



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

www.aija.org

Crowdfunding & Alternative Financing

Girona, November 2017



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

Take the money and run: New trends on internet & mobile payments

- **Montserrat Guàrdia Güell**, *Banco Sabadell Group, Spain*
- **Ileana Glodeanu**, *Wolf Theiss, Romania*
- **Dieter Veestraeten**, *Astrea, Belgium*
- **Dr. Thorsten Kuthe**, *Heuking Kühn Lüer Wojtek, Germany*

Innovation by technological push

- Context : new trends
- Innovating thanks to a technological push
- The 3 key change factors of the new age
- Banking IT platforms evolution strategy
- Addressing with focus the scope: defining the challenges

Age Of Transition



Innovating thanks to a technological push

One of the paradoxes of modern technology is that the more advanced it is, the less perceptible it is.

Rosenberg and Klein's model evolution:

Innovating by an interactive model in which the market (we speak of "**Market pull**"), and technology (we speak of "**Technology push**"), provide the energy for the change that represents innovation.

What is required?

The existence of a challenge or economic and social need

Having a base of business, technological and scientific knowledge

And finally apply a method that allows to associate knowledge in goods and services designed to meet that need or solve the challenge.



Innovation : What is required?

The existence of a challenge or an economic and social need

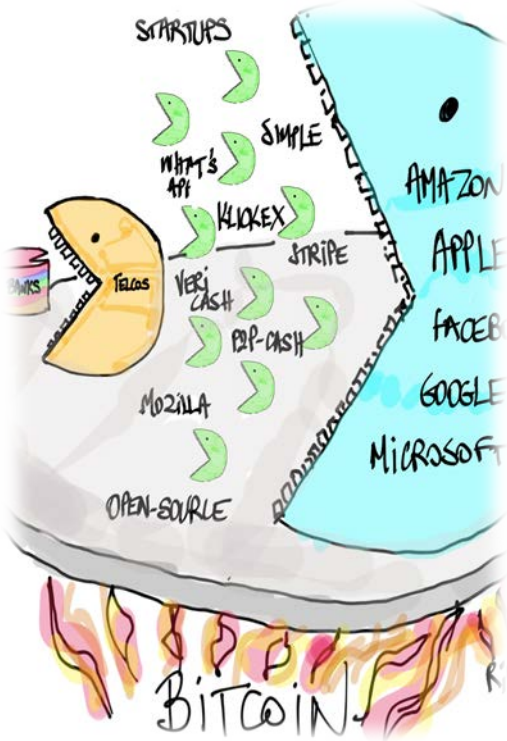
Having a base of business, technological and scientific knowledge

Apply a method that allows to associate knowledge in goods and services designed to meet that need or solve the challenge



The 3 key change factors of the new age

New Competitors



New Clients



New Technologies



SWOT @

Size & Agility

Adapt & Adopt

Efficiency & Innovation

**Focus @ IT platform
evolution considering,**

- Sustainability
- Robustness
- Easy to adopt new technologies.

Fintech, Legaltech, Regtech, Scenarios & APPs

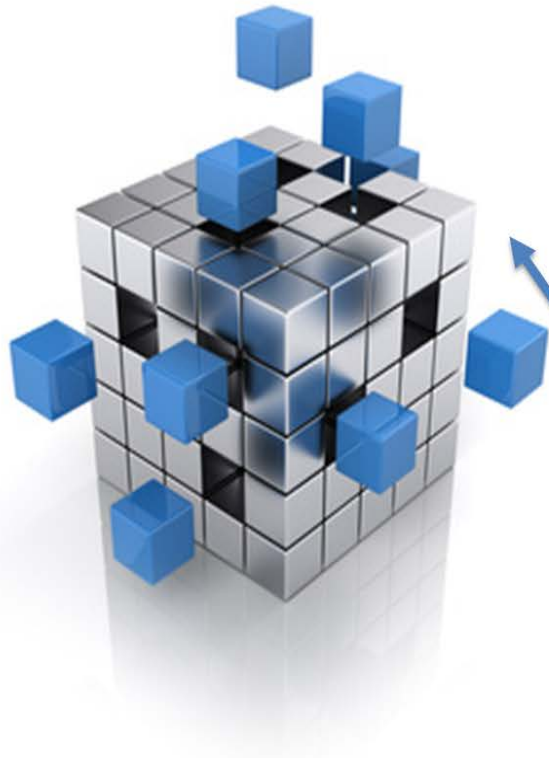


Micro-segmentation of the banking services value chain

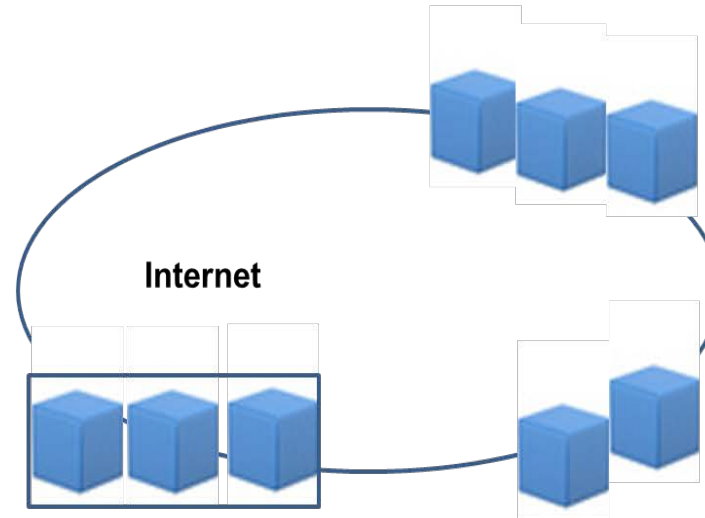
Banking IT platforms evolution strategy

Not visible

Visible



AI, BLOCKCHAIN



DATA, INFORMATION, KNOWLEDGE

Web, Mobile, IoT



FIT per PURPOSE : USABILITY

Addressing with focus the scope: defining the challenges

“Wallet” concept evolution: USABILITY

Payment bridges evolution: REGULATION

Integrated payments solutions: INTEGRATION



Have ever been a best age to innovate?





INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

Thank you !

Montserrat Guàrdia Güell

Banco Sabadell Group

Spain, UK, Mexico

Guardia.montserrat@sabis.tech



www.aija.org

Fintech a brand new world

- Fintech - concept
- RegTech
- Distributed Ledger Technology
- Revised Payment Services Directive
- Looking ahead

Fintech - Concept

BSBS / FSB define FinTech as: Technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services.

Includes both innovative and disruptive technologies, new business models

Is there a definition needed?

Highest number of FinTech service providers are in the payments, clearing and settlement category, followed by credit, deposit and special capital-raising services

RegTech and other Applications

Regtech applications are geared towards saving organizations' time and money by automating processes to ensure regulatory compliance. They also offer the possibility of more accurate compliance efforts, and better reporting to supervisory authorities.

Insurance - Insurtech

Investment management - Robo-advisor

Crowdfunding

Peer to peer lending

Distributed Ledger Technology

In its simplest form, a distributed ledger is a database held and updated independently by each participant (or node) in a large network.

The distribution is unique: records are not communicated to various nodes by a central authority, but are instead independently constructed and held by every node.

This architecture allows for a new dexterity as a system of record that goes beyond being a simple database => they enable us to formalize and secure new kinds of relationships in the digital world

Every single node on the network processes every transaction, coming to its own conclusions and then voting on those conclusions to make certain the majority agree with the conclusions.

TPPs under PSD2

Payment Initiation Service Providers – software bridge between merchant website and online-banking platform of customer

PISPs



Account Information Service Providers – enablers offering consolidated information on different accounts

AISPs

TPPs (Third Party Payment Providers)

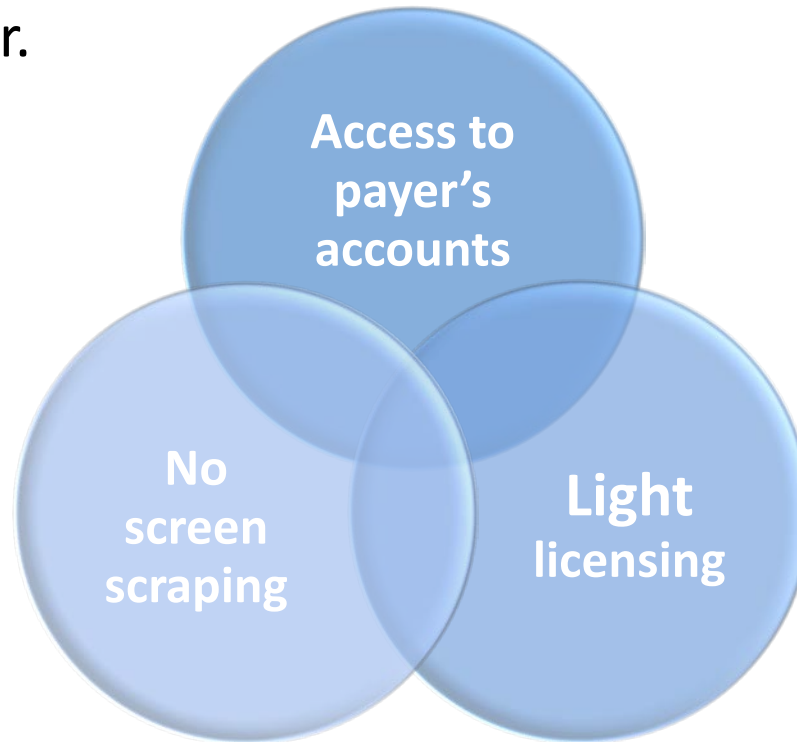
CISP

Card-based Payment Instrument Issuer → New method of checking the availability of funds offered to payment service providers based on card other than ASPSP, to receive confirmation of the availability of funds

2. Rights of TPPs under PSD2

Access is limited to information required to render the relevant service and subject to the explicit consent of the payer.

ASPSPs will be required to "ensure that the TPPs can access the information, and in particular the information they need to make a payment".

