

With the support of the
Erasmus+ Programme
of the European Union



BUSINESS LAW COURSE

EUMOL LECTURE 2

Gabriella Gimigliano, Ph.D.,
<https://twitter.com/EumolM>
<http://www.eumol.com>



UNIVERSITÀ
DI SIENA
1240

BUSINESS LAW COURSE

EUMOL LECTURE 2

Harmonisation Process for Payments

With the support of the
Erasmus+ Programme
of the European Union



Sources of Law. Art. 63 TFEU.



Sources of Law. Art. 57 TFEU.



Harmonisation.

Sources of Law

Primary Rules: At 63(2) and 57 TFEU, 4(2) (a) TFEU

Level 1: Secondary Rules. Soft and Binding Rules. Legal Basis: art. 114 TFEU

Level 2: EBA Technical Implementing Acts for Payment Institutions and Electronic Money Institutions

Level 3: EBA Guidelines for Crypto-Assets

Level 4. Enforcement

Secondary Rules.

2007 Payment Services Directive (PSD1)

- A close list of payment services
- The provision of payment services as a regulated activity
- A close list of PSPs (Payment Services Providers)
- Authorisation = principle of single licence and home country control

Secondary Rules.

2015 Payment Services Directive (PSD2)

What does PSD2 have in common with the PSD1?

Which are the main regulatory differences between PSD1 and PSD2?

BUSINESS LAW COURSE

EUMOL LECTURE 2

PAYMENT SERVICES CONTRACT

With the support of the
Erasmus+ Programme
of the European Union



Payment Services Contract.

Art. 4. PD2. Definitions.

Single payment transaction contract

Framework contract

Payment Account

2015 Payment Services Directive (PSD2).

Payment Services Contracts

- **framework contract** means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
- **payment account** means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

Payment Services Contract.

PSD2 Annex: Payment Services

Payment services. Close list.

Business activities

Regulated activity

Payment Services Contracts.

Object: payment services

- 1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.*
- 2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a **payment account**.*
- 3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:*
 - (a) execution of **direct debits**, including one-off direct debits;*
 - (b) execution of payment transactions through a payment card or a similar device;*
 - (c) execution of **credit transfers**, including standing orders.*

Payment Services Contracts.

Object: payment services

*4. Execution of **payment transactions** where the funds are covered by a credit line for a payment service user:*

*(a) execution of **direct debits**, including one-off direct debits;*

(b) execution of payment transactions through a payment card or a similar device;

*(c) execution of **credit transfers**, including standing orders.*

5. Issuing of payment instruments and/or acquiring of payment transactions.

*6. **Money remittance.***

Payment Services Contracts.

Object: payment services

7. Payment initiation services. 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 (art. 4, n. 15)

8. Account information services. 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 (art. 4, n. 15)

Payment Services Contracts. Key concepts.

- **payment transaction**
- **remote payment transaction**
- **Funds**

Payment Services Contract.

Art. 4. PD2. Definitions.

1. We use a payment instrument to issue

2. A payment order/giving instructions

3. For the execution of a payment transaction

Payment Services Contract.

Art. 4. PD2. Definitions.

Payment transactions:

- Placing funds, Withdrawing funds, Transferring funds

Payment instruments:

- Credit transfer; direct debits; debit or credit card

Payment Services Contract.

PSD2 Annex: Payment Services

Withdrawing funds

Placing funds

Payment Services Contract.

PSD2 Annex: Payment Services

Transfers of funds

Transfers of funds with
credit extension

Payment Services Contract.

PSD2 Annex: Payment Services

acquiring of payment transactions

issuing of payment instruments

Payment Services Contract.

