systems that need to complete instant payments in 10 seconds and there needs to be a programmable rule on "almost match" to trigger a reply to the payer.

Answer

As per Article 5c(1), point (a), a payer's PSP is obliged to indicate to the payer the name of the payee associated with the IBAN of the payee provided by the payer in case of "almost match". Recital (21) of the IPR gives a non-exhaustive list of examples what could be considered cases of 'almost match', such as presence of diacritics or different possible transliterations of names in different alphabets, differences between habitually used names and names indicated on formal documents. The same recital further clarifies that the provision of a full name of the payee should be carried out in the manner which ensures compliance with the GDPR. The name verification services should not lead to revealing name of holder of an account that is a natural person but to whom the payer did not intend to transfer the founds. The PSPs should only communicate the corrected name of the payee in cases when PSPs can reasonably assume that the payer knows the identity of the payee. This can depend on number of factors. Therefore:
(i) an acceptable threshold of what can be considered as 'almost match' to allow for the name of the payee to be indicated to the payer (e.g., a certain number of characters misspelled may deliver an 'almost match' outcome depending on the total number of characters in the last name of the payee), and
(ii) the manner in which the name of the payee is indicated (e.g., disclosure of the name of the payee in case of jointly held accounts would depend on the name which has been supplied by the payer)
should be determined based on programmable rules that are specific case-dependent and operate in the manner which complies with the GDPR.
According to recital (23) of the IPR, such obligation should as far as possible be complied with in accordance with a Union-wide set of rules and standards to enable its consistent, smooth and interoperable implementation.
See also answers to Questions 91 and 101.

105. Question (Articles 5c(1), point (a), and 5c(8) IPR)

Article 5c(1), point (a), obliges the PSP of the payee to provide information: "upon the request of the payer's PSP, the payee's PSP shall verify whether the payment account identifier specified in point (1)(a) of the Annex and the name of the payee provided by the payer match." If the payee's PSP does not fulfil the obligation, it shall be liable in accordance with Article 5c(8) for any resulting damage. Mutual pricing between payment service providers would be a major hurdle with regard to the required short-term implementation of the VoP. Are we correct in our assessment that, since this is a legal obligation, the payee's PSP is not allowed to charge payer's PSP a fee?

Answer

Article 5c lays down certain obligations that payee's PSPs have to fulfil in the context of the provision by the payer's PSPs to the payer of the service ensuring verification of the payee. These are legal obligations of the payee's PSPs and not services that they provide to the payer's PSP, therefore, there should be no accompanying charge.
In a hypothetical situation where the payee's PSP would refuse to provide information to the payer's PSP if the fee were not paid, the payee's PSP would be considered as failing to comply with its obligations (penalties would apply). Also, Article 5c(8) would apply with

respect to compensation of any damages that occur due to a payee's PSP failing to comply with its obligations.
Moreover, each PSP, in different payment transactions, would act in the capacity of either payer's PSP or payee's PSP and there would be little economic rationale for allowing payee's PSPs to apply charges for fulfilling this obligation.
That does not apply to third party technical service providers that provide infrastructure enabling or facilitating the provision of the service ensuring the verification of the payee.

106. Question (Article 5c(1), point (b), IPR)

In case LEI number (or other identifier) is provided, is it sufficient to check it as foreseen in Article 5c(1), point (b)? Or, that check should be done in addition to the verification of the provided name?

Answer

Yes, it is sufficient to verify the LEI number or another data element other than the name of the payee. This is subject to such data elements being available in the internal system of the payee's PSP (condition included in Article 5c(1), point (b)).

107. Question (Article 5c(1), points (b) and (c), IPR)

Should the pattern of operation (assessment of the level of matching, returning existing data in case of almost complete matching, warning in case of lack of matching) in the case of an account kept for a legal person identified with data other than name or for multiple payees be the same as for an account kept for one payee?

Answer

Such cases are different and the information provided to the payer will be different, especially with respect to 'almost match' cases. Where a data element other than the name of the payee is provided by the payer (Article 5c(1), point (b)), there is no 'almost match' situations, since such alternative data element is presumed to be alphanumerical combination/code, whereby it would be difficult and probably misleading to determine an 'almost match' in case of absence of a full match.
For payment accounts held on behalf of multiple payees (Article 5c(1), point (c)), the obligation is also to notify the payer if the payee indicated by the payer (via the additional information, in combination with name of the payee and the IBAN of the payee) is not among the multiple payees on whose behalf the payment account is held. That also reflects that in most cases such additional information will be in the form of unique user IDs, such as PANs (primary account numbers), sub-account identifiers on the ledger of an EMI or PI, etc.

108. Question (Article 5c(1), point (c), IPR)

How shall be the VoP service provided in case of PSPs which maintain only omnibus account and each client is identified by specific symbol? Some non-banking PSPs do not maintain payment account with particular IBAN for each client. They only hold omnibus account by credit institution (identified by IBAN) and each client is determined by their specific symbol which is included in the payment order.

Answer

For those cases, Article 5c(1), point (c), applies. Due to the business model of some non-banking PSPs, and the requirement to safeguard client funds, a PI or an EMI would be a 'PSP holding a payment account on behalf of multiple payees' at a credit institution, whereby that credit institution would be a 'PSP maintaining that payment account'.
The payer would make a credit transfer to the IBAN of a PI/EMI with the credit institution, but the actual payee would be a client of the PI/EMI. The provision allows discretion for the PI/EMI and the credit institution to agree between themselves which one of them will provide the feedback (on the outcome of payee verification) to the payer's PSP. In practice, this would/could be influenced by the type of arrangement between the PI/EMI and the credit institution.

109. Question (Article 5c(1), point (c), IPR)

Could you please clarify the difference between "maintaining an account" vs. "holding an account"?

Answer

In Article 5c(1), point (c), both notions of 'PSP holding a payment account on behalf of multiple payees' and 'PSP maintaining that payment account on behalf of multiple payees' are used. That wording aims to cater for transactions where PSPs such as EMIs are involved. Due to their business model and requirement to safeguard client funds, EMIs would be a 'PSP holding a payment account on behalf of multiple payees' at a credit institution, whereby that credit institution, would be 'a PSP maintaining that payment account'.

110. Question (Article 5c(1), point (c), IPR)

Is this article referring to 3 PSPs? – 1) payer's PSP; 2) PSP that holds the account and 3) PSP that maintains the account?

Answer

Article 5c(1), point (c), indeed refers to three PSPs: (i) payer's PSP, (ii) payee's PSP (e.g., EMI) that holds a payment account on behalf of multiple payees at a credit institution and (iii) the credit institution that maintains that payment account. The provision is flexible in terms of providing discretion, in such a set-up, for the verification of the payee (and communicated back to the payer's PSP) either by (ii) or by (iii).

111. Question (Article 5c(1) IPR)

Could you please clarify whether credit transfers processed via large value payment systems (T2) are concerned by the VoP?

Answer

A PSP is not obliged to offer the VoP service in relation to credit transfers processed and settled via large value payment systems, on grounds that payment transactions processed and settled via large value payment systems (LVPS) are excluded from the scope of the SEPAR. A PSP can however choose to do so on a discretionary basis in order to address the risk of payment fraud.

When assessing whether or not a particular PSP is obliged to offer the VoP service due to a specific payment system used by that PSP to process and settle the relevant outgoing credit transfer transaction, it is important that that payment system qualifies as a LVPS in the meaning of the SEPAR. In that regard, to benefit from the exclusion of Article 1(2), point (b), of the SEPAR, a LVPS must meet the definition laid down in Article 2, point (18), of the SEPAR, meaning to be "*a payment system the main purpose of which is to process, clear or settle single payment transactions of high priority and urgency, and primarily of large amounts."*

If the same PSP also offers to its PSUs outgoing or incoming credit transfers in euro that are not excluded from the scope of the SEPAR, it will have to comply with its obligations as a payer's PSP and payee's PSP included in Article 5c of the IPR.

112. Question (Article 5c(1) IPR)

Central banks can provide the euro instant payments service within specific time frames. What about providing verification of the payee – whether these services should be treated separately? Does a central bank have to provide verification of the payee 24/7/365?

Answer

IPR does not allow to limit the VoP service to a specific time. The general rule is that the VoP service has to be provided before the payer is offered a possibility to authorise a payment order (irrespective of whether it is a regular or an instant credit transfer), and these can be placed 24/7. Central banks, when acting as PSPs (in accordance with Article 1(1), point (e), of the PSD2, i.e., when they are not acting in capacity as monetary authority), have discretion to limit the provision of a payment service of sending instant credit transfers to business hours (as per Article 5a(2) of the IPR). However, the scope of the VoP service is broader and includes regular credit transfers in euro. Moreover, central banks, when acting as PSPs, may also have obligations under Article 5c of the IPR when they act in the role of the payee's PSP.

113. Question (Article 5c(1) IPR)

The payer is only present when a standing order is created. During the recurring execution of the respective payment, the payer is not present. This means that the payer cannot be informed of the result of the payee verification when the payment order is executed, and recipient verification cannot be disclosed to the payer. We propose that the recipient verification is to be carried out when the standing order is created and not when the payment order is executed on a recurring basis.

Answer

The service ensuring verification of the payee is to be executed immediately after the payer provides relevant information about the payee and before the payer is offered the possibility

of authorising that credit transfer. In such a scenario, the payer would still be present at the time of placing a payment order for a recurring credit transfer and thus would be duly informed about the outcome of the payee verification process prior to the authorisation of the payment order and its subsequent execution by his PSP.

114. Question (Article 5c(1) IPR)

If a successful VoP full match is done with a trade name, should this be formally handled as a full match (i.e., providing no information to the payer, that the match did not occur with the 'real' name of the payee) or as a close match (i.e., informing the payer about the correct 'real' name of the payee)?

Answer

This is to be handled as a full match, providing no further information to the payer. The definition in the IPR of the 'name of the payee' in relation to a legal person (Article 2, point (1d), of the IPR) refers to its "commercial or legal name". Therefore, the payer, when placing a payment order for a credit transfer in euro, may choose to provide either the commercial or the legal name of the payee.

115. Question (Article 5c(1), point (a), IPR)

In the case of an 'almost match', would it be in line with the IPR to offer the payer the option to – after manual confirmation by the payer – change the payee's name in the payer's IP order to the 'correct' one, i.e., to the name returned by the payee's PSP in the VoP answer?

Answer

This is an implementation aspect that is not governed by the IPR. Article 5c(5) provides that provision of the VoP service shall not prevent the PSU from authorising a credit transfer concerned. Therefore, although it could be an option offered by the PSP, under the IPR correction of the name of the payee in the payment order is not per se needed for a PSU to be able to proceed with the authorisation of a payment order.

116. Question (Article 5c(1) IPR)

If the payer's PSP has agreed with the PSU and payee that, in certain cases, payment will be made to an IBAN other than the IBAN entered by the payer, but having the same account holder, is any additional notice required in the context of the VoP?

Answer

Given that both IBANs belong to the same payee, the payer should be informed on whether the name of the payee provided by the payer matches with any of these two accounts. Depending on the specifics of this set up, Article 5c(1), point (d), may also apply. From the payer's perspective the most important is to have ex-ante certainty whether a credit transfer will be reaching the intended payee.