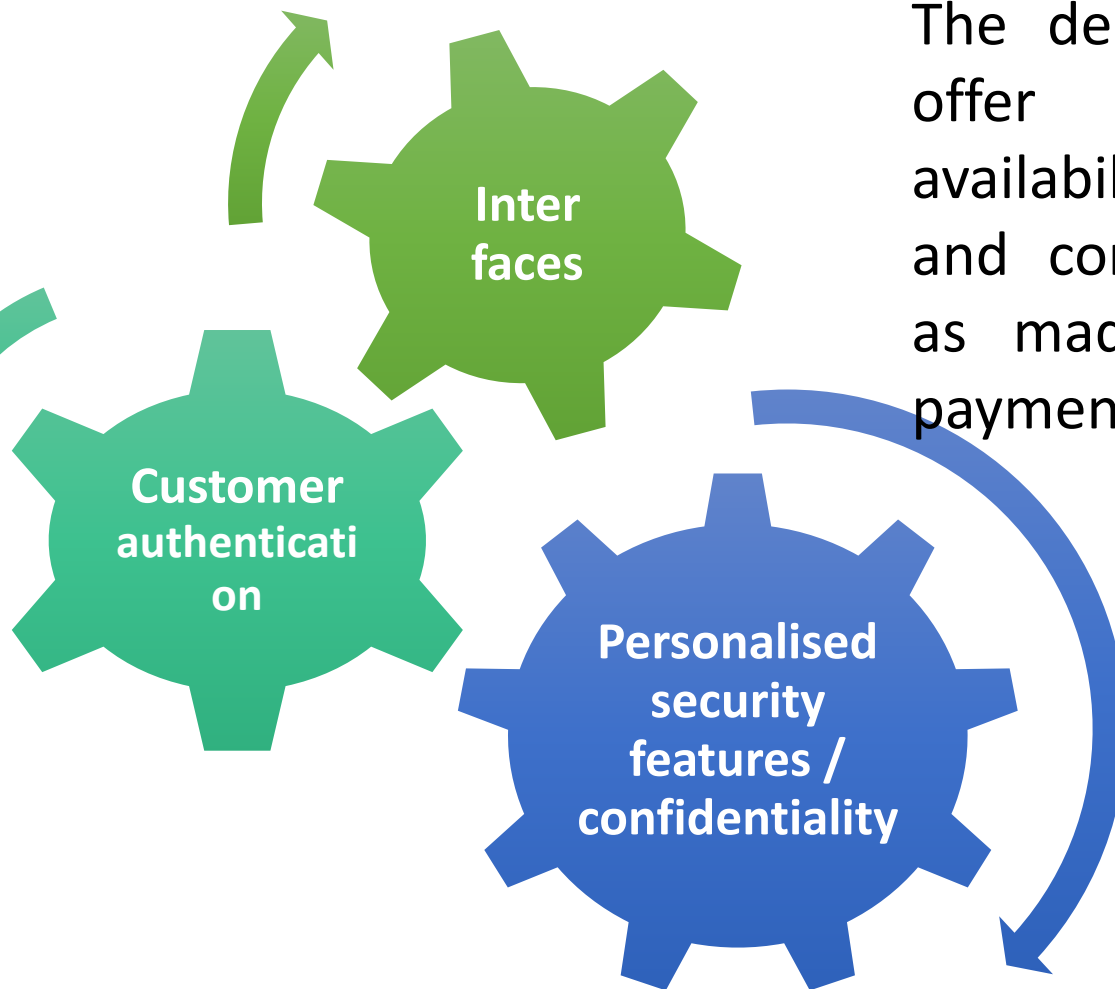


No possession of the funds (by PISPs and AISPs) to be transferred → not subject to safeguarding requirements under PSD2 → light license

3. Opening of bilateral interface customer-bank

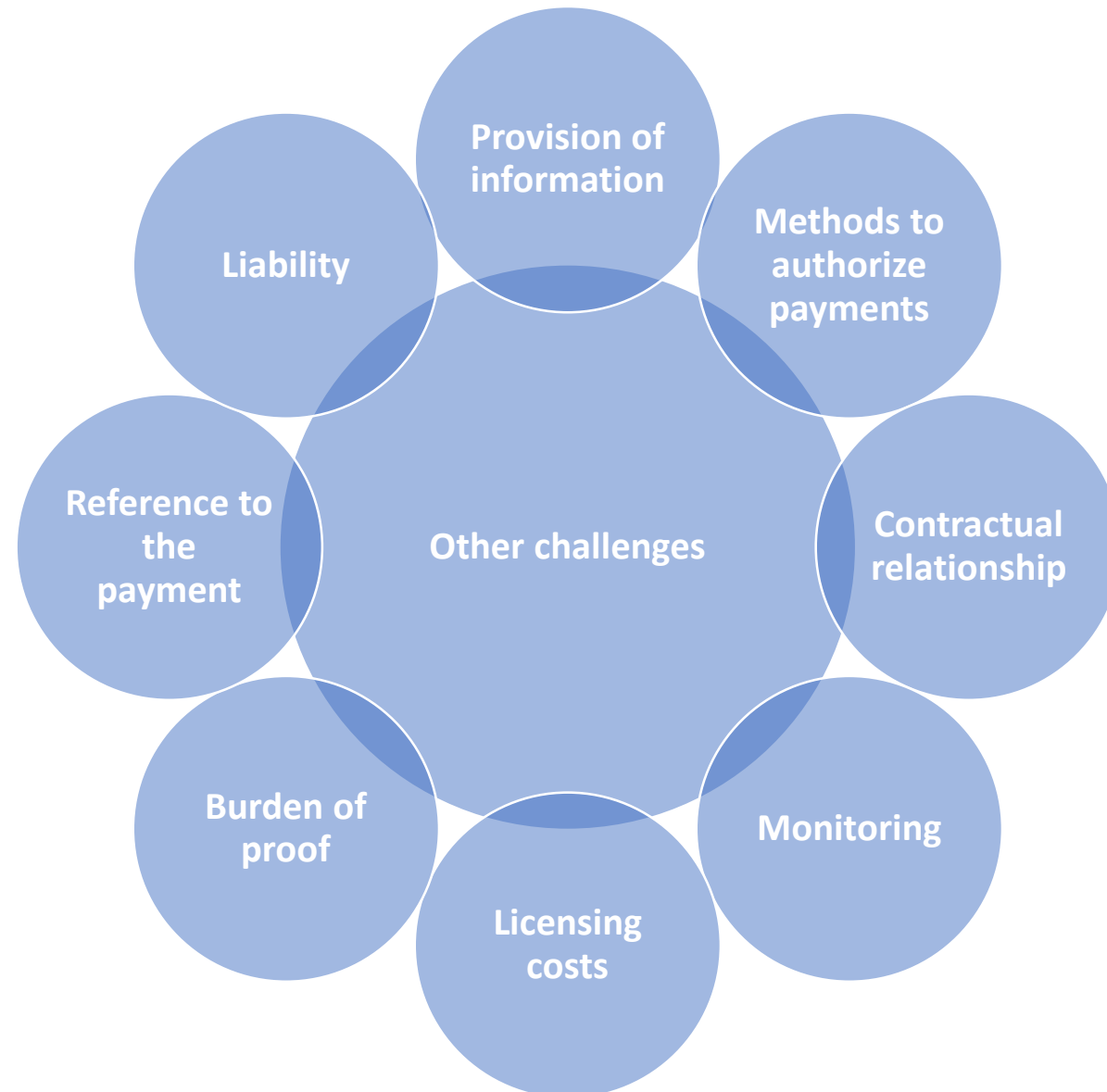
The services offered by AISP will only be successful if they offer a level of security comparable to that offered by the banks