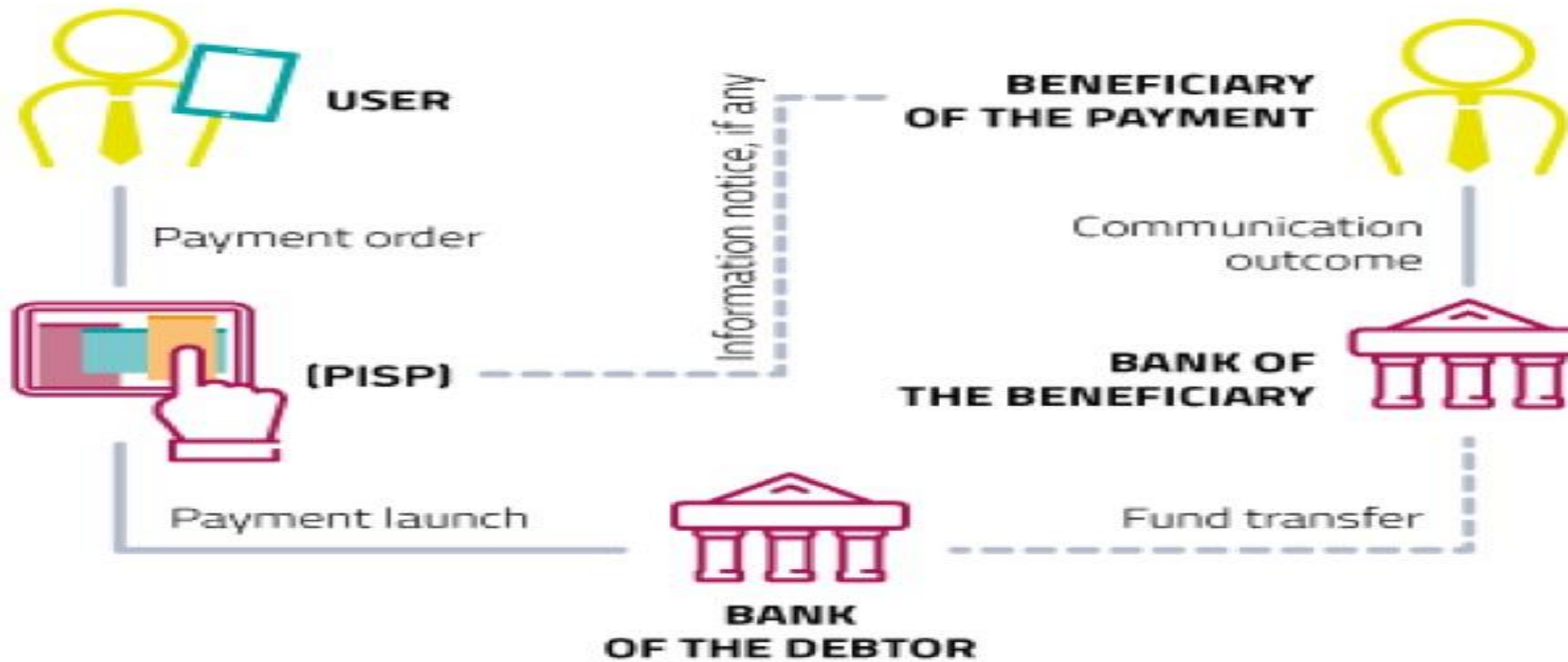
PSD2 Annex: Payment Services



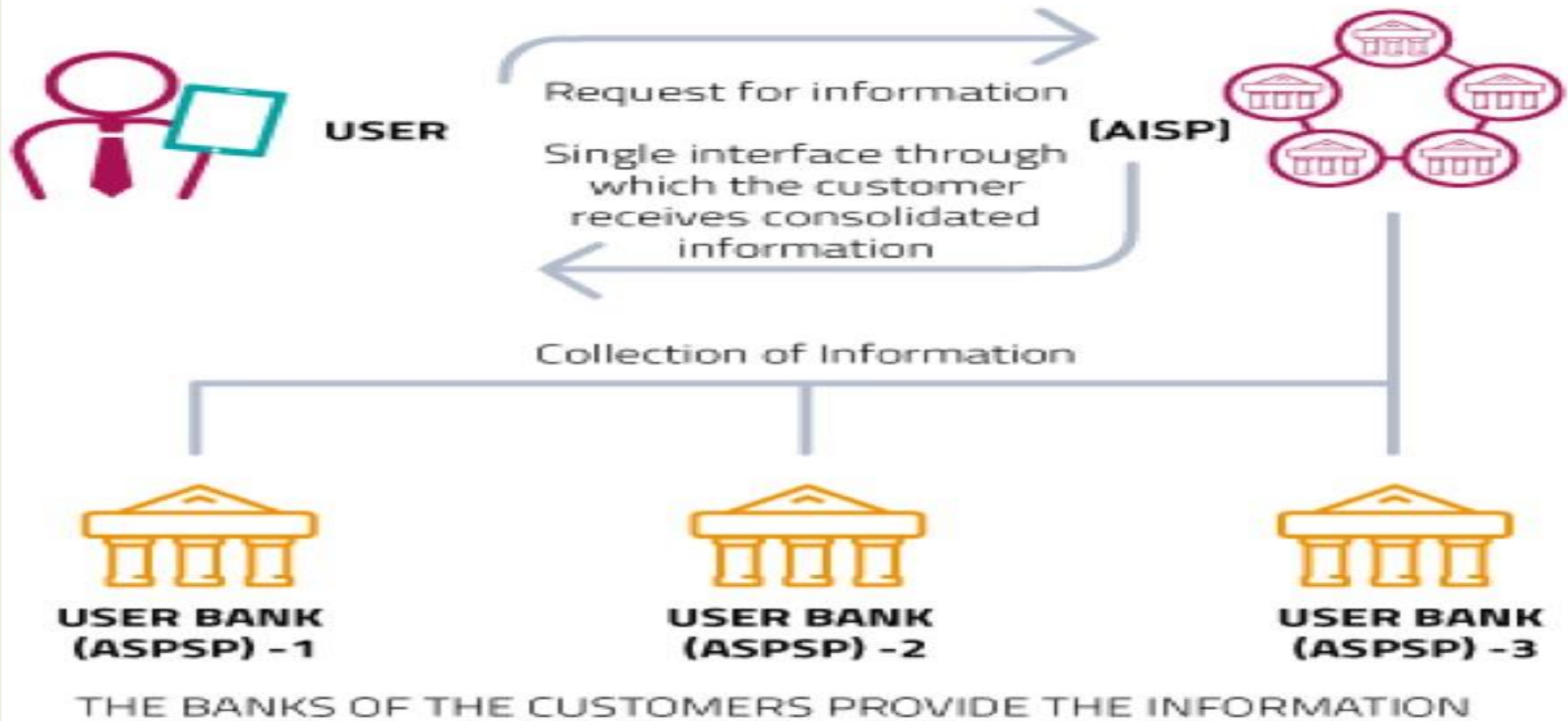
Exercise: Please, give a name for each example

- I am sending 100 euros to my brother in Greece, because He was on holiday and was short of money. what is it?
- I am an Italian national, but I study in Germany. This is the reason why I hold two bank account, one in Italy and another in Germany. Before coming back home on holiday, I send to my Italian bank account 500 euros. What is it?
- When I came in Siena, I decided to rent an apartment, so I told my bank to debit on my payment account the monthly utilities fees
- After rending the apartment, I went to the shop to buy something to eat and I paied by credit card
- Debit card, credit card, credit transfer, direct debit: what are they?

PAYMENT INITIATION SERVICES (PIS)



ACCOUNT INFORMATION SERVICES (AIS)



Payment Services Contract.

Services with transfers of data

Payment Initiation Service (PIS)

Account Information Service (AIS)