117. Question (Articles 5c(1) and 5c(6) IPR)

If a corporate customer sends a VoP batch file, but does not send a payment file afterwards, is this in contradiction with the IPR?

Answer

Provision of the VoP service does not impose an obligation to authorise a payment order. A payer may decide not to authorise a payment order either because of the feedback received via the VoP service or for other reasons.
The ultimate goal of the VoP service is to provide assurance to the payer about the accuracy of the information about the payee to whom the payer intends to make a credit transfer. Therefore, the service shall not be used by a PSU for purposes other than for making credit transfers (see the name of Article 5c and Article 5c(1) of the IPR).
Contractually it could be agreed that the VoP service is offered for other purposes than those laid down in the IPR. Depending on those purposes the pricing rule included in Article 5b(2) of the IPR may not apply. When such use of the VoP service would include processing of personal data, the parties determining the means and purposes of the processing must be able to demonstrate the compliance with data protection rules in line with Article 5(2) of the GDPR, including the lawfulness of such processing under the GDPR.

118. Question (Articles 5c(1) and 5c(6) IPR)

May a PSP offer their corporate customers a VoP in advance to payments in order to check their static data and then to be sure and use later for bulk payments opt-out option payments. Is this then covered by the IPR or is an extra consent needed by later payee by GDPR?

Answer

PSUs which are not consumers can opt-out from receiving the service ensuring verification of a payee in case of payment orders belonging to a package. They can also agree with their PSPs on receiving other services leading to further security of payments (outside the scope of Article 5c of the IPR). Any additional services need to respect current legislation, including the GDPR. Any processing of personal data must be based on one of the six lawful grounds of processing laid down in the GDPR. Consent is one of these grounds. It is for the entity deciding the means and purposes of the processing to determine the most appropriate legal basis taking into account the context of the processing of personal data.
See also answer to Question 117.

119. Question (Article 5c(1) IPR)

The VoP in case of package payments especially via corporate dedicated channels would take place prior to payment execution, however, it is not specified how long "prior" refers to, considering that -especially- for corporate dedicated channels the VOP and the payment execution can only be two distinct processes to avoid downgrading the user experience by obliging the corporates to revalidate / sign the payment files at each VOP result?

Answer

The provision of the VoP service with respect to packages of payment orders for credit transfers ("bulk" credit transfers) would have to comply with requirement of Article 5c(1), if the payer does not opt from receiving the VoP service. Article 5c(1), first subparagraph, provides that the VoP service has to be provided "immediately" after the payer provides the relevant information about the payee and before the payer is offered a possibility of authorising a credit transfer. It will be up to the payer then to decide how quickly it acts on the basis of the VOP feedback received from its PSP. The time limits set by Commission Delegated Regulation (EU) 2018/389 will apply, where applicable. The ultimate objective of the VoP service is to provide assurance to the payer about the accuracy of the information about the payee to whom the payer intends to make a credit transfer. Therefore, the service, referred to in Article 5c, shall be used by a PSU for purposes of making credit transfers (please note the scope of the measure, referred to in the name of Article 5c and the provisions of Article 5c(1)). Contractually it could be agreed that the service is offered for other purposes. However, depending on those purposes the pricing rule included in Article 5b(2) of the IPR may not apply.
See also answers to Questions 117 and 118.

120. Question (Articles 5c(1) and 5c(6) IPR)

Regarding the VoP process related to the bulk payment orders that are already pre-authorized / signed by the payer, do you confirm the following process:
1) First, a pure VoP requests file shall be sent by the payer to its PSP before sending the real bulk payment orders;
2) Then it is up to the payer to prepare the bulk payment orders according to the VoP responses;
3) Then the payer sends bulk payment orders with "specific opt out" or "systematic bypass"
The main drawback of such approach is that there could be a long time or a certain time between the reception of the VoP response by the payer and the sending of the payment order by this payer and so, some risk of no match afterwards.
Another idea is that given the objective to allow the payer to check the beneficiary of their payment orders, could the payer's PSP offer to perform the VoP from the bulk payment orders itself, then executes the payment orders which the VoP response is "match " and requests the confirmation of the payer in case of "almost match" and "no match", whatever the process? However, in such a case, the 10 seconds rule is inapplicable.

Answer

The two scenarios are possible implementation approaches.
In the first scenario, it will be important that the VoP response is sent back to the payer immediately after the provision by the payer of the information about the payee, i.e., the file with the multiple payment orders (in accordance with Article 5c(1)). In this scenario, "specific opt out" would not be needed, as the payer would authorise the payment orders included in the file, based on the received VoP feedback, when sending the file for unpacking and processing by the payer's PSP.
The second scenario could also be used. Under it, it would have to be agreed with the payer contractually that the payer's PSP would automatically proceed with execution of payment orders for which "no match" or "almost match" messages are not generated.

In all cases, the 10 second rule applies only after the determination of the time of receipt for each individual payment transaction, after it has been unpacked. The VoP service has to occur prior to the authorisation of the package of payment orders. Unpacking occurs after the package of multiple payment order is authorised and placed with the payer's PSP.

120a. Question (Articles 5c(1) and 5c(6) IPR)

Would the following approach be a compliant implementation of the obligation to provide the VoP service in relation bulk payment orders placed by corporates: based on a contractual agreement between a corporate and its PSP (the payer's PSP), individual payment orders included in the pre-authorised bulk file with a "full match", "almost match", and / or "impossible to verify" VoP outcome/s (depending on the nature of contractual agreement) would be processed by the payer's PSP automatically after it receives the VoP feedback from the payee's PSP, without needing a further input or authorisation from the corporate. Individual payment orders included in the bulk file which are agreed by the corporate and its PSP not to be executed depending on the VoP outcome (e.g., where the VoP outcome is "no match") would be rejected by the payer's PSP as per current market practice for erroneous items.

Answer

Such an approach would constitute a compliant implementation, assuming that a corporate (the payer) contractually agrees with its PSP (the payer's PSP) that (i) the payer's PSP automatically proceeds with the execution of individual payment orders included in the pre-authorised package (bulk file) where the payer's PSP receives the VoP feedback from the payee's PSP showing a" full match", "almost match" and / or "impossible to verify" VoP outcome, and (ii) the payer's PSP does not need to ask for or wait for the corporate to authorise those payment orders one more time. This is without prejudice to the requirement in Article 5c(1), point (a), for the payer's PSP to indicate, in case of "almost match", to the payer the name of the payee associated with the IBAN provided by the payer.
Where the corporate and its PSP contractually agree that under certain VoP outcomes the PSP will proceed with execution of payment orders without a further input or authorisation by the corporate, for the purposes of Article 5c(8) the payer's PSP will not be considered liable for not having complied with its obligations under Article 5c(1) and any losses to the payer which could have been prevented by reacting to the messages that would have been communicated to the payer under those VoP outcomes.
Where, on the basis of a contractual agreement, under certain VoP outcomes (e.g., "full match", "almost match" and / or "impossible to verify") the payer's PSP proceeds with execution of individual payment orders included in the package without a further input or authorisation by the corporate, the time of receipt of such payment orders should be the moment when the conversion of the package into ensuing individual payment transactions occurs (in line with Article 5a(3), third subparagraph, point (b)) or when the VoP feedback from the payee's PSP is received, whichever is later. In the case described by this Q&A, both the VOP procedure and the conversion of the package have to be initiated by the payer's PSP immediately after the 'pre-authorised' package (bulk) file is placed with it by the corporate.

121. Question (Article 5c(1) IPR)

How should the VoP be performed in case the payee has assigned its rights to a third party company (e.g., in case of factoring), where the payee's invoice lists the IBAN number of this third party company, without there being any legal requirement to inform the payer that the payee has assigned its claim and that the payment will actually be made to that third party company?

This technique is known as "silent cession" and is used to finance trade receivables of SME's on large retailers. The latter always impose assignment bans on their SME-suppliers, thus, blocking the SME's ability to finance their working capital.

Answer

These situations are not excluded from the scope of Article 5c. This means that the payer should be notified if the information about the name and IBAN of the payee, as provided by the payer, do not match. A possible way to prevent the "no match" from occurring is to inform the payer of the arrangement, providing the payer with the name and IBAN of such third party company as the ultimate beneficiary / payee.

122. Question (Article 5c(1) IPR)

Is it possible to allow multiple name options under an assigned account? This means that the PSP of the payee has the option of checking several registered account names in a VoP request and responding accordingly? For example, in case the beneficiary account is a trustee account held in the (legal) name of the trustor and the payer provides IBAN of the trustee account and name of the Trustee. Would it be possible for the payee's PSP to confirm a "match" / "close-match"?

Answer

The definition of "payee" in point (4) of Article 2 of the SEPAR provides that payee is "*a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction*". Therefore, the name of the trustor will be used by PSPs to carry out the VoP service. With regard to legal persons, the name used by PSPs to carry out the VoP service can be either the legal name or the commercial name of the payee.

123. Question (Article 5c(1) IPR)

If a payment order reaches the payer's payment service provider already authorised, is there still an obligation to check the payee after authorisation, contrary to the requirement in Article 5c(1), which states that the check must be carried out before authorisation? If the payee check is possibly carried out after authorisation, does the execution period of 10 seconds still start after the successful check or possibly after receipt of the payer's confirmation that the transfer is to be executed despite a discrepancy of matching?

Answer

The VoP service has to be provided before a payment order is authorised. There is no obligation to provide the service after an authorised payment order has been received.

124. Question (Article 5c(1) IPR)

Can the receiver bank reject a payment on Name Check Basic? E.g., account is already closed.

Answer

The possibility to "reject" an instant credit transfer in case the payment account of the payee is no longer available is not impacted by the VoP service. The payer should be informed that the service ensuring verification was not provided due to this reason. It will be up to the payer to decide whether he / she wants to proceed with authorisation of a payment order.

125. Question (Article 5c(1), point (c), IPR)

We would like to see clarified which 'additional information' is supposed to be provided by the payer to the payer's PSP if the payee indicated by the payer is among the multiple payees on whose behalf the payment account is maintained or held. Moreover, it should be detailed when and how this information should be provided by the payer, having in mind that the verification should be done in few seconds and based on automatic procedures.

Answer

That information should be included by the payer at the time of filling out the information on the payee in a payment order and the feedback to the payer should be provided immediately, in line with the introductory wording of Article 5c(1), and before the payer authorises the payment order. Additional information is not defined in the regulation, in practice it varies and could include PANs (primary account numbers), sub-account identifiers on the ledger of an EMI or PI and other types of information, that allows the payee to be unambiguously identified.

126. Question (Article 5c(1), point (c), IPR)

Which logic shall apply if the name of the payee provided by the payer creates a close match and the recipient account is held by a PSP on behalf of multiple payees? Is the PSP of the payer supposed to indicate to the payer the name of the payee or the names of all payees associated with the payment account identifier, as stated in Art 5c(1), point (a), and / or only that the payee provided by the payer is "likely / possibly" among the account holders, as stated in Art 5c(1), point (c)?

Answer

The obligation included in Article 5c(1), point (c), is for the payer's PSP to "*notify the payer if the payee indicated by the payer is not among the multiple payees on whose behalf the payment account is maintained or held*". The payee's PSP (or the PSP that maintains the account on behalf of multiple payees) will have to take a decision whether on the basis of the information provided by the payer it is possible to conclude that the payee is among the

multiple payees. Typically, additional information provided in such cases is in the form of alphanumerical combinations / codes which should aid PSPs in taking such decisions.