TPPs required to ensure security and apply strong customer authentication (in relation to transaction where the requirement applies)

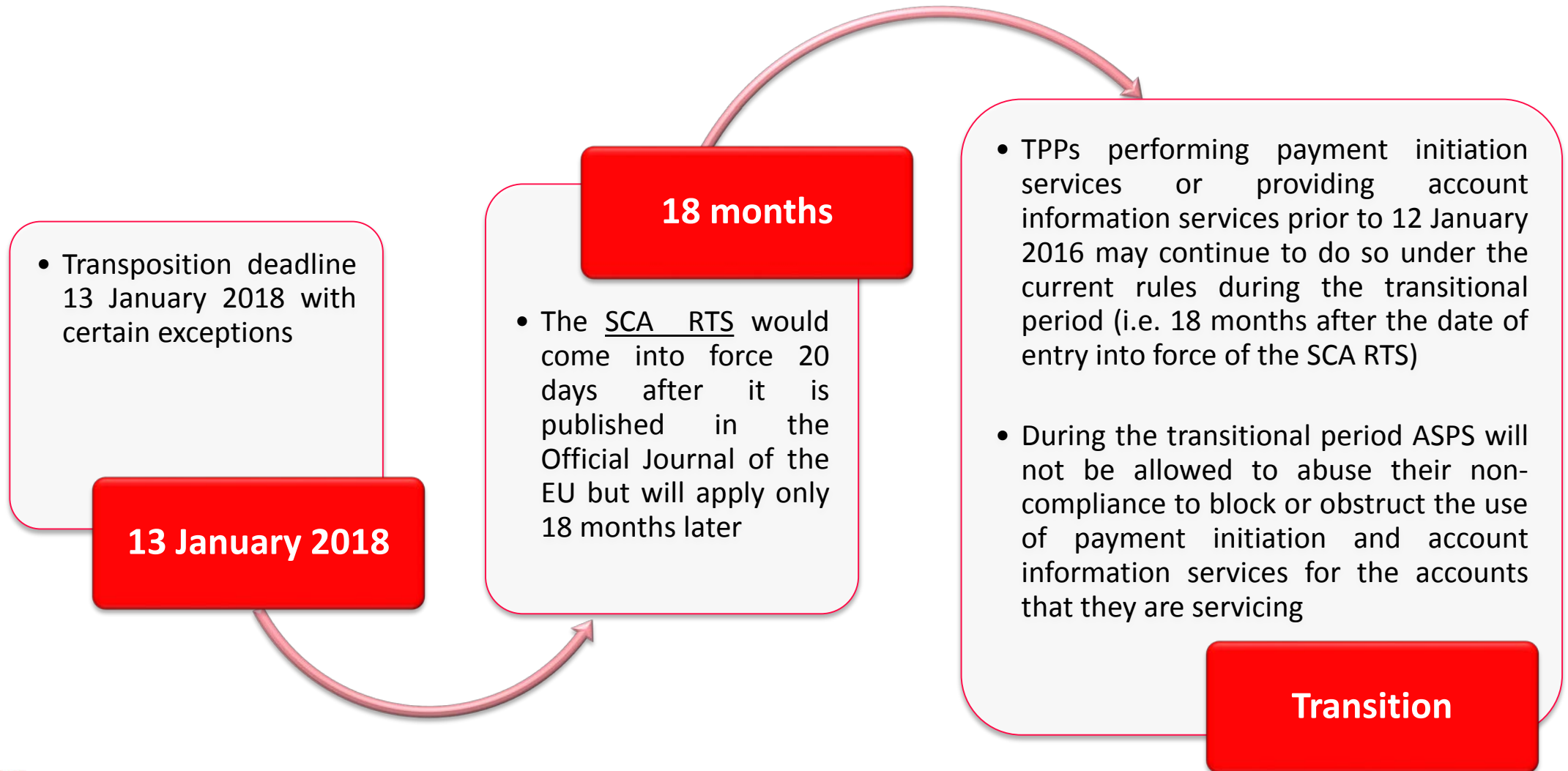


The dedicated interface to offer same level of availability, performance, and contingency measures, as made available to the payment service user

4. Other challenges



5. Transitional measures



6. Looking ahead

Review the existing terms and conditions and operational patterns to determine any potential gaps and align to PSD2

Analyse the terms and conditions applicable in a relationship with TPPs – whilst not ignoring that an agreement with such parties is not necessary; consider perhaps general T&Cs applicable whenever a TPP accesses information made available by the ASPSP

Identify business opportunities and enhanced customer experience options

Work closely with regulators and market stakeholders on technical implementation matters



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

Thank you !

