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EMA response to ECB Consultation on draft Eurosystem oversight framework for electronic payment instruments, schemes and arrangements

Date: 31. 12. 2020

No	Document	Section	Original Text	Comment	Reasoning
1	PISA framework	1 Introduction	While the revised Payment Services Directive (PSD2) defines "funds" as banknotes 2 and coins, scriptural money or electronic money, from a Eurosystem perspective recent technological developments warrant the extension of the scope of the PISA framework to transfer of value. Transfer of value consists not only of transfers of euro funds by means of payment instruments but also of representations of value backed by claims or assets denominated in euro or redeemable in euro (e.g. digital payment tokens). The PISA framework covers electronic payment instruments, including the use of these instruments to place or withdraw cash.	Broadening of scope from funds to transfers of value; this is welcome and may require qualification given what can be captured by 'value'.	The review of the scope of payment instruments to include transfers of value reflects the evolving payments landscape. We would however like to see further elaboration of the perimeter of instruments that would be captured, particularly where instruments may have multiple contemplated uses, only one of which may be for payments. It may present challenges later on when assessing size and penetration of the scheme or arrangement where the main use may be for investment or as a store of value or some other purpose.

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2	PISA framework	2.2 Payment Instruments	A payment instrument is a personalised device (or a set of devices) and/or set of procedures agreed between the payment service user and the payment service provider used in order to initiate a transfer of value.	Broadening of scope of the definition of a payment instrument to transfers of value may require qualification given what can be captured by 'value'.	The review of the scope of payment instruments to include transfers of value reflects the evolving payments landscape. We would however like to see further elaboration of the perimeter of instruments that would be captured, particularly where instruments may have multiple contemplated uses, only one of which may be for payments. It may present challenges later on when assessing size and penetration of the scheme or arrangement where the main use may be for investment or as a store of value or some other purpose.
3	PISA framework	2.2 Payment Instruments	From a geographical perspective, the framework covers electronic payment instruments used for transfers of value offered to end users within euro area and/or non-euro area countries, which are denominated in or funded in euro, partly or fully backed by euro, or redeemable in euro.	The scope is again broad, reference to 'funded' and to 'partly backed', both give rise to some uncertainty as to extend of scope and possible policy objectives	(i) Funding could include the payment of the purchase price, which is unlikely to have been intended, some elaboration would be helpful. (ii) Partial backing by EUR could mean that inclusion of the euro in the range of products offered by issuers outside the EU would give rise to oversight expectations and may act as a deterrence to the inclusion of euro in some products. (iii) This leads to a question in relation to policy objectives. If it is an objective of the Eurosystem to promote the use of the euro globally, then it may be helpful to allow payment ecosystem participants to

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					use the euro in some limited context - outside of the EU or EEA – without the risk of coming within the scope of EU regulation
4	PISA framework	2.3 Payment schemes and arrangements	A payment scheme is a set of formal, standardised and common rules enabling the transfer of value between end users by means of electronic payment instruments. It is managed by a governance body.	Application to three party payment service providers is in our view disproportionate given existing prudential regulation	A single entity acting as a three-party payment service provider could fall within the scope of the definition, but would be subject to supervisory oversight by the relevant NCA. In our view, all the data, risk assessment/mitigation, systemic risk considerations would be addressed under the existing supervisory framework, and any additional requirements may be better addressed through existing supervisory practices. We suggest consideration of the benefits of oversight in this context. This may be consistent with the ES's statements under chapter 4, paragraph 3 which suggests that duplication of effort is not intended or desirable.
5	PISA framework	2.3 Payment schemes and arrangements	A payment arrangement provides functionalities which support the end users of multiple payment service providers in the use of electronic payment instruments. It is managed by a governance body which issues the relevant rules or terms and conditions.	The regulatory objective is set out, but the perimeter between an arrangement and the freedom to outsource services is less clear. There are regulatory controls around outsourcing and ICT that capture prudential risk in such contexts, the point of transition to an arrangement type risk would benefit from elaboration.	As the scope of outsourcing of operational functions increases, including both AI-related services as well as processing or acceptance devices being offered by third parties, the perimeter of outsourced services and the point at which 'arrangement' related risks arise would benefit from elaboration. This is particularly the case when payments ecosystem risks

