

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



BUSINESS LAW COURSE

EUMOL LECTURE 6

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



UNIVERSITÀ
DI SIENA
1240

Sample Question. Please, form groups of 2/3 (persons), discuss and schematize a workable answer.

You are working as the regulatory adviser of a firm, “Boogie”, based in Rome, operating as large-scale retailer in Europe. Boogie is planning to enter the market for payment services in the European Union. The managing directors of Boogie asked you for a detailed analysis on the following aspects:

- Looking into the harmonising rules, which are the advantages and disadvantages of entering the common market for payment?
- If your answer is «no», please, give arguments based on what you have studied until now.
- If the answer is “yes”, which type of authorisation is the right one for Boogie?
- In the end, once entered the market, which would be the legal duties and obligations to fulfil (for retaining the authorisation and in the contracting relationships)?

Your answer must be based on the analysis of the European framework for payments covering all the rules and regulations you have studied until now.

How do you study?



How do you study?



Crossing different concepts and law rules



Giving legal arguments to support a statement, an opinion, a conclusion



Mid-terms 2 and 3.

How about?

- Mid-term 2 = one-person or two-person activity; asking a «research question» during the guest lectures (1 question for each webinar)
- Mid-term 3 = one-person or two-person activity organized as a oral power point presentations in the week between 29 November and 3 December; the PPP is based on the study of 4 out of 9 guest lecturers' papers (the students may make their own choice)
- If you pass the three mid-terms and then you want to take the business law exam (based on programme B) during the regular exam session, you can take the written exam according to the same study materials. If you want to take business law exam based on programme B in the regular exam session without taking mid-terms before, you have to study 9 out of 9 guest lecturers' papers.

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



BUSINESS LAW COURSE

EUMOL LECTURE 6

Rights and Obligations for the
provision of payment services.



UNIVERSITÀ
DI SIENA
1240

Title IV PSD2. Whenever there is payment service to provide, there are

The PSU's rights and obligations

The PSP's rights and obligations

Title IV PSD2. The PSU's rights and obligations.