127. Question (Article 5c(1), point (c), IPR)

In general, the following phenomenon is brought to attention. There are certain PSPs that offer a payment service using as the destination IBAN always and only the same IBAN as the PSP. For example, a PSP offers a service of issuing prepaid cards (sometimes even anonymous) and for reloading uses the method of receiving a wire transfer to the IBAN of the PSP indicating as the reason for the PAN of the card to be reloaded. In the case of the VoP, the payer who in good faith introduces the name of the final payee will always have a knockout compared to the match with the PSP's IBAN. Please clarify whether the PSP using a single IBAN can or should respond to the VoP request with the end payee information.

Answer

For those cases, Article 5c(1), point (c), applies. The payer shall receive feedback from the payer's PSP based on a verification of the information on the actual payee (including additional information supplied by the payer, such as PAN in this case) on whose behalf the payment account is held. Article 5c(1), point (c), does not require the payee's PSP to respond to the VoP request from the payer's PSP with the end payee information. The article rather requires the payee's PSP to confirm whether the payee indicated by the payer is among the multiple payees on whose behalf the payment account ("single" IBAN as referred in the question) of the payee's PSP is held.

128. Question (Article 5c(1), point (d), IPR)

What is a meaning of "validate the payee" in this provision? Is it referring to the possibility of the payer to check if the name provided is correct?

Answer

Yes, the last sentence is referring to the possibility for the payer to check whether the information on the payee's name provided by the PSP is correct and corresponds to the payee to whom the payer intends to make a credit transfer.

129. Question (Article 5c(1), point (d), IPR)

How does the payer PSP inform the payer on the identity of the payee if only the account identifier and not the name is used, i.e., where the payer PSP does not know who the payee is?

Answer

Article 5c(1), point (d), of the IPR pertains to specific payment initiation channels, which allow the payer to initiate credit transfers without providing the name or IBAN of the payee, or both (for example as in case of proxies). According to the SEPAR, Article 5(1), point (a), each credit transfer needs to include the IBAN of the payee and, in accordance with Article 5(2), point (b), of SEPAR such information should be provided by the payer's PSP to

payee's PSP. As per Article 5c(3) of the IPR, it is assumed that in such cases, when initiating payment transactions, such information would be provided by PSPs and therefore they are required to maintain robust internal procedures to ensure that the information regarding payees is correct. For instance, in the case of payment solutions that allow the initiation of credit transfers by way of using a proxy (such as a telephone number of the payee), it will be the responsibility of the solution provider that the users of the solution are accurately onboarded, allowing to link the telephone number of the payee provided by the payer with the IBAN of the payee. In practice, SCT and SCT Inst Schemes also require to include the name of the payee in the credit transfer transactions (see inter-PSP payment dataset).

Therefore, PSPs should be able to comply with the requirement to inform the payer in a way that allows the payer to validate the payee before authorising the credit transfer.

130. Question (Article 5c(1), point (d), IPR)

Article 5c(1), points (a), (b) and (c), lay down the rules for the "service ensuring verification" in a variety of cases. Article 5c(1), point (d), appears to be the residual rule applicable to cases not covered by the preceding points (a), (b) and (c) and, in particular, "where a PSP provides a payment initiation channel which does not require the payer to insert both the payment account identifier (…) and the name of the payee". Article 5c(1), point (d), therefore, seems to apply to cases where the payer has not (for whatever reason) inserted both the payment account identifier and the name of the payee; in other words, to cases where the "comparison" at the core of the "service ensuring verification" cannot prima facie be performed.

We wonder what practical steps the payer's PSP must take to fulfil its obligation. Should the payer's PSP ask the payee's PSP for the payee's name (or the payee's payment account identifier) and show it to the payer? Or, does point (d) apply only to cases where there is a predetermined list of payees (as is the case, for example, with certain payment options to public administrations in some countries)?

Answer

In cases covered by Article 5c(1), point (d), the payer does not provide the name or the IBAN (or both) of the payee, but still provides some information pertaining to the payee, such as his telephone number (which acts as a proxy for the name and the IBAN), on the basis of which the PSP initiates a credit transfer transaction. Practical steps may differ, depending on specific payment initiation channel offered by the PSP to the payer. The required outcome is that the PSP shall inform the payer in a way that allows the payer to validate the payee before authorising the credit transfer transaction.

131. Question (Article 5c(3) IPR)

Article 5(c)3 states that PSPs should maintain robust internal procedures to ensure that the information concerning payees is correct. In that regard, are there specific rules that should be understood as complying with the Regulation on this issue, or should it be understood that each PSP is free to define its internal procedures? It should be noted that there is no definition of "robust internal procedures" in the articles or in the whereas of the Regulation.

Answer

IPR does not include any specific obligations on internal procedures. PSPs are free to set up their internal procedure. The responsibility to interpret the term "robust internal procedures" will be for competent authorities when they exercise their supervisory powers in accordance with Article 10(4) of the SEPAR.

132. Question (Articles 5c(1), point (d), and 5c(2) IPR)

PISPs offering services where a PSP provides a payment initiation channel which does not require the payer to insert both the payment account identifier specified in point (1)(a) of the Annex to the SEPAR and the name of the payee, the PSP shall ensure that the payee to whom the payer intends to send a credit transfer is correctly identified. For that purpose, the PSP shall inform the payer in a way that allows the payer to validate the payee before authorising the credit transfer. We understand that providing to the payer the name of the payee before confirmation of the payment order would comply to this obligation.

Answer

As regards PISPs, given that in the process of initiation of payment orders they prefill a payment order with the payee-related information for authorisation by the payer, the key obligation included in Article 5c(2) for PISPs is to ensure that such information is accurate. Article 5c(2) of the IPR does not lay down what type of information about the payee the PISP is to provide to the payer (prior to authorisation of the payment order by the payer). Normally, that would include the information that is needed to initiate a credit transfer transaction in line with the SEPAR and with the relevant payment scheme.

133. Question (Article 5c(1), point (d), IPR)

Some EMIs provide strictly so-called 'me-to-me' credit transfer services, where the PSUs can only transfer funds to accounts which they themselves own with other PSPs. With that in mind, we would appreciate your insight into the below scenarios:

1. In case PSUs first need to register their external accounts (beneficiary accounts) with the PSP in a separate flow that is completely detached from a credit transfer initiation, would the VoP be required upon this beneficiary account registration (where the PSU enters the IBAN of their external account)?
2. If the external account ownership is pre-validated (before the credit transfer) by means of, for example, penny deposits or open banking, and considering that these PSUs do not enter any details (IBAN or name) when initiating the transfer itself (as details were already entered and saved when registering the external account), does the requirement to provide the VoP still exist? And where would the liability lie in such a case?
3. If the requirement still stands in the above scenario, does it fulfil the requirement to offer the VoP just once during the external beneficiary account registration, or would VoP need to be offered on each credit transfer? This is considering that the PSU does not enter any IBAN details upon credit transfer initiations (based on Article 5c(1)(d) it would seem that it is not required).

Answer

1. Article 5c does not require provision of the VoP service upon beneficiary account registration.
2. Yes, the requirement to provide the VoP service exists.
3. The VoP service would have to be provided for each payment order. In this case, point (d) of Article 5c(1) and Article 5c(3) apply, i.e., PSP will be responsible for the accuracy of the information about the payee.

134. Question (Articles 5c(1), point (d), and 5c(2) IPR)

(i) how should Article 5c be applied with respect to transactions that are initiated through a digital wallet that allows the payer to initiate a payment order based on a proxy identifying the payee (e.g., selecting the mobile phone number of the payee from the address book or introducing manually the mobile phone number)?
(ii) how should Article 5c be applied with respect to transactions that are initiated through a digital wallet that allows the payee to initiate a payment request based on a proxy identifying the payer, which then receives the payment request and must accept or reject it?
(iii) who would be considered as the "payee" in the "verification of payee" regulatory requirement in case of P2P (person-to-person payments): should it be the accountholder receiving the SCT Inst funds or the Wallet Owner User that registered the payment source receiving the funds? In some cases, the accountholder receiving the SCT Inst funds differs from the Wallet Owner User that registered the payment source receiving the funds.
(iv) who would be considered as the "payee" in the "verification of payee" regulatory requirement for ecommerce: should it be the accountholder receiving the SCT Inst funds or the ultimate beneficiary receiving the funds? In some cases, the accountholder receiving the SCT Inst funds is the acceptor PSP or a payment facilitator, while the ultimate beneficiary is the merchant.

Answer

On point (i):
In this case Article 5c(1), point (d), applies because it is the payer who provides the information about the payee, but that information is neither the name of the payee nor the IBAN of the payee, but a proxy. In such case the display of the full name of the payee is not required, but the PSP "*shall inform the payer in a way that allows the payer to validate the payee before authorising the credit transfer*" (please note that this wording is different from point (a) of the same Article, where in cases of 'almost match' the payer's PSP shall indicate to the payer the name of the payee). The type of information (e.g. a name of the payee or another identifier used by a service) that could be displayed to the payer for the payer to be able to validate the payee would depend on different factors, including the type of the payment order initiation method and the possibility to demonstrate the compliance with the GDPR, in particular the data minimisation principle.
On point (ii):
In this case, Article 5c(1) does not apply as the information about the payee is not provided by the payer. Rather, the information about the payee is provided by the payment solution, on behalf of the payee who initiates a request for a credit transfer. The applicable provision therefore would be Article 5c(2). That means that for the payer's PSP there is an obligation to ensure that information concerning the payee is correct. In this case, and particularly

bearing in mind that the request to pay is initiated by the payee itself, it should be possible (and probably even necessary) to provide the payer with the full name of the payee.
On point (iii):
"Payee" is a defined term in the SEPAR: "payee" means a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction (see point (4) of Article 2). Also, from the payer's perspective, he / she is making a payment to the account holder and not the wallet owner, if the two are different.
On point (iv):
Same as (iii), it should be the actual payee, i.e., the merchant, receiving the funds. From the payer's perspective, he / she is making a payment to the account holder (merchant) and not to the payment facilitator, with whom the payer is not familiar. If this is the case where a credit transfer transaction is initiated by the PISP and the information about the payee is provided by the PISP, the obligation, in accordance with Article 5c(2), is to ensure that the information concerning the payee is correct. If this is the case where the payment facilitator holds a payment account on behalf of multiple merchants, then Article 5c(1), point (c), applies.

135. Question (Article 5c(2) IPR)

(i) In the case where a payment order is initiated through a PISP it must ensure (to the ASPSP) that the payee information (we mean name / surname or company name and associated IBAN) is correct. Therefore, it is the PISP that has to do the VoP and not the ASPSP, which will have to rely on what is sent by the PISP, which, moreover, has the interface with the user in any case and therefore is the only one able to show the PSU any discrepancies with the payee name. Consider especially the embedded method (in which the ASPSP interface never appears).
(ii) As regards the wording of the article, let it be understood that a PISP may also not perform in real time for each payment a VoP although required to ensure precisely the correctness of the data. Consider, e.g., a scenario where the PISP acts as a payment enabler for an e-commerce where the PSU does not know the exact name of the payee and so the PISP sends them to the payer's PSP in lieu of the PSU. In this scenario it would also make little sense for the PISP to make a VoP for each purchase, since the payee is always the same moreover contracted with the PISP.
(iii) Similar case in which the PISP offers services to a PSU that acts as a payer (e.g., an apartment building manager who manages the accounts of several apartment buildings). Even then, it is the PISP that is required to perform VoP, or otherwise ensure the correctness of the data of the various payees.
(iv) By way of analogy, it is believed that the ASPSP may also be deemed exempt from VoP for each payment in certain circumstances where there is already acquired certainty of the correspondence between the payee and IBAN.

