

# PSD2 vs. MiCAR

Roma Tre University

*“Towards PSD3: the dynamics of digitalized  
payment systems”*

Rome, 14 April 2023



# *Outline of presentation*

- Scene-setting observations: what are “*digital and financial asymmetries*”?
- The 2<sup>nd</sup> Payment Services Directive (PSD2): background, scope, market effects
- The PSD2 in light of recent market developments and the Proposal for a Markets in Crypto Assets Regulation (MiCAR)
- The interplay between the PSD2 and the MiCAR
- Tying the (regulatory) threads: toward the PSD3

# ***Digitalized payments: contextualizing the concept of “asymmetries”***

- technological advancements (digitalization, cloud storage, DLTs):
  - add value to payment products and services, as well as
  - increase the riskiness of payment products and services.
- the riskiness and the externalities connected, stem from new types of asymmetries in digitalized payments (*known* vs. *unknown* asymmetries)
- in the Fintech context, **the term “asymmetry” can describe:**
  1. various security risks connected with the ascent of disruptive technologies in payments,
  2. related conceptual ambiguities or regulatory gaps; these can materialize as economic/legal risks.
- legislation should identify new asymmetries, provide appropriate solutions and future-proof traditional incumbents / end users against disruptions within the payments market

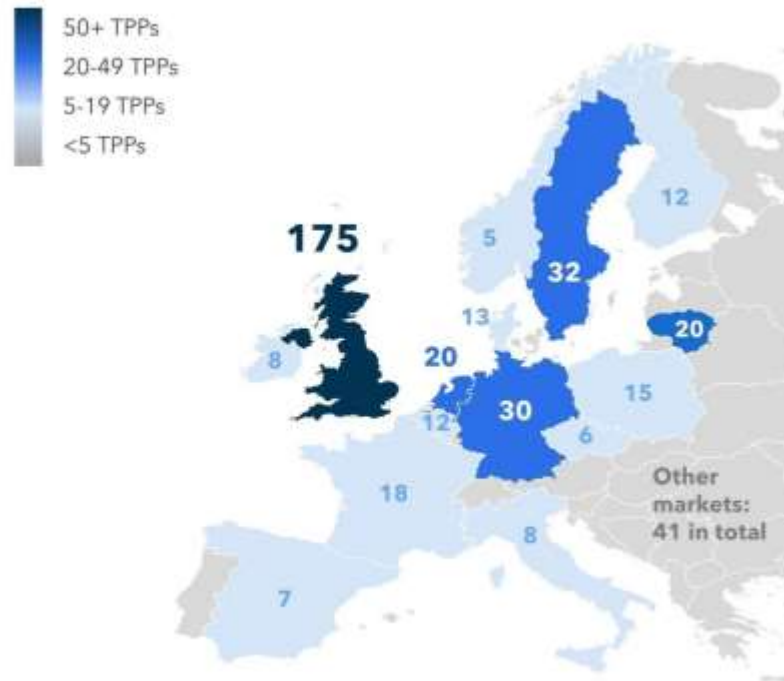
# *The PSD2: kick-starting the open banking ecosystem*

- The PSD2 as a legislative measure that revolutionized payments in the EU
- Overarching goal → harness asymmetries arising from the increasing use of third parties in payments execution
- **Which asymmetries exactly?**
- Contribute to creating a level playing field for payment services providers in the digital age
  - Third Party Providers or TPPs, basically Paytech companies divided into two subcategories: PISPs and AISPs [Art. 4(15)(16), PSD2]
- Fostering security of digital payments
  - Standardized process of account information sharing via APIs [Art. 66 and 67, PSD2]
- Prevent the misuse of consumer data
  - Strong customer identification and ban on “screen scraping”

