

# Single Rulebook Q&A

<b>Question ID</b>	2020_5355
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2015/2366/EU (PSD2)
<b>Topic</b>	Other topics
<b>Article</b>	3
<b>Paragraph</b>	(b)
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	Not applicable
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<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	The implementation of commercial agent exclusion for B2C e-commerce platforms
<b>Question</b>	In what situation a business-to-consumer (B2C) e-commerce platform can be subjected to the exclusion foreseen in Article 3 (b) from PSD2?
<b>Background on the question</b>	<p>According to the Impact Assessment accompanying the PSD2 proposal, the new directive should clarify the negative scope. "Thus, for commercial agents, the law would clarify that this exemption is intended only for legal persons who use an agent as their representative. It should not be used by agents working on behalf of consumers. The foreseen change would impact those commercial agent activities that clearly concentrate on management of financial flows between buyers (consumers) and sellers on a professional basis and should not have been exempted from the PSD. The main benefit would be to limit the risks and increase the rights and protection of consumers." Article 3 from PSD2 excludes from its scope "b) 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 goods or services on behalf of only the payer or only the payee". Recital (11) states that differing application practices regarding this exclusion distort competition in the payment market. Many B2C e-commerce platform models</p>

	<p>are bringing together the sellers – legal persons and the buyers – consumers and thus facilitating the sale. Specifically, the platforms enlist the sellers and the buyers, display information about the goods, receive the buyers’ orders, collect the payments before the respective goods are delivered (or even before the sales contract are concluded) and transfer the amounts to the sellers on a regular basis, in principle, after the delivery of the goods. The e-commerce platforms contribute in an automated manner to the conclusion of the sale/purchase. The contracts concluded between the platforms and the sellers ensure that the payment obligations of the buyers are met at the moment the amount is paid to the platform. No explicit representation contract is concluded between the platform and the individual buyer, and for this reason the platforms usually claim that they act only on behalf of the sellers.</p>
<p><b>Final answer</b></p>	<p>Pursuant to Article 3, point (b), of Directive (EU) 2015/2366 (PSD2), a business-to-consumer (B2C) e-commerce platform could be excluded from the scope of PSD2 if, as a commercial agent, it is authorised by the payee to negotiate or conclude the sale of goods or services and if it does not also act on behalf of the payer.</p> <p>The Competent Authority must evaluate, based on the business model, whether the platform only acts on behalf of the payee or for both payer and payee. PSD2 does not provide criteria in order to determine whether a platform can be deemed to be also acting on behalf of the payer.</p> <p><b>Disclaimer:</b></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>
<p><b>Link</b></p>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5355">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5355</a></p>