Ileana Glodeanu

Wolf Theiss Romania

WOLF THEISS

Albania - Austria - Bosnia & Herzegovina - Bulgaria - Croatia - Czech Republic - Hungary - Poland - Romania - Serbia - Slovak Republic - Slovenia – Ukraine

ileana.glodeanu@wolftheiss.com



www.aija.org

A case study: Payconiq and PSD II

A case study: Payconiq and PSDII

- Payconiq
 - Introduction
 - Facts
 - How it works
 - Making a transfer
 - Set-up
 - Expansion in Europe
- European Payment Services Directive (PSD II)
 - Facts
 - Scope
 - Obligations relating to payment services
 - Authorisation requirements
- Payconiq under the PSD II

Payconic: Introduction

- [Introduction by Payconiq](#)

<https://vimeo.com/179887991>

Payconiq: some facts

- Established in 2014 in Amsterdam in ING innovation lab
- Current shareholders are ING, KBC and Belfius
- It is currently an independent entity, with seat in Luxembourg
- Supervised by the Commission de Surveillance du Secteur Financier (“CSSF”), the supervisory authority for the financial sector of the Grand Duchy of Luxembourg.

How does it work

- Payconiq facilitates mobile payments for both consumers and retailers by integrating online, on-the-go and peer-to-peer transactions in its payments app.
- No need to enter IBAN numbers to settle payments.
- Online and in-shop payments are executed via QR code or a direct link to the Payconiq app.
- The app enables peer-to-peer payments by linking bank accounts to phone numbers.
- Access to the sender's contact list allows app to link the beneficiary's phone number to its banking details.

Making a transfer

- Step 1: Finding a contact or business on Payconiq through their phone number or through scanning their personal Q-code, or through the list of affiliated businesses
- Step 2: Input of the amount to be transferred
- Step 3: Entering of a pincode
- Transfer will be completed.

Set-up

- For merchants
 - No payment terminal required anymore – clients pay with smartphone
 - Conclusion of a contract with a Payconiq reseller (in Belgium: ING, Belfius and KBC)
 - Payment of € 0,06 per transaction, billed every month
 - The merchant has access to the online merchant portal which shows overview of all transactions
 - Linked to customer loyalty program
- For consumers
 - Downloading the app free of charge
 - Registration:
 - Identification and choice of bank
 - Choice of bank will link the app to either the bank's mobile app or to the bank account that has been input
 - The consumer has access to the online consumer portal

Expansion in Europe

- Currently, over 35,000 shops are actively connected to the system in Belgium
- Rollout is imminent in the Netherlands (backed by ABN AMRO, ASN Bank, ING, Rabobank, SNS and RegioBank)
- In Luxembourg, Payconiq has joined forces with fintech startup Digicash Payments, a mobile payments service offered by a number of banks and currently used by 25% of the local population.
- Customers will be able to use Payconiq for mobile payments right across the Benelux in 2018

European Payment Services Directive (II): Facts

- Directive: the Second European Payment Services Directive (PSD II) published in 2015, replacing the first Directive of 2013.
- Member States have until January 13th 2018 to implement the directive, at which point the provisions become applicable.
- What: legislation that provides legal foundation for an EU single market for payments
- Objectives:
 - Integrated and efficient European payments market
 - Improving level playing field for payment service providers and new market entrants
 - Safe and secure payments
 - Protection of consumers
 - Encouragement of lower prices for payments

PSD (II): Scope

- Differences with PSD I
 - Wider scope, covering new services and players
 - Includes transactions with third countries when only one of the payment service providers is located within the EU (one-leg transactions)
 - Enhanced security measures to make electronic payments safer and more secure
- Scope:
 - Focus on electronic payments
 - Intra-EU payments + one leg transactions
 - Third-party payment service providers
 - **Payment initiation service providers**
 - Service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider
 - Account information service providers
 - Issuers of payment instruments

PSD(II): Obligations relating to payment services

- Blocking of payment instruments: Possibility must be open 24/7 free of charge
- Liability for unauthorised payment transactions
 - Payer:
 - bears losses up to 50 euro
 - Pays no losses from the moment of notification
 - Pays all losses if fraudulent or failed to fulfil his own obligations intentionally or grossly negligently
 - Payment Service provider:
 - bears risk for unauthorized payment transactions if there was no gross negligence
 - Bears risk in case of payer's gross negligence in case no 'strong customer authorisation' has been requested
 - Refunds for authorized transactions:
 - in case of a **direct debit**, payer has unconditional right of refund by Payment Service provider
 - In other situations: when the exact amount of the payment transaction was not specified and if it was higher than the user could expect

PSD (II): Authorisation requirements

- “Strong customer authorisation”
 - an authentication based on the use of two or more elements categorised as
 - knowledge (something only the user knows, e.g. a PIN or password);
 - possession (something only the user possesses, e.g. the card or an authentication code generating device); and
 - inherence (something the user is, e.g. the user of a fingerprint or voice recognition)
 - that are independent, in that the breach of one does not comprise the reliability of the others
 - and is designed in such a way as to protect the confidentiality of the authentication data

Payconiq under the PSD II

- Falls under the scope of a payment service provider: payment initiation services provider
- Important consequences
 - Must fulfil obligations under the PSD II
 - Liable if unauthorized transaction
 - Not liable in cases of strong negligence, as it does require strong customer authorization by requiring
 - Access to the customer's account
 - A PIN code
 - Payer has unconditional right of refund as Payconiq works through direct debit