Answer

On point (i):
Obligation of the PISP, as per Article 5c(2).
On point (ii):

Yes, the PISP is not expected to perform VoP for each transaction. It is expected to know the payee.
On point (iii):
In this case it depends on whether the payee is a client of a PISP. If the payer enters the information about the payee and / or the payee is not a client of a PISP, then Article 5c(1) applies. In such a case, such PISP would be considered to be payer's PSP in the meaning of Article 5c(1).
On point (iv):
No, the VoP has to be done for each transaction.

135a. Question (Article 5c(2) IPR)

According to Article 5c of the IPR and Q&A #135 on IPR implementation, PISPs are responsible and liable for ensuring the match of the payee's payment account identifier and account holder name, which they are providing to the payer's ASPSP in the process of initiation, either by applying the Article 5c(2) "VOP exemption", or by applying a transactional VOP according to Article 5c(1).
In both cases it would be detrimental to PIS if the payer's ASPSP would apply their own VOP on any PISP-initiated payment, because it would be redundant and likely reduce the transaction's success rate. Considering that ASPSPs may want to do their own VOP on PISP-initiated payments, i.e. where the payee's name and IBAN was not provided by the payer, but by the PISP, should any (duplicate) ASPSP VOP be prohibited - unless explicitly requested by the PISP, e.g. using the Berlin Group VOP API flag "Client-VOP Requested" - to avoid such detrimental effect?

Answer

According to Article 5c(2) of IPR, in cases where credit transfers in euro are initiated by a PISP and where the IBAN and the name of the payee are provided by the PISP, and not the payer, it is the obligation of the PISP to ensure that the information concerning the payee is correct regardless of the implementation route chosen. Since IPR does not prescribe a specific implementation approach for PISPs to comply with this obligation, implementation could include involvement of ASPSPs if there is an agreement in this regard between the PISP and the ASPSP (this is not a service that the ASPSP is obliged to provide to the PISP based on the PSD2 open banking requirements). In order to prevent undesired friction for such PISP-initiated transactions, ASPSPs shall not carry out a VoP procedure unless requested by PISPs.

In cases of credit transfers in euro that are initiated by a PISP and where the IBAN and the name of the payee are provided by the payer, the PISP should be considered to be the payer's PSP in the meaning of Article 5c(1). In such cases, PISPs may request payee's PSP to verify whether the IBAN and the name of the payee match either directly or indirectly via other intermediaries, which may include ASPSPs, provided that there is an agreement in this regard between the PISP and the ASPSP (as above, this is not a service that the ASPSP is obliged to provide to the PISP based on the PSD2 open banking requirements). In order to prevent undesired friction for such PISP-initiated transactions, ASPSPs shall not carry out a VoP procedure unless requested by PISPs.

135b. Question (Article 5c(2) IPR)

Q&A #135 (iii) on IPR implementation clarifies that PISPs can use Art. 5c(2) only when the payee is a "client" of the PISP. Can we assume that this means having a contractual relationship with the payee, and that this could also be indirect, i.e. through a chain of contracts, which may include payers themselves, e.g. a PISP contracting a corporate (being the payer or not), which in turn has a contract with the payee.

Answer

Where credit transfers in euro are initiated by a PISP and where the IBAN and the name of the payee are provided by the PISP, and not the payer, Article 5c(2) of IPR applies. This is regardless of the contractual set-up in place, e.g., whether the PISP has a contractual relationship with the payee only, or with the payer and the payee, or some other type of contractual arrangement, as this does not change the nature of the obligation of the PISP under that Article, which is to ensure that the information concerning the payee is correct. Please note that reference to “client” in the answer to Q&A 135(iii) should not be read as being a condition in itself.

If the PISP provides the IBAN and the name of the payee, it is liable for the correctness of that information (in accordance with Article 5c(2) and 5c(8)) and is also required to maintain robust internal procedures to ensure that the information concerning the payee is correct (in accordance with Article 5c(3)).

136. Question (Article 5c(2) IPR)

According to Article 5c(2), no recipient verification is to be carried out by the payer's payment service provider if the IBAN or the recipient’s name was provided by the PISP. We assume that the XS2A interfaces for recipient verification will not be adapted?

Answer

Article 5c(2) contains the obligation for PISPs which does not require them to provide additional information to the payer verifying accuracy of the information on payee. It is assumed that information about the payee when prefilled by the PISP on behalf of the payer is already (should be) correct, as PISP knows the payee as its client. This is required by Articles 5c(2) and 5c(3).

137. Question (Article 5a(3), third subparagraph, points (b) and (c), and Article 5c IPR)

How does Article 5a(3), third subparagraph, point (b), combine with Article 5a(3), third subparagraph, point (c), (conversion) and possibly Article 5c (VoP)?

Answer

VoP service is to be provided before the placement / authorisation of the package of payment orders (see Article 5c(1) and the last sentence in recital (20)).

The currency conversion is to be done after the placement of the package of payment orders, either (i) before the process of unpacking of that package or (ii) immediately after each individual payment order for an instant credit transfer belonging to a package has been unpacked, but always before the time of receipt of an individual payment order for an instant credit transfer belonging to the package. Hence, in practice there is some flexibility allowed for how these two actions (currency conversion and unpacking of the package) are sequenced.
As per Article 5a(3), third subparagraph, point (b), the process of unpacking of the package will have to start immediately after the package has been placed with the payer's PSP and completed as soon as possible. The fact that a currency conversion will fall in this process should not delay the time of receipt, as currency conversion, as required by Article 5a(3), third subparagraph, point (c), shall take place immediately after the placement of a payment order.

138. Question (Article 5c(6) IPR)

(i) Can PSUs that are not consumers also opt out from receiving the service when submitting single payment orders?
(ii) What about single payment orders that are submitted via an initiation channel without real-time interaction between the payer and the PSP and the payment orders are already authorised when they are submitted? These payment orders should be treated in the same way as paper-based orders where the payer is not present.

Answer

On point (i):
No. Article 5c(6) explicitly allows opt-out only in case of payment orders submitted as a package.
On point (ii):
Exclusions from the scope of obligation to provide the VoP service shall be interpreted narrowly.

139. Question (Article 5c(6) IPR)

May micro-enterprises opt out from receiving the VoP service according to Article 5c(6) or are they included in the consumers' category?

Answer

Yes, microenterprises may opt out as well, as they shall not be understood as consumers (both terms are defined in the SEPAR), but only with respect to payment orders submitted in a package.

140. Question (Article 5c(6) IPR)

What about the IBAN - Name check of batch payments? As per our understanding, the final text clarifies that PSPs can opt-out from offering customer verification checks when a business submits a batch of payment orders.

Answer

PSUs which are not consumers can opt out from receiving the VoP service but only when submitting multiple payment orders as a package. This article does not allow PSPs not to offer this service to PSUs if PSUs have not opted out from receiving it.

141. Question (Article 5c(5) IPR)

Should this provision be interpreted as meaning that, in the event of a malfunction of the verification service, the customer must still be able to authorise the transfer? In this case, which liability regime would apply?

Answer

No. The aim of the provision is to enable PSUs to authorise payment transaction despite the nature of the notification that the payer has received in the course of the provision of the VoP, i.e., final decision on whether to proceed with a payment order is with the payer. If a PSP has fulfilled its obligations under Article 5c, it is not liable for execution of a credit transfer to an unintended payee (see Article 5c(8), first subparagraph).

142. Question (Article 5c(5) IPR)

If a PSU, in the event of a malfunction of the verification service, decides to arrange the transfer anyway and it is credited to an "unforeseen" beneficiary, the payer's PSP is still held responsible for the incorrect execution of the transfer operation?

Answer

Yes, as the malfunction should be understood as failing to comply by the payer’s PSP, pursuant to Article 5c(8), second subparagraph.

143. Question (Article 5c(8) IPR)

If the payer authorises the transaction, does this release payer's PSP from liability in the event of fraud or error? Or, will it be obliged to refund the payer in the event of a dispute?

Answer

As per Article 5c(8), first subparagraph, the PSP shall not be held liable for the execution of a credit transfer to an unintended payee on the basis of an incorrect unique identifier, as laid down in Article 88 of PSD2, if it has fulfilled the requirements of Article 5c.

144. Question (Article 5c(8) IPR)

What will be the liability regime in case the PSP of the payee provides the PSP of the payer with incorrect information (including the situation where the payee himself has failed to update his data)? Is the degree to which the data correspond to the correct data considered in that case?

Answer

If the payee's PSP provides incorrect information and this leads to the payer's PSP failing to comply with its obligations under Article 5c, the payee's PSP shall compensate the financial damage caused to the payer's PSP by that failure (see Article 5c(8), third subparagraph). The VoP service will be provided based on the information about the payee that has been provided by the payee to the payee's PSP. Generally, the payee's PSP will have to rely on the information provided by the payee. However, under the AML Directive obliged entities have an obligation to identify the customer and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source. The identification requirements have been clarified in the recently revised EU AML framework (AML Regulation), whereby obliged entities will have an obligation, in the course of complying with customer due diligence measures to collect information on (i) a legal form and name of a customer that is a legal entity and (ii) all the names and surnames in case of a natural person.

145. Question (Article 5c(8) IPR)

(i) Potentially there could exist multiple trade names for one corporate customer, e.g., Bayerische Motoren Werke / BMW / BMW AG / etc. Thus, who takes the risk, if trade names are being used? Where are the limits for the usage of a trade name (see BMW example)?
(ii) Where does the liability rest, if trade names are being used? With the payee, if it reports the trade names to be used for the VoP?

Answer

On point (i):
Commercial names to the PSP would have to be provided by the corporate customer (payee). Implementation of an "almost match" rule should address the situations where commercial name of the payee as provided by the payer only marginally mismatches a commercial name on the records of the payee's PSP. Possibility to use a commercial name is expected to minimise the rate of false "no match" situations, in cases where payers are not be familiar with the legal name of the payee, providing payers with confidence that credit transfer is being directed to an intended payee.
On point (ii):
Using of a commercial name does not create any specific liability for the payee. The rules on PSP liability included in Article 5c(8) apply equally regardless of whether the payer provides the legal or the commercial name of a payee that is a legal entity.

146. Question (Article 5c(8) IPR)

What applies if the creditor's ASPSP cannot be reached for technical reasons in order to provide the VoP service?

Answer

IPR does not provide any specific guidance on this situation. But the payer should be notified that the VoP service was not possible to perform (the notification may explain why the VoP service could not be performed). In any event, the payer shall still be able to proceed with authorising the payment order (see Article 5c(5)). If any loss occurs, Article

5c(8), second or third subparagraph applies. Liability will be determined based on where 'technical reasons or problems' have occurred. In practice, this may be governed by the VoP scheme rules on liability.