Data protection: main sources of EU law

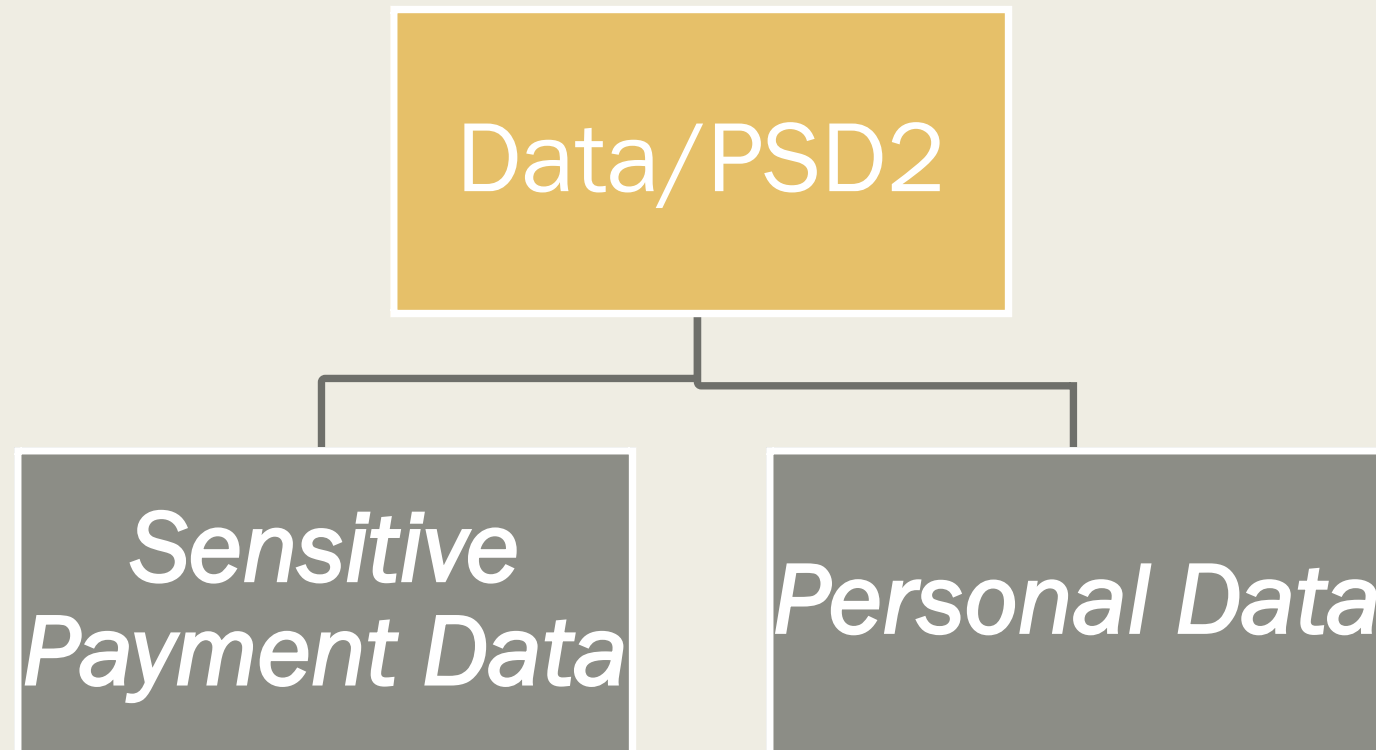


PSD2



GDPR

Title IV PSD2. The PSU's rights and obligations. Right to Data protection.



Title IV PSD2. The PSU's rights and obligations. Data protection.

Processing of personal data: what does this mean?

collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Title IV PSD2. The PSU and Data protection.

A couple of research questions.

- The PSD2 aims to improve the consumer's control on personal data. Therefore, the explicit consent to the process of personal data becomes a contract requirement and it must be «freely given, specific, informed, and unambiguous». How to comply in practice with this requirements? The «data subjects» (the natural persons whose data are processed) might find difficulties in actually realizing complex data processing practices.
- If the **purpose limitation principle (data processed for a precise purpose)**, which is applied also to the processing of personal data in the payment transactions, to what extent might be put under pressure for specified purposes such as marketing purposes?

Title IV PSD2. PSU and the right to funds protection.

Funds protection when:

- It is provided a payment service executing a payment transaction using a payment account;
- The payment service provider is other than a bank (namely, it is an Electronic Money Institution or a Payment Institution)
- Therefore, the payment account holder does not enjoy a deposit-guarantee scheme in case of PSP's insolvency

Title IV PSD2. PSU and the right to funds protection.

Aim

- segregating the funds of one payment account holder from the funds of another payment account holder;
- Segregating the funds of the payment account holders from the PSP's own funds in case of insolvency.

Title IV PSD2. PSU and the right to funds protection.

Financial Segregation

Or

Insurance policy

Title III PSD2. The PSU and the Right to be properly informed.

Contract transparency conditions

Prior and after a contract is made

- Contract for single payment transactions and framework contracts

Title III PSD2. The PSU and the right to be properly informed. Research questions.

- The PSP must provide (or make available) the prospective customer with the information set in the Title III prior a contract is made. If the contract is made, the terms and conditions applied to must comply with the preliminary information. What are the legal consequences if the contract terms and conditions are different from the contents of preliminary information? Is the contract invalid and null? Does it apply a replacement mechanism?

Title III PSD2. The PSU and the right to be properly informed. Scope.

Where the PSP is located

In which currency the payment transaction is denominated

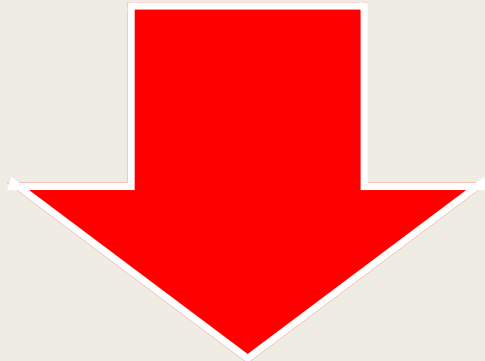
The **Payment Service Consumer** and the right to be properly informed.

- When the payment service users are consumers, they enjoys a stonger legal protection because:
- The PSD2 provisions on the information requirements are binding for the Member States and for the contracting parties.
- The 2014 Payment Account Directive provides for a right to comparison website made avaiable by the Member States for free.

The **Payment Service Consumer** and the right to be properly informed.



Make a payment service user properly informed



Unfair Commercial Practices

The Payment Service Consumer and the Payment Accounts

The right to access the payment system

- Payment Account with Basic features

The right to switch from a PSP to another

- Switching on a cross-border basis