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					related to outsourced ICT functionalities are addressed by other regulatory provisions such as the EBA Guidelines on ICT and security risk management, EBA Guidelines on outsourcing arrangements. The proposed EC Regulation on digital operational resilience (DORA) already aims to introduce an Oversight Framework for Critical ICT Third Party Providers; some of these Providers fall within the description of Payment Arrangement defined in this Section. The nature of the 'arrangement' risk and the point at which it arises is not sufficiently clear.
6	PISA framework	3 Who this framework is aimed at	This framework is aimed at the governance bodies of payment schemes/arrangements. A governance body should adhere to the oversight expectations irrespective of whether it relies on third parties or even if it does not have, either itself or within its organisation, an operational role with regard to certain payment scheme functions or payment arrangement functionalities.	It is unclear how oversight would be practiced where a governance body may not necessarily be based wholly or entirely in the EU. Whilst this is a common issue with many payment schemes being based in North America or Asia for example, it is particularly challenging where fungible units of value are issued by a scheme, based outside the EU and associated with a governance structure that may not be subject to EU regulatory supervision.	This is a challenge that is particularly relevant to DLT-based schemes/arrangements, where issuance can only be undertaken by a single entity globally, and consequently, governance will be centred around that activity. The challenge with having multiple issuers, should this approach be considered, is that coins or value issued by one entity would be indistinguishable from those issued by another, and issuers regulated in different jurisdictions would not be able to recognise value issued by them from that issued by others. The outcome is that a single issuer with a single governance structure would

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					be required, and this will likely require international cooperation by relevant regulators
7	PISA framework	4 Coordination with payment system overseers and/or supervisory authorities	General comment	Reporting obligations are growing at a significant rate for regulated financial institutions. Ensuring coordination to minimise the need for additional data collections is key.	Regulators and supervisors are increasingly making more granular data requests and this is taking up considerable resource and time. It would be helpful if the data can be obtained from the relevant NCA where this is available, and separately that harmonisation of data sets is encouraged to increase standardisation and uniformity of data requests.
8	PISA framework	5 Proportionality considerations	General Comment	The exemption criteria are key to proportionality, addressing quantitative considerations, whether by volume, value or geographic coverage. It is difficult to estimate the number of schemes or arrangements that are likely to score 3 or more under the current criteria, but we suggest an additional 'sense checking' criterion which assesses the impact on the Euro payment system in real terms, once a scheme or arrangement is found to have met the minimum score. Additionally, there are platforms that operate payment services that are tightly linked to their product offering and where such underlying products are limited in scope. We do not believe that	It is difficult to assess the scope of schemes and arrangements that will fall within the framework in abstract. Some additional means of ensuring only those that merit oversight are included would be helpful. Furthermore, there are platforms that could be considerable in size but whose payment services impact only the platform itself, and such services do not therefore meet the systemic risk test, even if their size could trigger inclusion. We would welcome such clarification. It may be that the suggestion at paragraph 2 of section 7 that such schemes apply the principles on a voluntary basis may be more appropriate in these circumstances.

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				the payment services relating to such products are intended to be captured as schemes and would welcome such clarification.	
9	Assessment methodology	4 Applicable principles, key considerations and the resulting assessment questions	General comment	The methodology is complex; it addresses a comprehensive range of risks, set out as principles, elaborated as key considerations for each principle and applied to individual functions of a scheme or of an arrangement, and in respect of each payment instrument. There is also the geographical scope of the offering. The outcome is a significant body of regulation albeit expressed as guidance, and requiring significant resource to implement, review and assess.Whilst there is no denying the benefits of the framework, the magnitude of the work needed, and the potential complexity will require significant resource. This will influence the entire structure of the business, and will be a non-trivial cost. We suggest a longer and more engaged period of discussion with industry prior to the publication of a final framework and assessment methodology. An extended period of industry engagement can lead to appropriate optimisation, simplification, prioritisation	The complexity of the methodology is considerable, and the magnitude of the work required to implement the approach by organisations is significant, especially so where they may not currently be subject to prudential regulation. It would be helpful to enter into a period of engagement with industry prior to the publication of the framework, exemptions and assessment methodology to ensure a better understanding of what is expected and to provide a sufficiently long lead time for preparations to be made.

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				of the assessment methodology. The adoption a risk-based assessment approach can also allow more effective allocation of resources to high-risk areas. We are unable within the current consultative timeline to provide more detailed comments on the methodology.	
10	Exemption policy	2. Exemption criteria	General comment	The exemption criteria address quantitative considerations, whether by volume, value or geographic coverage. It is difficult to estimate the number of schemes or arrangements that are likely to score 3 or more under the current criteria, but we suggest an additional 'sense checking' criterion which assesses the impact on the payment system in real terms, once a scheme or arrangement is found to have met the minimum score. Additionally, there are platforms that operate payment services that are tightly linked to their product offering and where such products are limited in scope. We do not believe that these payment services are intended to be captured as schemes and would welcome such clarification.	It is difficult to assess the scope of schemes and arrangements that will fall within the framework in abstract. Some additional means of ensuring only those that merit oversight are included would be helpful. Furthermore, there are platforms that could be considerable in size but whose payment services impact only the platform itself, and such services do not therefore meet the systemic risk test, even if their size could trigger inclusion. We would welcome such clarification. It may be that the suggestion at paragraph 2 of section 7 that such schemes apply the principles on a voluntary basis may be more appropriate in these circumstances.