147. Question (Article 5c(4) IPR)

(i) In this article, is the notion of "paper-based payment orders" the same as "non-electronic payment orders" (in Article 5a(3), third subparagraph, point (a))?
(ii) Can the payer be considered present only when physically at the premises of the PSP or also when in direct and immediate contact with the PSP (e.g., on the telephone)? Moreover, it is not clear whether the condition of the payer's presence is required in order to perform the check at all or it only implies a particular timing for such a service (i.e. when the payment order is entered into the payer's system as per Article 5a(3), third subparagraph, point (a), instead of immediately after the payer provides the information about the payee).

Answer

On point (i):
"Non-electronic payment orders" is a broader term than "paper-based payment order". These two terms should be distinguished.
On point (ii):
With respect to paper-based orders for credit transfers, there is no obligation in the IPR for the payer's PSP to call the payer to provide the feedback of the VoP. Reference to being "present" in this article means payer being in branch / business premises at "the time of receipt", which in accordance with Article 5a(3), third subparagraph, point (a), means the moment when the payment order has been introduced into the internal system of the payer's PSP. In those cases, the payer's presence is required to perform the VoP "at all".

148. Question (Article 5c(4) IPR)

(i) We assume that if paper-based payment orders are not presented for immediate recording by an employee, but are instead deposited in a letterbox, for example, it can generally be assumed that the customer is not present. This is irrespective of the fact that the customer may still be in the business premises for advice on other matters. Is this assumption correct?
(ii) What about payment orders that have been scheduled for the future. Usually the customer cannot be reached soon at the time of execution. An instant dialog with the costumer as it is needed for the verification would only be possible at the moment the customer submits the payment order.

Answer

On point (i):
Correct. But during opening hours of a PSP, a letterbox should not be an artificial barrier for the payer to submit the payment order, i.e., the payer should always have an option to present a paper-based payment order to an employee.
On point (ii):
With respect to future dated orders, the VoP service is to be provided before the authorisation of the payment order (see Article 5c(1)), not at the time of execution.

149. Question (Article 5c(4) IPR)

(i) Does it mean that the time of receipt is the time of the manual insertion of the order?
(ii) What are the PSP's obligations for the CoP when the payer is not present?

Answer

On point (i):
Yes – see Article 5a(3), third subparagraph, point (a), of the IPR.
On point (ii):
In the case of paper-based payment orders, there is no obligation to perform the service if the payer is not present at the time of receipt.

150. Question (Article 5c(9) IPR)

Different deadlines have also been set for recipient verification:

- 18 months for Member States with the euro currency and,
- 39 months for Member States with another national currencies.

How is recipient verification handled if payment orders are to be sent between countries with different deadlines? What information is issued to the originator of the payment? How is liability regulated in this case?

Answer

It will not be possible to provide the service ensuring verification of the payee if the payee's PSP that is located in a Member State whose currency is not the euro provides the service of receiving instant credit transfers in euro but does not yet have to comply with its obligations under Article 5c. In such cases the payer's PSP may inform the payer that verification of the payee is not yet possible for that particular payee. In such cases the payer's PSP is not liable for failure to comply with Article 5c(1). The payee's PSP is not liable as it is not yet bound by the obligation to provide the service.

D. QUESTIONS ON THE SANCTIONS SCREENING OBLIGATIONS (ARTICLE 5D)

151. Question (Recitals (25) and (26) IPR)

Do the PSPs referred to in these recitals include PISP that do not have the capacity to freeze funds as they do not handle any funds?

Answer

As set out in recital (26) and in Article 5d, it is for PSPs sending and receiving instant credit transfers in euro to verify whether their PSUs are persons or entities subject to targeted financial restrictive measures. PSPs that do not execute instant credit transfers in euro, including PISPs are not subject to that Article 5d. Therefore, they shall continue ensuring their compliance with the EU restrictive measures (sanctions) regulations, as well as with the EU AML / CFT framework, without any modifications deriving from the IPR.

152. Question (Article 5d IPR)

While provisions are in place to hold non-compliant PSPs accountable for financial losses of other PSPs, there are a number of other inherent risks in this new approach that require legal certainty. What will happen if updates to sanctions lists happen between the daily checkpoints, resulting in transactions being processed to recently designated targets? Can financial institutions invoke indemnity based on the legal requirement to use this method?

Answer

The IPR establishes penalties for PSPs for not complying with their obligations under Article 5d. If a new designation is adopted between the daily checkpoints, in accordance with Article 5d(1), a check of own clients must occur immediately after the entry into force of a new designation.
If a PSP does not comply with its obligations in the IPR, this may result in such PSP incurring penalties under the EU Council Regulations adopted under Article 215 TFEU. If this also results in a counterparty PSP (involved in the execution of that instant credit transfer transaction) incurring penalties imposed on such counterparty PSP under the EU Council Regulations adopted under Article 215 TFEU, the matter of compensation of any financial damages would be decided in accordance with applicable national law.

153. Question (Article 5d(1) IPR)

If a central bank (acting as a monetary authority) decides to offer instant payments, is it also obliged to comply with this article?

Answer

When a central bank provides instant payment services to its clients, while acting as a PSP (in accordance with Article 1(1) of PSD2, point ((e), i.e., when it is not acting as a monetary authority), the obligation laid down in Article 5d(1) applies.
If a central bank provides instant payment services to its clients when it is acting in its capacity as a monetary authority, the obligations laid down in Article 5d do not apply.

154. Question (Article 5d(1) IPR)

PSPs should periodically, and at least daily, verify whether their PSUs are persons or entities subject to targeted financial restrictive measures. Against what sanction list or lists must the PSUs be checked by a PSP?

Answer

The periodic verification of own clients under the IPR must be conducted with regard to EU-wide designation lists adopted in accordance with Article 215 TFEU (applicable Council Regulations).

155. Question (Article 5d(1) IPR)

Does the screening requirements apply during business days only or 24/7/365?

Answer

As per Article 5d(1), second subparagraph, the own client screening must be carried out at least once every calendar day.

156. Question (Article 5d(1) IPR)

How do the IPR provisions reconcile with the "EBA Consultation paper on Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures" whose Section 4.1.5, Para. 20 provides that "PSPs and CASPs should screen all transfers of funds and crypto-assets prior to their completion (…)"?

Answer

In case there are any inconsistencies between the EU law and guidelines of the EBA, the requirements specified in the EU legislation prevail. The screening of own clients required by the IPR has to be carried out by PSPs that offer the service of instant credit transfers, ensuring that no transfers can be completed from and to a designated person on EU-wide lists.

157. Question (Article 5d(1) IPR)

Not all entities mentioned in EU sanctions regulations lists concern asset freezes (e.g., there are entities with whom you are prohibited to engage in financial transactions but to whom no freezing obligations apply, there are also specific entities that are listed for exemption purposes, etc.). It is common practice to filter out transactions containing any and all of those names to assess if sanctions restrictions are applicable for that particular transaction. How should Financial Institutions deal with transactions involving entities such as those set out under Annex XIX ex vi Article 5aa(1)(b) of Council Regulation (EU) 833/2014 (as amended) – e.g., Rosneft?

Answer

Where entities are not subject to targeted financial restrictive measures but to other restrictive measures adopted in accordance with Article 215 TFEU (e.g., like those referred to in Article 5aa(1)(b) of Council Regulation (EU) 833/2014), Article 5d(2), second subparagraph, of the IPR applies: PSPs have to implement / use appropriate tools to comply with them diligently.

158. Question (Article 5d(1) IPR)

To prevent the initiation of instant credit transfers from payment accounts belonging to persons or entities subject to targeted financial restrictive measures and to immediately freeze funds sent to such payment accounts, PSPs should carry out verifications of their PSUs immediately following the entry into force of a new targeted financial restrictive measure. Can you please concretely specify how fast "immediately" is?

Answer

Any time elapsed between the entry into force of a new or modified targeted financial restrictive measure and verification of own clients should be as short as possible to ensure compliance of PSPs with their obligations under the EU Council Regulations adopted in accordance with Article 215 TFEU, which impose the "obligation of result" and are in most cases applicable on the day of their publication in the Official Journal. PSPs are expected to modify and, to the extent possible, automate their internal processes as necessary to make this time gap the shortest period possible. The policy expectation with respect to the acceptable duration of this time gap is represented by the use of the notion "immediately" as opposed to "as soon as possible" or "without undue delay".
Failure to manage the elapsed time effectively may subject a PSP not only to penalties under the IPR but also to claims to compensate financial damages incurred by a counterparty PSP involved in the same payment transaction (in case that counterparty PSP is penalised for non-compliance with its obligations under EU Council Regulations adopted in accordance with Article 215 TFEU).

159. Question (Article 5d(1) IPR)

Once a customer name generates an alert against EU lists, are PSPs expected to suspend instant payment services for this customer until the alert is assessed as being a false positive? In addition, it is noted that the obligation to screen the customer database at least once per calendar day, does not mean that PSPs should ascertain on the very same day whether flagged PSUs are actually subject to an EU asset freeze. The analysis of the alerts is executed only during business days. As a consequence, PSPs are allowed to suspend / reject (originator side / beneficiary side) payment services, including instant credit transfers, for flagged PSUs during the time required for this verification to avoid transactions in breach of restrictive measures.

Answer

Yes, once verification of a client generates an alert against an EU-wide list, PSPs are expected to suspend the provision of instant credit transfer services with respect to such client, until the flag is confirmed to be a false positive.
Article 5d(1) refers to verifications being carried out immediately after the entry into force of new or modified designations, and at least once every calendar day. In that context, reference to "verification" implies verification procedure start-to-end. It is to be stressed that Article 5d(1), second subparagraph, requires that verifications are to be "carried out" immediately. "Carried out" should be understood as implying both the start and completion of the procedure. This means that verification of own clients cannot be launched on a calendar day with a manual follow up, in case of an alert, only on the next business day.

160. Question (Articles 5d(1) and 5d(2) IPR)

Do the provisions of Article 5d (screening) also apply for non time critical instant payments (NTC instant payments), which may become an important solution for the settlement of bulk payments in the future? NTC instant payments are payments which are (usually) not submitted (by the payer to its PSP) as instant payments. In the inter-PSP space, they are cleared and settled in the same way as instant payments. While NTC instant payments do not completely fit the definition of instant payments (i.e., in some cases they

are not executed immediately) they still endeavour to meet the timeline from SCT Inst and the vast majority of NTC instant payments do meet it.

Answer

For credit transfers that do not comply with the definition of an instant credit transfer, the prohibition included in Article 5d(2), first subparagraph, regarding transaction-based screening does not apply. However, if the same PSP also offers a payment service of sending and receiving instant credit transfers in euro, then it will be subject to the requirement of Article 5d with respect to instant credit transfers in euro.

