



New Payment Stakeholders Overview



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Foreword

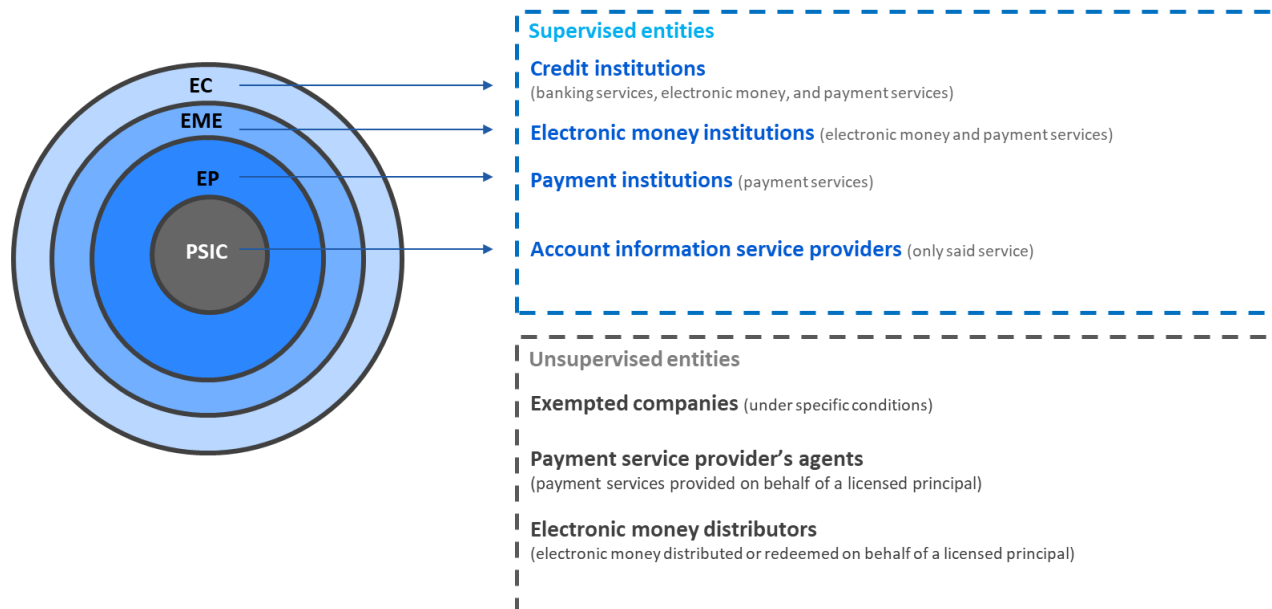
In order to remove obstacles to an efficient European payment services market that ensures the same rules across the EU and across a wide range of payment services, the European Union adopted in the late 2000s two fundamental directives, Directive/2009/110/EC on electronic money (EMD2, which replaces Directive 2000/4) "EMD1") and Directive 2007/64/EC on payment services (PSD1).

The effect of these two directives was, in particular, to allow for two new types of market players to provide payment services alongside credit institutions: electronic money institutions and payment institutions.

These two texts have thus paved the way for an increased level of competition in the payments market, accompanying the rapid growth of electronic commerce and the digitalisation of services. The legal framework for payment services was then complemented by Directive (EU) 2015/2366 (PSD2) to take better account of technical innovations and risks associated with these activities, by strengthening payment security in the era of electronic payment, and by providing the framework for two new payment services related to "open banking".

The purpose of this study is to provide an overview of these non-bank players in France in the payments market.

Figure 1. Supervised and unsupervised entities



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1. Directly supervised entities in the field of payment and electronic money

Among the supervised entities are originally **credit institutions** (banks), which can provide banking services, manage electronic money and offer payment services. Banks, that also have the capacity to grant credit and receive repayable funds from the public¹, are subject to the most demanding capital and supervisory regime.

In the general context of developments in electronic commerce and in order to remove legal barriers to entry, the European legislator has introduced a regulatory framework enabling new players to provide payment services without collecting repayable funds from the public or providing credit unless said credit is strictly in connection with the execution of a payment² transaction:

- **electronic money institutions** (EMIs) introduced by Directive 2009/110/EC on electronic money ("EMD2"), which may issue and manage electronic money and provide payment services;
- **payment institutions** (PIs) introduced by PSD1 in 2007, which can only provide payment services;
- and finally **account information service providers** (AISPs), which were introduced by PSD2 in 2018, can only provide the service of collecting information on one or more payment accounts (e.g. aggregating payment accounts to analyse a firm's cash flow etc.).

Different requirements are imposed according to these statutes and depending on the risks linked to the operations these players can perform, with a core set of common requirements regarding the security of the services they are authorised to provide and the protection of client funds (see Appendix 2 - Requirements according to the statutes).

The security of payment services offered by these new players is supervised by the Banque de France, which issues an opinion on this aspect at the time of the licensing or the exemption thereof of PIs, EMIs or AISPs.

Clients' funds received by electronic money and payment institutions must be subject to specific protection, either in the form of a segregated account held at a credit³ institution, or in the form of insurance coverage or a comparable guarantee.