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

ANTWERP

RODERVELDLAAN 3
B-2600 ANTWERP
T +32 3 287 11 11
F +32 3 287 11 12

BRUSSELS

LOUIZALAAN 235/
AVENUE LOUISE 235
B-1050 BRUSSEL/BRUXELLES
T +32 2 215 97 58
F +32 2 216 50 91

Dieter Veestraeten
dve@astrealaw.be

The logo for astrea, featuring a green circle with a white dot inside, followed by the word "astrea" in a dark grey, lowercase sans-serif font.



www.aija.org

A case study: Social Gifting and E-Shop Payments

1. Social Gifting (Cinema Voucher via Facebook)

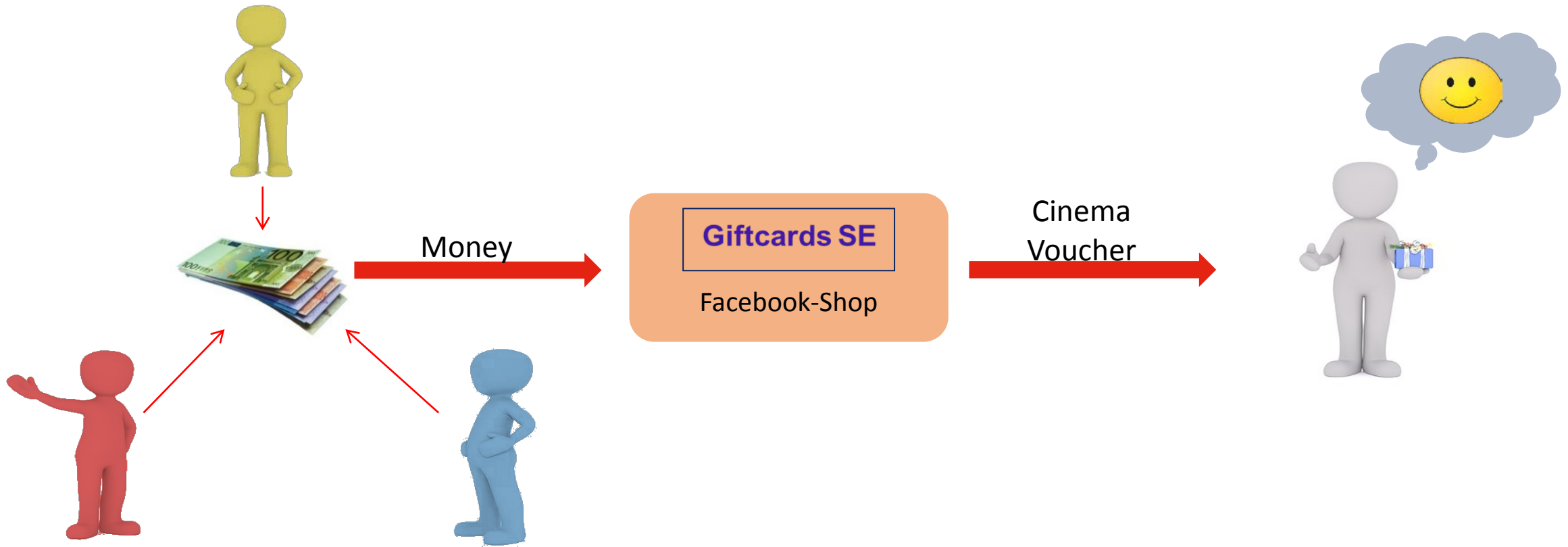
2. E-Shop Payments

1. Social Gifting: Introduction

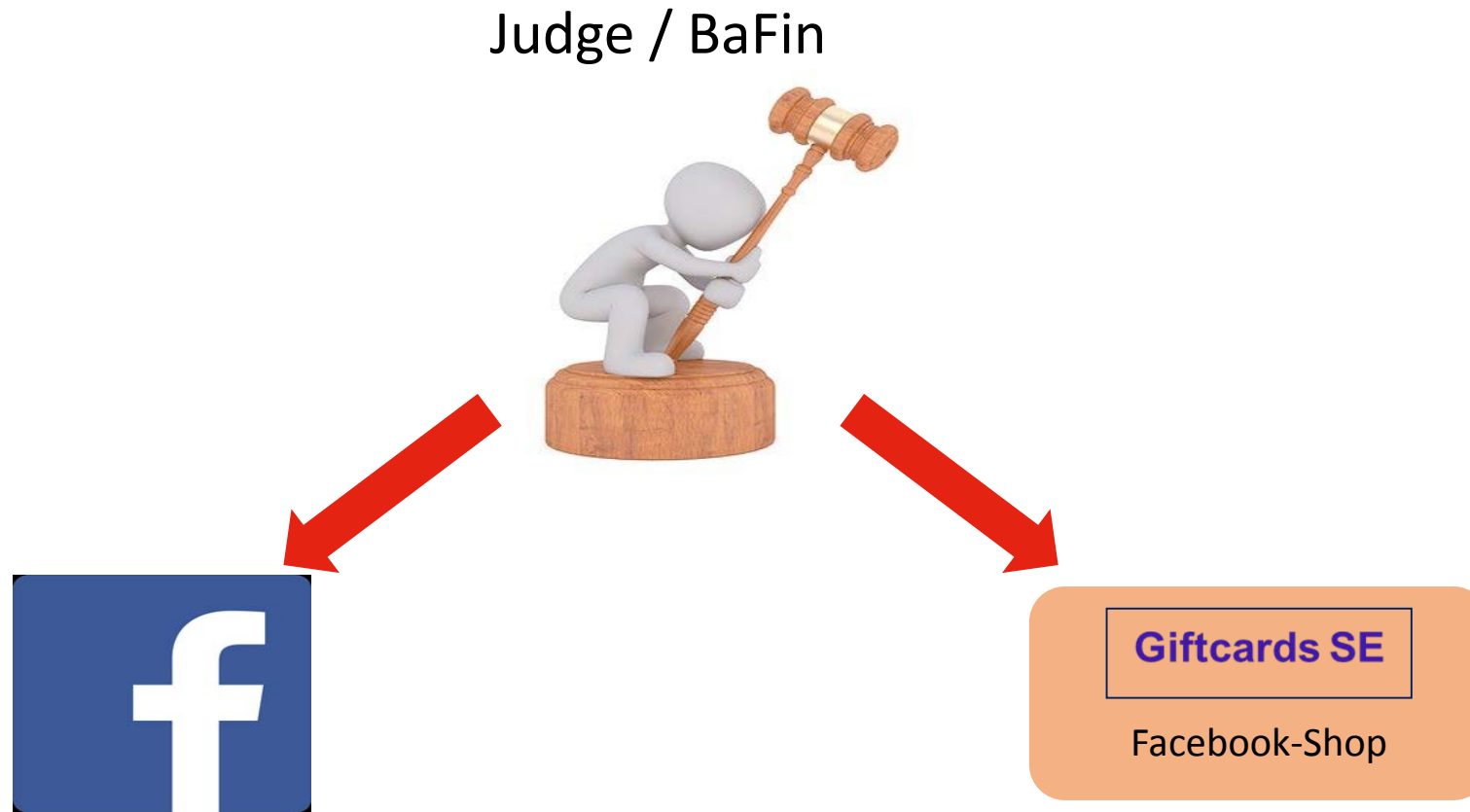
Collect money via
facebook-shop for a
cinema giftcard as a
birthday gift