161. Question (Article 5d(1) IPR)

Banks cannot so far use the EU consolidated list of persons, groups and entities subject to EU financial sanctions provided by the European Commission as it contains the following disclaimer of the European Commission: "While every effort is made to ensure that the database and the consolidated list correctly reproduce all relevant data of the officially adopted texts published in the Official Journal of the European Union, the European Commission doesn't accept any liability for possible omissions of relevant data or mistakes, and for any use made of the database or of the consolidated list. Only the information published in the Official Journal of the EU is deemed authentic."
Thus, banks have to apply an EU consolidated list offered by external private providers which are probably not able to update their consolidated list in due course after the publication of new or restrictive measures, e.g., in the late evening. Therefore, banks consider that they would have no alternative instrument than using the EU consolidated list provided by the European Commission, but they would need a version without the above-mentioned disclaimer of the Commission. Would it possible to omit the above disclaimer in the electronic list and to provide immediate updates in the list after the publication of new sanctions?

Answer

Firstly, the consolidated list published by the Commission is not envisioned to serve the purpose of PSPs' obligation referred to in Article 5d(1).
Secondly, ensuring immediate compliance with targeted financial restrictive measures is already required by the Council Regulations adopted in accordance with Article 215 TFEU, otherwise the restrictive measures would not be effective. Such compliance is to be ensured by PSPs regardless of the type of screening put in place (e.g., transaction based or screening of own clients as required by Article 5d(1)).
PSPs are responsible for and must put in place the necessary measures to comply with this obligation. Therefore, fulfilment of their obligations to effectively comply with targeted financial restrictive measures cannot be dependent on the Commission's ability to provide updates to its list.

162. Question (Article 5d(1) IPR)

Certain local authorities have long set out that the verification of whether existing client relationships are subject to new targeted financial restrictive measures should be conducted "without delay". This has long been interpreted as having a different meaning than that of

"immediately". Does Article 5d supersede this local understanding and create new standalone screening obligations for the screening of clients immediately after the entry into force of new financial sanctions regulations and immediately after the amendment to existing financial sanctions regulations?

Answer

Yes, EU regulations take precedence over any existing national law.

163. Question (Article 5d(1) IPR)

If a PSP has already conducted a daily check of its PSUs and if on the same day a new entry is added to a sanction list, is the expectation that the PSP should conduct a second screening of its customers that very same day?

Answer

Yes, in this case own client verification would have to be carried out once more on such a day, because Article 5d(1) requires verification to be carried out immediately after the entry into force of new or modified designations. Article 5d(1) states that verifications have to be done "at least once every calendar day".

164. Question (Article 5d(1) IPR)

European Union legislation regarding the application of targeted financial EU restrictive measures, e.g., Council Regulation (EC) No. 765/2006, Article 2, Council Regulation (EU) No. 269/2014, Art. 2, requires the freezing of all funds and economic resources owned, belonging to, held or controlled by natural or legal persons, entities or institutions related to them listed in Annex I of the aforementioned regulations.

Taking into account this requirement of the regulations, credit institutions that have received funds from persons subject to targeted financial restrictive measures of the European Union do not credit those funds to the recipient's account without the permission of the country's competent authority and freeze them in a separate internal account of the credit institution. Meanwhile, the Instant Payments Regulation stipulates that instant credit transfers will not have to be checked for compliance with targeted financial restrictive measures of the European Union. This means that according to the Instant Payments Regulation, credit institutions will not be able to ensure the freezing of funds requirement for incoming instant payments.

In such a case, how should credit institutions ensure both the requirements of EU legislation regarding the application of targeted financial EU restrictive measures - the freezing of funds, and the general non-checking of the provisions of the Instant Payments Regulations for compliance with the targeted financial restrictive measures of the European Union?

Answer

In the described case it would appear that the designated person is a client of the payer's PSP while the submitter of the question acts in the role of the payee's PSP. The payer's PSP will be obliged by Article 5d(1) to screen its own clients and on that basis the payer's PSP

will be able to freeze the account of a designated person with respect to outgoing instant credit transfers. Hence, such an instant credit transfer transaction in euro is not expected to reach the payee's PSP.

165. Question (Article 5d(1) IPR)

Is the verification under Article 5d(1) aimed to screen persons or entities under indirect sanctions or sanctioned by propagation (e.g., entities owned by listed persons, that is, entities not directly targeted by financial restrictive measures, adopted in accordance with Article 215 TFEU, and for this reason not present in the lists of persons, groups and entities subject to EU financial sanctions provided by the European Commission)? What about the determinations given by EU best practice on indirect sanctions, in particular with reference to the criteria of control?

Answer

The EU legal acts imposing obligations of asset freeze require the freezing of all funds and economic resources belonging to, owned, held or controlled by any person or entity listed in an Annex.
The definition of "targeted financial restrictive measure" included in point (1e) of Article 2 and Article 5d of the IPR do not harmonise the interpretation of "ownership" and "control".
The PSPs' (at least) daily screening of their customer base under Article 5d can be calibrated to detect entities owned or controlled by listed persons (the entities themselves being not directly designated). For instance, the screening can be made against the registered Ultimate Beneficial Owner (UBO) for a client entity and if the UBO is designated, the client entity's account would be frozen too.
Where national competent authorities have established national lists of entities owned or controlled by (EU) designated persons, PSPs are not prohibited by Article 5d(2) from performing transaction-based screening of instant credit transfers in euro in order to comply with such national lists.

166. Question (Article 5d(1) IPR)

Targeted financial restrictive measures of the European Union stipulate the obligation for credit institutions to freeze funds and economic resources belonging to, owned, held, or controlled by listed individuals or entities. Considering this, how should a financial institution assess the possible ownership, management, or control of instant credit transfer - funds to a person or entity subject to targeted financial restrictive measures of the European Union, if such a person or entity is indicated in the payment details? Do payment details need to be checked in such instances?

Answer

For such purposes checking of payment details is not prevented by Article 5d(2), first subparagraph, if it is not possible to verify the payment details concerned via the (at least) daily screening of information related to own clients, required by Article 5d(1) of the IPR.

167. Question (Article 5d(2) IPR)

Could you please explain how the second subparagraph of Article 5d(2) in relation to sanctions adopted by the United Nations Security Council should be understood? According to our understanding, sanctions adopted by the United Nations Security Council are implemented in the EU consolidated list of persons, groups and entities subject to EU financial sanctions and therefore PSPs are aligned with Article 5d(1) – PSPs verify whether any of their PSUs are persons or entities subject to targeted financial restrictive measures and are not obliged to screen instant credit transfers against United Nations Security Council sanctions list.

Answer

With respect to sanctions adopted by the United Nations Security Council, they are implemented in the EU-wide list under EU Council Regulations, adopted in accordance with Article 215 TFEU. It is only when EU-wide designation lists enter into force that PSPs are prohibited from conducting transaction-based screening with respect to persons and entities included in the EU-wide designation lists (and in relation to instant credit transfer in euro transactions only). IPR is without prejudice to obliged entities' obligations under Article 27 of AML Regulation (recently revised EU AML framework).

168. Question (Article 5d(2) IPR)

There is an additional risk that a payer's PSP or payee's PSP may not be an EU person, so therefore it cannot be expected to verify whether its client are persons or entities subject to EU targeted financial restrictive measures.
Is the expectation to still not screen this transaction (inbound or outbound)? What protection is there for an EU financial institution which processes such a payment should it transpire that the payer or payee is an EU designated person?

Answer

The scope of Article 5d, like that of the IPR and the SEPAR, is transactions where both the payer's PSP and payee's PSP, or the sole PSP, involved in a payment transaction, are located in the EU (or EEA, following the incorporation of the IPR in the national law of EEA countries). For transactions where one of the two PSPs is located outside the EU (EEA), the prohibition included in Article 5d(2), first subparagraph, does not apply.

169. Question (Article 5d(2) IPR)

My understanding is that instant payments within the EU in euro are not to be screened anymore on a transaction basis. Instead, it is considered whether the corresponding payer and / or payee involved are listed on sanction lists, which are to be updated daily by the PSPs. To what extent, however, is such screening necessary when funds are transferred to or from:
(i) the European Economic Area (EEA)?
(ii) Additional EFTA members (Switzerland)?
(iii) the UK?

Answer

(i) For EEA countries:
As to instant credit transfers to and from PSPs located in an EEA country: the answer to that question will depend on whether, how, and when the IPR is transposed into the legal framework of the EEA country concerned.
If Articles 5d(1) and 5d(2) of the IPR are fully transposed into the legal framework of that country, then the prohibition laid down in Article 5d(2), first subparagraph, would, as of the day of application of the incorporated provision, apply to instant credit transfers in euro between a PSP located in that EEA country and a Member State.
It should be noted however that Article 215 TFEU, and any restrictive measures based on that Article, are not covered by the EEA Agreement. It follows that, at the stage of the incorporation in the EEA framework, the definition of targeted financial restrictive measures under Article 2, point (1e), of the IPR and, via it, the obligations laid down in Articles 5d(1) and 5d(2) will most probably be modified to include an adaptation that will directly refer to the restrictive measures taken pursuant to the legal order of EEA countries and not to the restrictive measures adopted pursuant to Union legislation. In such cases where Articles 5d(1) and 5d(2) of the IPR are not, or perhaps not fully, transposed into the legal framework of the EEA country, the prohibition in Article 5d(2), first subparagraph, will not be applicable to a PSPs located in a Member State where the instant credit transfer is a transfer to or from such an EEA country.
(ii) & (iii) For additional EFTA Countries, the UK:
As to instant credit transfers to and from PSPs located in Switzerland and the UK, it is unclear whether Articles 5d(1) and 5d(2) will be taken over in the legal orders of Switzerland and the UK. As for Switzerland, such 'incorporation' will depend on the signing of a bilateral agreement between the Union and Switzerland. Until such cooperation, those articles will not apply to instant credit transfers between a PSP located in the Union and a PSP located in Switzerland. The same would apply with regard to instant credit transfers in euro to and from the UK.

170. Question (Article 5d(2) IPR)

If I understand it correctly, Article 5d(2), first subparagraph, is also applicable for intermediary payment service providers (correspondence banks of payer's / payee's)?

Answer

Yes, Article 5d(2), first subparagraph, applies also to intermediary PSPs.

171. Question (Article 5d(3) IPR)

Article 5d does not have a date for non-euro Member States to implement. We assume that it should be 9 January of 2027 but we wonder if in fact it is to be 9 January of 2025 and there is some reasoning behind? Or, for the PSPs of non-euro countries these rules do not apply?

Answer

The application deadline of Article 5d is the same (9 January 2025) for all PSPs that provide instant credit transfers in euro, irrespective of where those PSPs are located in the EU. This is needed to ensure effective compliance of PSPs with their obligations under the

EU Regulations adopted in accordance with Article 215 TFEU. Applying differentiated application deadlines would not enable this objective to be achieved. For PSPs that will start providing this service after 9 January 2025, compliance with this article shall be as of the first day when the service is offered to PSUs.

E. OTHER QUESTIONS ON THE IPR PROVISIONS - CHARGES IN RESPECT OF INSTANT CREDIT TRANSFERS (ARTICLE 5B), PENALTIES, REPORTS

172. Question (Recital (17) IPR)

For the purposes of equalizing commissions, what criteria can be referred to for identifying the corresponding type of bank transfer in euro? In recital (17), how should the reference to the "customer position" be interpreted?