BUSINESS LAW COURSE

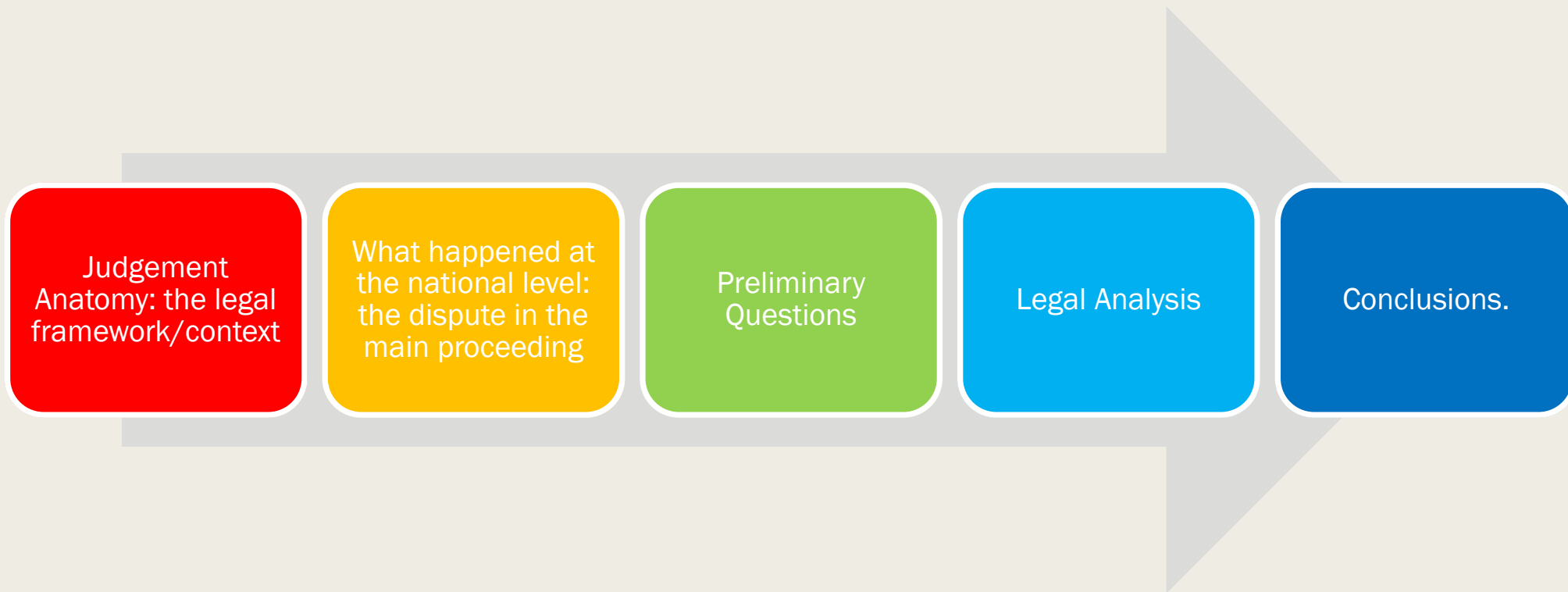
EUMOL LECTURE 2

ING-BANK CASE

With the support of the
Erasmus+ Programme
of the European Union



ECJ Preliminary Rulings: Structure



ECJ Preliminary Ruling.

ING-BANK CASE

Court of Justice 4 October 2018

Preliminary Ruling, art. 4, n. 14, PSD

Federal Chamber W&E vs ING-DiBa
Direktbank

ING-BANK CASE.

Main regulatory concern.

Article 4, n. 14, PSD directive

'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions”

ING-DiBa case law.

The dispute in the main proceedings

What does the Federal Chamber of Workers and Employees argue?

Which is the main point of ING-DiBa Direktbank Austria?

ING-DiBa case law.

Preliminary Question

The referring court:

‘Must Article 4(14) of [the Payment Services Directive] be interpreted as meaning that an online savings account with which a customer (without notice and without any particular involvement of the bank) may by way of telebanking make deposits into and withdrawals from a reference account (a current account in Austria) held in his name is also to be included within the term “payment account” and thus falls within the scope of that directive?’

ING-DiBa Case Law.

Legal Context

EU Law Level

- (2007) PSD1 directive; PAD directive

Austrian Law Level

- Domestic law implementing EU law rules

ING-DiBa Case Law.

EU Legal Context

Concept of payment services

Concept of payment transaction

Concept of payment account

ING-DiBa Case Law.

National Legal Framework

Law of payment services (the ZaDiG)

Law on banking

Payment vs savings account

ING-DiBa Case Law.

Legal Analysis

Main features/functions of the «payment account»?

Does ING savings account work in the same way?

What are the main steps of the legal reasoning of the Court?

ING-DiBa Case Law.

Conclusions

- Can savings account provided by ING-DiBa deemed as a payment account?
- **The ECJ clarifies the PSD rules' meaning, while the referring court (i.e., the national court) ascertain whether the savings account at issue complies with the legal criteria (laid down by the ECJ)**

BUSINESS LAW COURSE

EUMOL LECTURE 2

NEGATIVE SCOPE

With the support of the
Erasmus+ Programme
of the European Union



Art. 3 PSD2.

NEGATIVE SCOPE (Exclusions).

When the business activity falls beyond the PSD2 scope

- Despite it is a payment service
- Because it is an activity technically supporting to the transfer of funds or data
- Because it is operated only between financial institutions or within the same group of undertakings
- Because it is not the main business activity
- Because it is operated for non-for profit objectives