# The PSD2: kick-starting the open banking ecosystem (continued)

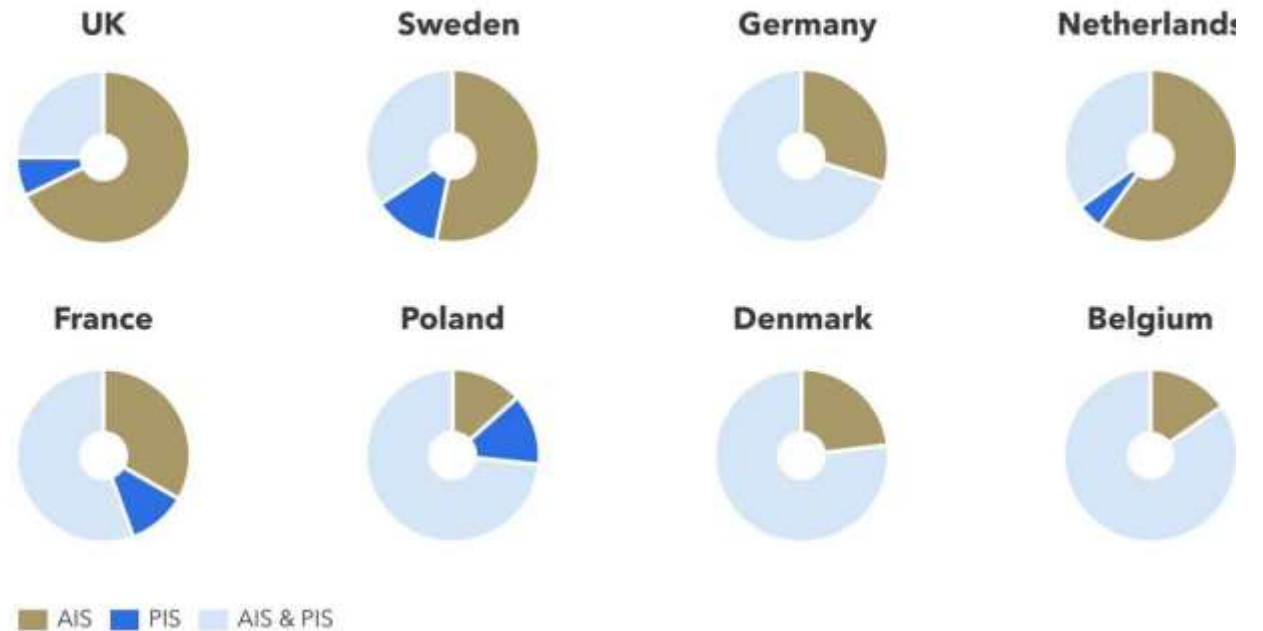
- Some contention about the success of PSD2 → a “chicken or egg” situation; the PSD2 as an “imposed innovation” measure
- What does market data say?

FIGURE 1: Number of TPPs Across Licensed Countries (May 2021)



Source: EBA Register

FIGURE 2: Break-Up by License in Top 8 Markets (% of registered TPPs)



Source: EBA Register, Flagship analysis

# *The PSD2 in light of market developments ... toward the MiCAR*

- Markets and technology continued to develop alongside PSD2 implementation → new asymmetries
- **Crypto assets**: backed by cryptography and distributed ledger technologies, not issued or guaranteed by a public authority, able to *de facto* serve various economic functions
- How do crypto assets relate to payments?
- The current EU framework has some indirect relevance for crypto assets: MiFID/MiFIR regime, 5th AMLD, 2nd EMD and the PSD2
- MiCAR adds value to existing legislation, however only if regulators understand how to better coordinate between legislative acts

# The MiCAR

- The MiCAR is one of the operational pillars of the Digital Finance Package → provides a comprehensive legislative framework for crypto assets, crypto asset issuers and crypto asset service providers (CASPs) operating within the EU
- Both the PSD2 and the MiCAR foster similar objectives:
  - a bespoke legal basis for new players in the market (p. 6, Recital of the PSD2; p. 1, Recital of the MiCAR),
  - a pro-competitive approach (p. 67, Recital of the PSD2; p. 5, Recital of the MiCAR),
  - boosting consumer confidence and market integrity (p. 4 and 6, Recital PSD2; p. 5, Recital of the MiCAR)
- Besides conceptual objectives, *the PSD2 and the MiCAR overlap marginally*:
  1. when considering “funds”,
  2. when considering the legislative treatment of new players in the market, specifically CASPs