Answer

The corresponding payments shall be assessed similarly as the assessment of "corresponding national payments", as referred to in Article 3 of the CBPR, except for the currency component, as the scope of the IPR is credit transfers in euro. Each payment and each payment account should be assessed individually – e.g., if the client has to pay a specific charge for regular credit transfers in euro initiated via phone, the charge for instant credit transfers in euro initiated via phone cannot exceed that charge.
"Customer status" could be understood as referring, for instance, to consumers vs corporate clients.

173. Question (Article 5b(1) IPR)

Could you please clarify how to identify the most correct charge for instant SEPA payments based on a new regulation? Charges for sending instant SEPA payment are in the middle of other credit transfers. We got some credit transfer types that are more expensive then instant SEPA and credit transfer type that is cheaper then instant SEPA. Shall the charge for instant SEPA be equal to the cheapest other credit transfer type?
Example: charges for outgoing payments:
SWIFT payment – 7 euro
Instant SEPA – 6 euro
Non-instant SEPA – 5 euro
Shall as per new regulation charge for instant SEPA payment decrease to 5 euro?

Answer

The charges for an instant credit transfer in euro cannot exceed charges for credit transfers of a corresponding type, where the notion of "corresponding" should be determined on the basis of criteria such as payment initiation channel, customer status, provision of additional features and services, etc (see recital (17)). In case where there are several alternative "corresponding" regular credit transfers in euro, the charges for an instant credit transfer in euro cannot exceed the charges applicable to those other alternatives. In this particular example, the charges cannot exceed 5 euro.

174. Question (Article 5b(1) IPR)

Can you confirm that an SCT Inst cannot be priced higher than a normal SCT, 9 months after entry into force of the regulation?

Answer

Article 5b(1) applies from 9 January 2025 for PSPs located in Member States whose currency is the euro. For PSPs from non-Eurozone Member states, Article 5b(1) applies from 9 January 2027.

175. Question (Article 5b(1) IPR)

We have accounts that include some services in the monthly fee, for example 50 SEPA regular credit transfers. With the new regulation, will we also have to offer 50 instant transfers?

Answer

In this particular set-up, at least 50 instant credit transfers would have to be included (because there is a specific number of non-instant credit transfers included).This is because Article 5b(1) requires that instant credit transfers cannot be more expensive than other credit transfers of a corresponding type.

176. Question (Article 5b(1) and Recital (18) IPR)

Recital (18) foresees the possibility to add additional feature(s) or service(s) to SCT Inst. and that a SCT Inst. with additional feature(s) / service(s) should not be compared to a SCT non-instant without these additional feature(s) / service(s). Does this also apply the other way around? I.e., may a PSP add additional feature(s) / service(s) to SCT non-instant and not offer these additional feature(s) / (service(s) for SCT Inst. as long as SCT non-instant without additional feature(s) / service(s) and SCT Inst. without additional feature(s) / (service(s) are subject to the same charges?

Answer

This is possible. IPR does not limit additional features and services that can be offered together with non-instant regular credit transfers. Recital (18) aims only to clarify how to establish "correspondence" between an instant credit transfer and a non-instant credit transfer, when one of them or both of them are offered together with additional features and services.

177. Question (Article 5b(1) IPR)

We can split instant payments in the following categories:
(a) "on-us" transactions, where payer and payee are with the same PSP;
(b) not "on-us" transactions, where payer and payee are with different PSPs
With the current regulations which scenarios are viable:
1) (a) and (b) must have the same pricing model;
2) (a) can have its own pricing model, (b) can have its own pricing model.

Answer

IPR does not govern the pricing model for non-instant credit transfers in euro. IPR only requires that charges for instant credit transfers in euro do not exceed the charges for other credit transfers in euro of a corresponding type. Therefore, if a PSP applies differentiated pricing approaches for categories (a) and (b) for non-instant credit transfers in euro, then those approaches are the basis for the application of the pricing rule referred to in Article 5b(1) in relation to pricing of instant credit transfers in euro for categories (a) and (b), respectively.
In practice, there could be only one pricing model for instant credit transfers in categories (a) and (b), as long as the charges of instant credit transfers do not exceed the lower of the charges for non-instant credit transfers for category (a) and category (b).

178. Question (Article 5b(1) IPR)

We would appreciate the confirmation that "other credit transfers of corresponding type" means credit transfers in euro. For providers located in a Member State whose currency is not the euro, should the equivalent type of credit transfer for imposing instant credit transfer fees be an instant credit transfer in the national currency of that Member State?

Answer

The scope of the SEPAR and the IPR are payment transactions denominated in euro, hence, corresponding credit transfers are always denominated in euro. With respect to the comparability of charges for corresponding cross border transactions in euro and domestic transactions in the national currency, the rules laid down in the CBPR shall apply.
Where there is conflict between the requirements of Article 3(1) of the CBPR and Article 5b(1) of the IPR, the requirement laid down in Article 5b(1) of the IPR prevails (see amendment of Article 3 of the CBPR included in the IPR).

179. Question (Article 2, point (1a), IPR)

Definition of instant credit transfer: How does the provision relate to TARGET system? Is it assumed that still between, e.g., 6:00 p.m. on Friday and 8:00 a.m. on Monday will banks not be able to top up the TIPS sub-account?

Answer

IPR does not govern the operations of T2 and TIPS.

180. Question (Article 11(1c) IPR)

If information about planned maintenance is not distributed to other PSPs it can’t be relayed to PSUs of beneficiary PSP. Can you confirm that in case of planned maintenance PSP is not required to inform other PSPs about planned activity and shall inform only its own PSUs?

Answer

The objective of information obligation referred to in this article is for PSP to inform its own PSUs about periods of planned maintenance at the level of a PSP or planned downtime of a payment scheme.

181. Question (Article 11(1c) IPR)

What can be considered as "short" in terms of planned maintenance? How long in advance must PSUs be informed?

Answer

No specific duration is prescribed. Typically, PSP-level maintenance lasts only a fraction of a day (normally during the night). Such duration could be considered conforming with the policy expectation of “short” under this article.
With respect to informing PSUs, no specific period is prescribed on how much in advance this action should occur. However, the idea is to warn the PSUs and enable them to make any necessary arrangements in their needs to send and receive credit transfers. Therefore, the warning period should at least cover the period that is necessary to initiate a payment order for a non-instant credit transfer by a payer that would reach the account of the affected payee during the time of the maintenance of a PSP’s IT systems related to processing of instant credit transfers (as receiving instant payments would not be possible during that period).

182. Question (Article 11(1c) IPR)

What can be considered as a foreseeable period of non-availability? When is it considered to be foreseeable?

Answer

“Foreseeable” in that context means planned maintenance that is known in advance to a PSU. For this reason, there is an explicit obligation for PSP to inform PSUs of periods of planned maintenance in advance.

183. Question (Article 11(1c) IPR)

Which means of notifications are sufficient: ex online banking alerts, external sites, etc?

Answer

Notifications to be made through all payment initiation channels through which instant credit transfers can be initiated. PSUs can also be informed through communication means other than payment initiation channels or only via specific payment initiation channels, if this effectively achieves the intended result of this obligation (i.e., that PSU are informed in advance of the planned maintenance or planned downtime).

184. Question (Article 15(3) IPR)

According to Article 15 PSPs’ and competent authorities’ reporting obligation starts by 2025. Does this timeframe also apply to PSPs and competent authorities located in

Member States whose currency is not the euro (especially in the context of the IPR not applying before 2027 for such Member States)?

Answer

The deadline of 9 October 2025, referred to in Article 15(4) applies to competent authorities. It applies to competent authorities from all Member States. The deadline of 9 April 2025, referred to in Article 15(3) applies to PSPs. It applies to PSPs from all Member States.
The information will have to be reported by PSPs that have not yet started to provide instant credit transfers in euro, but that are under the obligation to provide them. This is because some of the information to be reported by PSPs pertains to non-instant credit transfers in euro which they already provide.

185. Question (Article 15(3) IPR)

It is foreseen that EBA will prepare ITS for the collection of data about charges for credit transfers, instant credit transfers and payment accounts. Can competent authorities use other sources of information, if available, instead of yearly collection of data from PSPs using EBA's defined templates?

Answer

The implicit objective of the obligation for PSPs to report the information specified in Article 15 to their competent authorities is for this information to be later transmitted to the Commission in accordance with paragraph (4) of that article, so that the Commission can evaluate it and fulfil its mandate referred to in paragraph (2) of that article. The source of the information reported by competent authorities to the Commission has to be PSPs.

186. Question (Article 15(3) IPR)

In paragraph 3, point (a), what is meant by "payment account fees"? Do we have to wait for instructions from our competent authority to provide this information? How will this form of reporting be coordinated with the annual survey of current account costs?

Answer

The instructions will be clarified by the forthcoming EBA's ITS referred to in Article 15(5) of the IPR. The Commission is participating in that process and is also liaising with the EBA.

187. Question (Article 15(3) IPR)

Article 15(3)(b) of the IPR now provides that PSPs must report to their competent authorities the "share of rejections, separately for national and cross-border payment transactions, due to the application of targeted financial restrictive measures". Could you explain what is meant by "rejection" here?

Answer

The instructions will be clarified by the forthcoming EBA's ITS referred to in Article 15(5) of the IPR. In terms of meaning of 'rejections': before the application of the IPR article on screening of own clients, instant credit transfer transactions can be rejected due to them being flagged as suspicious (without there being a possibility to follow up such flags with a manual investigation within 10 seconds)
From the date of application of the IPR article on screening of own clients, an instant credit transfer that is rejected could be considered as a payment order for an instant credit transfer which is not allowed from an account flagged as suspicious during the screening of own clients.

188. Question (Articles 15(3) and 15(5) IPR)

PSPs shall submit such reports every 12 months. The first report shall include information on the level of charges and on rejections during the period starting on 26 October 2022 until the end of preceding calendar year. This is understandable when determining the share of rejections. The level of charges is usually calculated as of the reporting date. Should an average price for the period be determined here or which reporting date should be used as a basis?

Answer

The instructions will be clarified by the forthcoming EBA's ITS referred to in Article 15(5) of the IPR. The Commission is participating in that process and is also liaising with the EBA.

F. QUESTIONS ON AMENDMENTS TO SFD AND PSD2

189. Question (Recital (15) IPR)

We understand that PISPs that do not handle payment accounts are not included in the payment institutions mentioned in this recital.

Answer

The amendment of the SFD enables payment institutions and e-money institution to participate in SFD systems. It is not determined which payment services should be provided by those PSPs. Hence, PISPs can also become participants of systems designated under the SFD, subject to them complying with Article 35a of PSD2 and meeting access rules of a payment system.
It is questionable whether business model of PISPs would benefit from access to SFD system.

190. Question (scope of IPR and scope of SFD)

Directive 98/26/EC is amended by adding payment institutions and electronic money institutions to the definition of "institutions" thus allowing their direct participation in payments systems designated in accordance with Directive 98/26/EC. We understand that

the focus here is on payment institutions and electronic money institutions licensed within the single market of the European Economic Area (EEA).
Will this new regulation in any way affect the participation of non-EEA SEPA country payment service providers in the SEPA area? Or, this regulation will have no direct impact on non-EEA SEPA country payment service providers and non-EEA SEPA country payment institutions and electronic money institutions will also have no opportunity to directly participate in designated payments systems?

