

Single Rulebook Q&A

Question ID	2020_5354
Status	Final Q&A
Legal act	Directive 2015/2366/EU (PSD2)
Topic	Other topics
Article	3
Paragraph	(b)
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	The implementation of commercial agent exclusion for e-commerce platforms
Question	Should the settlement of the debt by an e-commerce platform be considered a sufficient reason to exclude the e-commerce platform from the scope of PSD2 or an indispensable requirement for a commercial agent mandate?
Background on the question	<p>According to Article 3 of PSD2, the directive does not apply to payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of products or services on behalf of only the payer or only the payee. Recital (11) also states that differing application of this exclusion in EU distort competition in the payment market. Some e-commerce platforms that are managing the flow of payments from payer to payee collect the payments before the products/services are delivered and transfer the aggregate amounts to the payee on a regular basis, in principle, monthly. If the payer does not receive the products, the platform or the seller reimburses the amounts paid in advance. As long as the money is in its possession, the platform is in absolute control of that money without any safeguarding requirements. These e-commerce platforms invoke the commercial agent exclusion because the contracts between the platforms and the payees</p>

	ensure that the payments made by the payers to the platforms constitute settlement of the payer's debt to the payee.
Final answer	<p>Having regard to Article 3, point (b) of Directive (EU) 2015/2366 (PSD2) and recital 11 PSD2, an e-commerce platform that receives payment on behalf of the payee, where such receipt constitutes settlement of the payer's debt to the payee, is not to be excluded by default from the scope of PSD2.</p> <p>The settlement of the payer's debt to the payee is not in itself to be a reason to exclude the e-commerce platform from the PSD2 scope. This would otherwise affect the protection of both buyers and sellers, as guaranteed by PSD2, and the competition in the payment market would be distorted.</p> <p>Disclaimer:</p> <p>The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.</p>
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