# *The interplay between the PSD2 and the MiCAR*

- **Ad 1) funds** → wherein lies the asymmetry, i.e., the regulatory incoherence?
  - EBA warning about new formats of crypto assets which broadly correspond with the definition of e-money provided by the 2nd EMD
  - if a firm is carrying out “payment services” with a crypto asset that qualifies as e-money using DLT, such activity would fall within the scope of the PSD2 by virtue of being “funds”
  - an incoherent, “circular definition” of crypto assets as funds (Linden and Shirazi 2023, p. 11), which is problematic especially in respect of asset-referenced tokens (ARTs) and e-money tokens (EMTs)
  - the payment appeal of ARTs and EMTs will depend on stabilization mechanisms (Gimigliano 2022, p. 367), yet it is evident that **better coordination between the PSD2 and the MiCAR is required in defining “funds”**
- **Ad 2) CASPs** → wherein lies the asymmetry, i.e., the regulatory incoherence?
  - if a CASP contracts with a payee to accept crypto-assets (other than EMTs), it should follow the same requirements on consumer protection as those provided by the PSD2 for PSPs
  - **disparity of consumer protection levels** between the PSD2 and the MiCAR
  - either authorize CASP under the PSD2 regime, or designate a PSD-authorized PSP
  - also, **clarification is required about the nature of CASP business** (European Commission 2021, p. 181)



## *Toward the PSD3 ... concluding remarks*

- The PSD2 as an evolutionary step in the regulatory paradigm for EU payments (engaging with market developments rather than simply keeping the pace)
- MiCAR builds on these conceptual foundations → the EU wishes to capitalize on the market appeal and potential of unregulated crypto assets
- At this point it is difficult to speculate about the MiCAR's market impact (less/more, equally successful as the PSD2)
- Certainly, closer coordination between existing legislation and the MiCAR is essential (EMD2 vs. MiCAR)
- Looking toward the PSD3 → closer interplay between the PSD2 and the MiCAR (funds, CASPs, consumer protection)
- The emergence of new payment channels and EU's digital transition present **an inflection point for the PSD regime**



***Thank you!***

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# References

- Bignell, F. (2022, 6 May), How are the arrivals of new regulations, like the PSD2, shaping technology?, *The Fintech Times*, Retrieved from: <https://thefintechtimes.com/how-are-the-arrivals-of-new-regulations-like-psd2-shaping-technology/> (Accessed 3 March 2023)
- Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, *OJ L 156*
- Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 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, *OJ L 337*
- Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 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, *OJ L 267*
- European Commission (2021), A study on the application and impact of Directive (EU) 2015/2366 on Payment Services (PSD2), Brussels, FISMA/2021/OP/0002
- Gimigliano, G. (2022), Payment tokens and the path toward MiCA, *The Italian Law Journal*, 8(1), pp. 353-375.
- Linden, T. van der, Shirazi, T. (2023), Markets in crypto-assets regulation: Does it provide legal certainty and increase adoption of crypto-assets?, *Financial Innovation*, 9, DOI: <https://doi.org/10.1186/s40854-022-00432-8>
- Majmudar, A. (2021), Dissecting the European Open Banking / PSD2 TPP landscape, Flagship Advisory Partners, Retrieved from: <https://www.flagshipadvisorypartners.com/dissecting-the-european-open-banking-psd2-tpp-landscape> (Accessed 7 March 2023)
- Polasik, M., Huterska, A., Iftikhar, R., Mikula, Š. (2020), The impact of PSD2 on the PayTech sector development in Europe, *Journal of Economic Behavior and Organization*, 178, pp. 385-401.
- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM/2020/593 final