Answer

As regards SEPAR and IPR:
The provisions of the SEPAR and the IPR do not apply to PIs and EMIs located outside the EEA area. This is because the scope of the SEPAR as set out in Article 1(1) covers only payment transactions denominated in euro between two PSPs (or alternatively the sole PSP) located in the EU (EEA).
As regards SFD:
IPR amends the definition of "institution" in the SFD, by including in it the notions of an EMI and a PI. PI is defined in Article 4, point (4), of PSD2. This article defines a payment institution as a legal person that has been granted authorisation in accordance with Article 11 PSD2. In turn, Article 11(1) of PSD2 specifies, inter alia, that an authorisation can be granted only to a legal person established in a Member State. EMI is defined in Article 2, point (1) of the EMD, which states that EMI is a legal person. As in case of PIs, the definition is linked to authorisation process which in turn includes a requirement for the EMI to be established in a Member State.

191. Question (SFD and PSD2)
Are CSMs obliged to comply to the SFD, and must allow access to non-banks as a direct participant to CSM services?

Answer

Payment systems have their own access rules, hence, participation in them is not unconditional. IPR modifies Article 35 of PSD2. As a result, Article 35(1) also applies to payment systems designated under the SFD. Article 35(1) of PSD2 requires Member States to ensure that:
"*the rules on access of authorised or registered payment service providers that are legal persons to payment systems are objective, non-discriminatory and proportionate and that they do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.*"

192. Question (SFD)
Is SFD update only applicable to instant payments CSM and not the batch CSM? According to our understanding, the SFD amendment opens the door for non-banks to have access to the necessary infrastructure to settle a payment order, subject to meeting certain conditions. Since the amendment itself does not specify for what types of clearing mechanisms it would be applicable to, we would assume that it is both.

Answer

The SFD amendment applies to all payment systems designated under the SFD.

193. Question (general)

What are the liquidity requirements for a PI or an EMI licensed entity, willing to directly access the settlement ecosystem?

Answer

This is not governed by the PSD2 or SFD. Access rules are set by payments systems, but they have to comply with Article 35(1) of PSD2.

194. Question (Article 10 PSD2)

The amendment to Article 10(1) of PSD2 keeps essentially the requirements already laid down in that disposition, but, concerning separate accounts it establishes that the funds of PSU" shall be deposited in a separate account in a credit institution or in a central bank at the discretion of that central bank". We would like to obtain further information on the sense of the expression "at the discretion of that central bank". Does it imply that the provision of these accounts to PI in order to safeguard PSU funds would be at the discretion of central banks?

Answer

The possibility of safeguarding at a central bank would be in addition to the currently available options to non-bank PSPs. Central banks are not obliged but have discretion to allow PIs and EMIs to deposit client funds in accounts that PIs and EMIs may hold with them, for the purpose of compliance with safeguarding obligation.

195. Question (Article 35a PSD2)

Article 35a(1), letter (g), provides that the governance arrangements and internal control mechanisms shall include a description of the way outsourced functions are monitored and controlled so as to avoid impairment of the quality of the internal controls of the payment institution or electronic money institution. Please clarify whether the abovementioned description refers only to outsourced internal control functions (e.g., compliance, risk management, etc.) or to all the outsourced functions of a PI/EMI.

Answer

This refers only to outsourced internal control functions.

196. Question (Article 35a PSD2)

There seems to be a discrepancy between the description of the measures taken for safeguarding of funds where they are deposited in a separate account in a credit institution or safeguarded through an insurance policy or comparable guarantee. In particular, it seems that, in the first case, the PI/EMI shall submit to the competent authority a copy of the draft

contract with the credit institution while, in the second case, it shall submit either a copy of the insurance agreement or comparable guarantee, either the draft agreement. We ask the Commission to please clarify if there is a reason for differentiating the wording of the two provisions.

Answer

Both provisions shall be read in a way that submitting a draft is sufficient. The requirements are based on the current EBA Guidelines on the information to be provided for the authorisation of PIs and EMIs and for the registration of account information service providers under Article 5(5) of PSD2.

197. Question (Article 35a PSD2)

(i) Regarding winding-up plans specifically: We are not aware of specific (in particular EU - harmonised) requirements for PIs'/EMIs' winding-up plans. What are the minimum expectations from the EU legislator or the European Commission on what such plans should comprise? Are there existing reference standards from which national authorities could draw their requirements?

(ii) Please provide clarity on what type of evidence will be required by the authorities from e-money and payment institutions to demonstrate compliance with the safeguarding of funds, adequate internal controls and governance arrangements, and winding-up plan requirements detailed in Article 35a(1)?

(iii) Could the European Commission please confirm that, even in the case where the payment institution or e-money institution provides a "self-assessment", the competent authority will also issue an explicit decision or otherwise acknowledge the self-assessment publicly, such that third parties could rely on this assurance?

Answer

On sub-question (i):

With regard to winding-up plans, Article 35a(1), last subparagraph specifies that those plans shall be adapted to the envisaged size and business model of PI or EMI, and describe of the mitigation measures to be adopted by the PI or EMI in the event of the termination of its payment services, which would ensure the execution of pending payment transactions and the termination of existing contracts.

On sub-questions (ii) and (iii):

In line with Article 35a(2) of PSD2, that procedure is to be decided by Member States (i.e., is subject to Member Sates' discretion).

198. Question (Article 35a PSD2)

It is assumed that compliance of PIs and EMIs with this provision will be assessed on an ongoing basis by relevant authorities (similar to how compliance is assessed for banks for similar requirements. If this assumption is correct, which authority/ies will be the competent authority to assess compliance of PIs and EMIs with the measures set out in this provision on an ongoing basis? How will compliance / non-compliance with such requirements on an initial and an ongoing basis be made known to payment system

operators (e.g., would public information be made available in supervisory registers and / or would a notification to operators be sent?)?

Answer

If a PI or EMI intends to request access to a payment system designated under the SFD, Article 35a of PSD2 applies (in addition to all other provisions of PSD2 that would normally apply to these entities). Compliance with this provision should be assessed in line with the procedure defined by Member States as per Article 35a(2) of the PSD2. Compliance with Article 35a shall be supervised by (home) competent authority (in line with Article 22 of PSD2).
Compliance with Article 35a is expected not only at the time of requesting participation, but also during the participation of EMIs and PIs in the payment systems designated under the SFD (see introductory sentence of Article 35a(1)). Competent authorities, as appropriate (depending on assessment procedure and penalties defined at a national level) would apply penalties to EMIs and PIs that infringe on requirements of Article 35a. There is no explicit obligation for competent authorities to inform payment system operators on compliance or non-compliance of PIs and EMIs with those requirements.

199. Question (Article 35a PSD2)

Does the European Commission consider that the safeguarding requirements are compatible with payment institution or e-money institution participation in SFD-designated payment systems?

Answer

The aim of Article 35a PSD2 is to ensure that PIs and EMIs requesting access or accessing payment systems designed under SFD comply with certain obligations under PSD2. The aim of this provision is (see recital (16)) to:
- ensure a proper level playing field for participants in those systems,
- maintain stability and integrity of those systems and
- ensure comprehensive risk management.

The requirement of safeguarding is already applicable to PIs and EMIs under Article 10 PSD2. Article 35a PSD2 describes in a more comprehensive manner how the requirements of Article 10 shall be complied with by those EMIs and PIs that want to apply for access to designated payment systems. This greater level of prescriptiveness in the level one text, i.e., PSD2, (moved from the EBA guidelines under Article 5(5) of PSD2) emphasises the prudential nature of obligations included in Article 10 of PSD2.

200. Question (Article 35a PSD2)

Can payment systems' operators require non-bank PSP applicants to demonstrate their compliance with financial conduct or supervisory requirements, other than listed in the PSD2 Art. 35a (e.g., compliance with AML requirements)?

Answer

According to Article 35(1) PSD2, payment systems' access rules have to be objective, non-discriminatory and proportionate. Different rules for different types of applicants might be considered an infringement of this rule. PSD2 does not regulate the type of information payment systems decide to request from non-bank PSPs.

201. Question (Article 35a PSD2)

Conditions for requesting participation in designated payment systems (Article 35a of the PSD2) – now added – will establish a set of conditions for payment institutions and electronic money institutions to access designated payment systems. Notwithstanding, there is some degree of coincidence between the conditions listed in said article and some of the legal requirements that must be complied with at the time of the initial authorisation (contained in both Article 5 of PSD2 and EBA's Guidelines on authorisation and registration under PSD2) and whose compliance must be ensured at all times by the institutions (under the terms of Article 13(1)(c) of PSD2). Therefore, it is important to clarify, with reference to these cases of "coincidence of requirements", what kind of intervention is expected from the respective competent authority, given that compliance by the institution will have already been demonstrated and ensured at the time of initial authorisation, not to mention the fact that institutions are legally obliged to comply with these criteria on an ongoing basis, under the terms of Article 13(1)(c) of PSD2.

Answer

The obligations set in PSD2 that apply to all PIs and EMIs regardless of their plan to participate in SFD system shall be fulfilled by these PSPs and supervised by the competent authorities on an ongoing basis. If a PI or an EMI intends to request access to a payment system designated under the SFD, Article 35a of PSD2 applies. In addition to existing obligations, Article 35a contains specific obligations such as a winding-up plan.
In accordance with Article 35a(2), competent authorities may choose not to request information pertaining to cases of "coincidence of requirements" as it might be able to assess compliance based on its supervisory activity.

202. Question (Article 35(2) PSD2)

Does the deletion of Article 35, paragraph 2, point (a), of PSD2 mean that all payment systems with settlement finality, including those operated by central banks, are required to allow payment institutions and electronic money institutions to be direct participants, and as such ensure that payment institutions and electronic money institutions can open settlement accounts at the relevant central bank?

Answer

The deletion of the exclusions previously contained in Article 35(2) means that access rules of payment systems designated under the SFD also have to comply with Article 35(1) PSD2 – i.e., they have to be objective, non-discriminatory and proportionate. In view of the amendment of the definition of institution under the SFD, these requirements also apply to access rules for EMIs and PIs' participation in any payment system with settlement finality, including those operated by central banks.

The amendments to the SFD and PSD2 do not grant non-bank PSPs automatic access to payment systems, including central bank operated payment systems such as T2. As regards T2, it is noted that there are eligibility criteria and rules for participation in it, derived from the Eurosystem primary mandate of price stability and, in particular, the basic tasks of implementing monetary policy and promoting the smooth operation of payment systems.

203. Question (Article 35(1) PSD2)

Is Article 35(1) of PSD2 with regard to amendment of Article 35(2) applicable also to small payment institutions and small e-money institutions as they cannot be SFD system participants?

Article 35(1) of PSD2 will be applicable also to SFD systems now. The question is whether "non-discriminatory rules" in paragraph 1 apply also to that PSPs which are not entitled to obtain access to SFD systems.

Answer

Only entities that are covered by the definition of 'institution' of the SFD can become participants of payment systems designated under the SFD. Therefore, Article 35(1) is not applicable with respect to 'small' PIs and 'small' EMIs in relation to their participation in payment systems designated under the SFD, because such a participation is not legally possible under the SFD.

As regards 'small' PIs and 'small' EMIs, Article 35(1) of PSD2 applies in relation to payment systems not designated under the SFD. In addition, Article 35(3) of PSD2 would also apply.