1. Social Gifting: Introduction



1. Social Gifting: Be wary



1. Social Gifting: Electronic Money

Electronic Money?

“electronic money means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural or legal person other than the electronic money issuer”

**Cinema
Giftcards**



current and future obligation
three cinema chains



1. Social Gifting: Exemptions



ZAG

acquire goods under a commercial agreement with *the issuer*

BaFin: only for networks in a limited range → not applicable for

Giftcards SE

ZAG2018 (Art. 3 k) (i) PSD II)

acquire goods within a limited network of service providers under direct commercial agreement with a *professional issuer*



Will this change the administrative practice?

1. Social Gifting: Exemptions



ZAG

for the acquisition of a limited range of goods or services

BaFin:  not applicable for

Giftcards SE

ZAG2018 (Art. 3 k) (ii) PSD II)

for the acquisition of a **very** limited range of goods or services



stricter regulation = **stricter** administrative practice

1. Social Gifting: Classification of Facebook



Is Facebook a (regulated) third party payment service provider?

Third party payment service provider

account information service, or

payment initiation service

1. Social Gifting: Classification of Facebook



Account information service?

Art. 4 para. 16 PSD II

“means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider”



Facebook does not provide such information

1. Social Gifting: Classification of Facebook



payment initiation service?

Art. 4 para. 15 PSD II:

“means a service to **initiate** a payment order at the request of the payment service user with respect to a payment account held at another payment service provider”



What does „**initiate**“ exactly mean?

1. Social Gifting: Classification of Facebook



„initiate“

- **wording**: could be regarded as „causing“ a transaction (-) →
- **systematical**: a payment-order is required (-) →
- **sense and purpose**: social networks should not regulated by PSD II (-) →

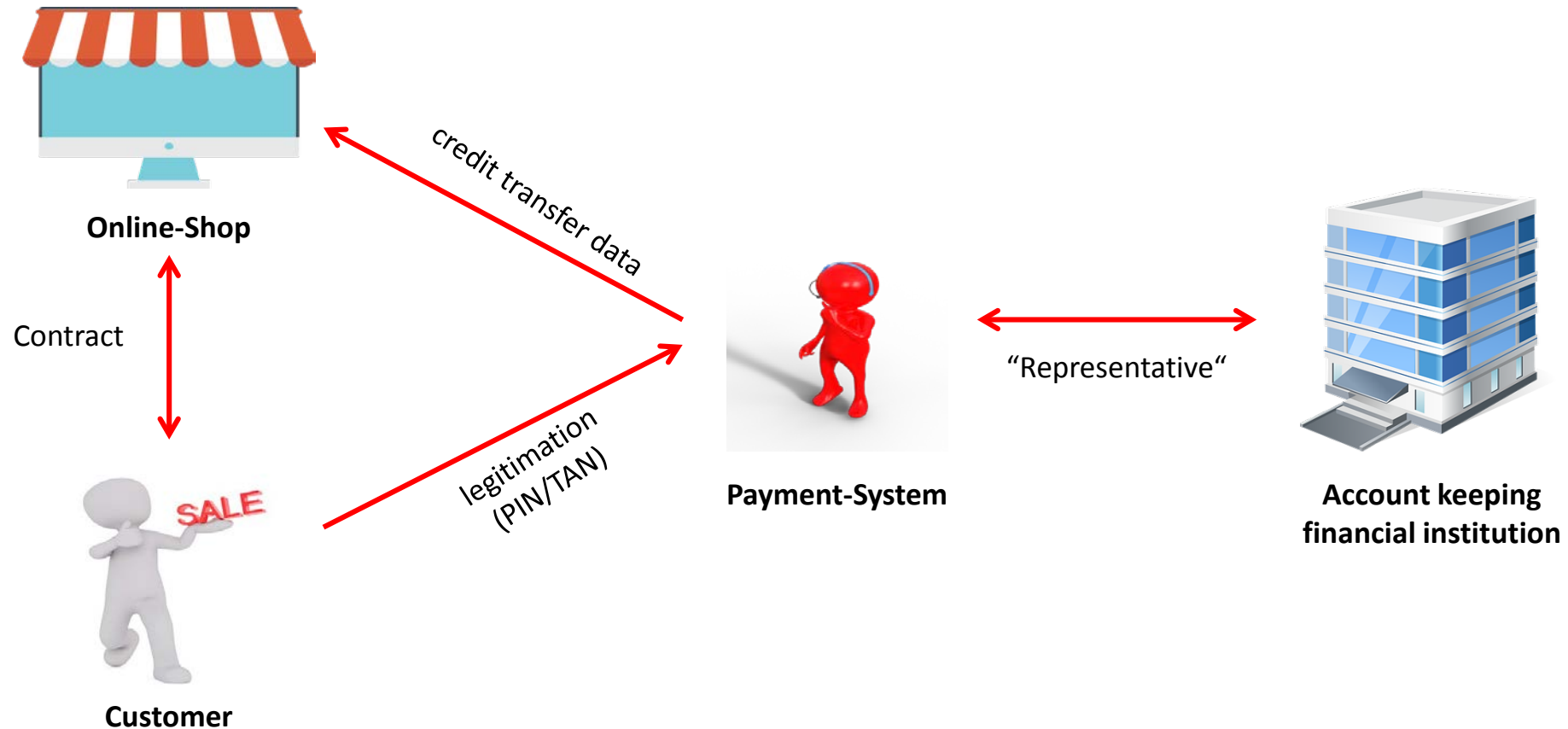
Overview

1. Cinema Voucher via Facebook

2. E-Shop Payments

2. E-Shop Payments: Overview

Situation of “immediate transfer”
(Sofortüberweisungen.de):



2. E-Shop Payments: Federal Supreme Court Judgement

Key messages:

A payment system that forces consumers to enter PIN/TAN online is illegal.

An alternative paying method has to be offered by the e-shop without additional charges.

Federal Supreme Court Judgement (immediate transfer, KZR 39/16)

Impact of PSD II:



Art. 62 sec. 4 PSD II: No separate fees or costs may be charged to payment initiator →
Might solve the cost issue

Payment initiation services are regulated by law and monitored and therefore may collect private data of the consumer; however, it is unclear whether this includes PIN/TAN

- The example shows that mobile payment trends even after PSD II might face weird legal obstacles.
- **To be on the safe side, E-Shops still have to offer at least two free paying methods, when using immediate transfer (Sofortueberweisungen.de) in Germany.**

Dr. Thorsten Kuthe, Lawyer, Partner

- Born 1972 in Leverkusen, Germany
- Admitted to the Bar since 2001

Areas of practise:

- Corporate and Capital Markets
- Corporate Finance
- Venture Capital & Private Equity, Mergers & Acquisitions
- Corporate Restructuring

Languages:

- German and Englisch

Publications (selection):

- „Stellschrauben bei Wandelanleihen“, BondGuide, Ausgabe 21/2016
- „Direktinvestments im Auge des Regulators“, BondGuide Spezial Anleihen 2016
- „Geht das noch? Beteiligungsunternehmen und Asset Manager an der Börse“, GoingPublic, Ausgabe 1/2016 und Die Aktiengesellschaft (AG), Heft 6, 20. März 2016
- „Genussrechte – Auf die Ausgestaltung kommt es an“, BOND MAGAZINE FLASH, Ausgabe Oktober 2015
- „Demnächst für alle Freiverkehrsemittenten: Insiderlisten ante portas“, BondGuide, Ausgabe 17/2015
- „Immobilienfinanzierung über die Crowd“, BondGuide, Ausgabe 11/2015
- „Die Squeeze-out-Hauptversammlung in der Praxis: Ende mit Knalleffekt“, HV-Magazin, Sonderausgabe HV-Recht 2015
- „Aufgepasst, Geschäftsleiterhaftung!“, Unternehmeredition „Steuern & Recht 2014“
- „Die Emissionen von Anleihen und anderen Debt Produkten: Rechtliche Rahmenbedingungen für die Investorenkommunikation“ (essentials) 2014
- Mitherausgeber Szesny/Kuthe, Kapitalmarkt-Compliance 2013
- „Neues zu Börsengängen“, GoingPublic Magazin, Ausgabe 11/2013
- „Die Wahl der richtigen Rechtsform“, VentureCapital Magazin Sonderausgabe „Start-Up 2014“
- „Turnaround mit Anleihen für Emittenten“, Unternehmeredition „Steuern & Recht 2013“
- „Die Bedeutung des Wertpapierprospekts bei der Emission einer Mittelstandsanleihe“, in: Konrad Bösl/Peter Thilo Hasler (Hrsg.) Mittelstandsanleihen, ein Leitfaden für die Praxis, November 2011
- „Start-up übernimmt Start-up. M&A in der Gründungsphase“, VentureCapital Magazin „Tech-Guide 2011“, S. 50-51

Miscellaneous:

- Recommended by JUVE, Legal 500 Kanzleien in Deutschland, Chambers Global and Chambers Europe
- Lecturer in Capital Markets Law at the Hochschule Fresenius
- Member of Advisory Board Düsseldorf Stock Exchange

„Fast, efficient, competent
and dependable.“
(JUVE, client quote on
Dr. Thorsten Kuthe)



Thank you!

Montserrat Guàrdia Güell, *Banco Sabadell Group, Spain*

Ileana Glodeanu, *Wolf Theiss, Romania*

Dieter Veestraeten, *Astrea, Belgium*

Dr. Thorsten Kuthe, *Heuking Kühn Lüer Wojtek, Germany*