¹ In accordance with Article L. 312-2 of the Monetary and Financial Code, "*funds which a person collects from a third party, in particular in the form of deposits, shall be deemed to be repayable from the public with the right to dispose of them for his own account but with the obligation for him to return them.*"

² Article L. 314-1 II-4° of the Monetary and Financial Code (see also Appendix I to this note)

³ Institutions shall place the funds received on behalf of the users in one or more accounts opened specifically for this purpose, with a credit institution, separately from any other account used to hold funds belonging to the institution. It should be noted that some companies are finding it difficult to find a credit institution that accepts such a segregated account. These issues will be discussed during the review of PSD2.

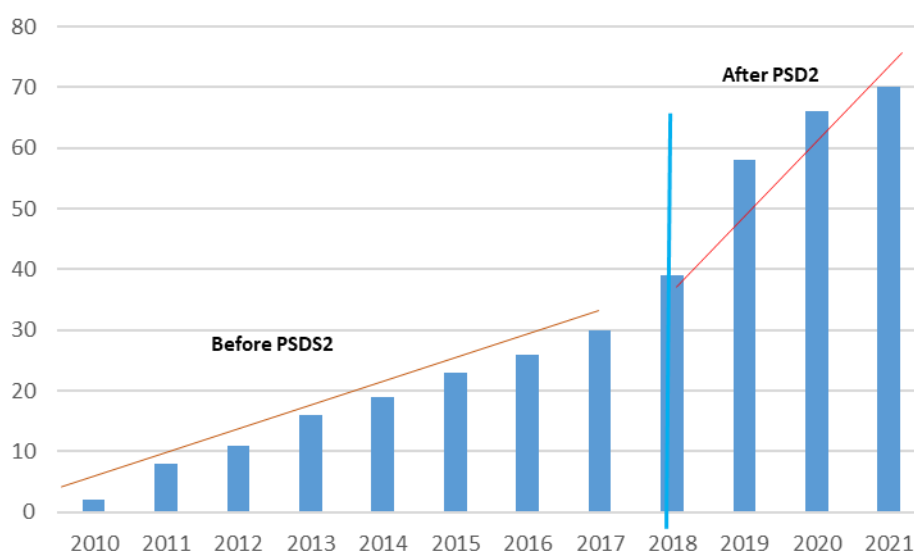
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The creation of these new statutes, together with the development of e-commerce, enabled *Fintechs* to build up on the basis of their competitive advantages (see Part 1 c) of this note).

The number of licenses and authorisations issued by the ACPR to these new payment participants has increased significantly in recent years (see Figure 2 below).

More than half of the existing EMIs and PIs were authorised after 2018, i.e. 32 out of the 62 institutions in operation⁴. This shows the degree of enthusiasm for new payment services introduced by PSD2 (linked to open banking), and the acceleration of change in the financial landscape in recent years.

Figure 2. ACPR number of EMIs, PIs and AISPs in France



To expand their business and reach critical size, new players in the French payment industry are increasingly exporting their services abroad.

In 2021, for example, 43 electronic money and payment institutions and 4 French AISPs reported at least one passport within the EEA; each of them addresses 19 countries⁵ on average. In 2021, almost all of these declarations (99%) concerned the freedom to provide services (FPS). However, these passports are not always active, as some declarations are made in anticipation of future expansion of their business. The cross-border activities are often minimal compared to France.

⁴ On the one hand, we excluded from the study 16 financing companies and payment institutions whose payment activity was very marginal. On the other hand, AISPs are not counted here as this status only became available in 2018.

⁵ The principles of freedom to provide services and right of establishment within the EU internal market allow actors authorised and supervised in another country of the European Economic Area (EEA) to exercise in France either through the freedom to provide services (FPS) or through the right of establishment (ROE). In the first case, the provider provides services remotely from the home country. In the second, it has a local presence (branch) or a local representation through an agent or a distributor.

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2. Entities not directly supervised by the ACPR in the field of payment and electronic money

- *Market participants in payment services*

The different payment⁶ service providers (PSPs) supervised by the ACPR (or by the ECB where applicable) are able to mandate **agents** to provide payment services on their behalf under the cover of their license. The **latter are not subject to the supervision of the ACPR** but fall within the scope of their principal's internal control mechanism because the principal bears ultimate responsibility for the services offered through its agents. For the information of the public, the ACPR registers these agents, which must be notified by the principal, in the public register of financial firms (REGAFI).

The status of agent of PSP only allows them to offer payment services, subject to both the mandate conferred by the principal and the limits imposed by the license granted to the principal. For example, a payment institution's agent is not authorised under its agent mandate to market products distributed by banks -such as savings contracts- since the payment institution is not itself authorised for such products.

Box 1: New uses of agent status and their risks

Agent status enabled institutions to develop new methods of product distribution, notably through the establishment of networks of large physical sales points outside the banking agency. For example, one payment institution opens payment accounts through a network of tobacconists, booksellers and lottery agencies.

This status is also used in white label solutions that are based on the back-end services offered by the licensed institution. The distribution model is reversed: while the agent develops a new service, the licensed institution is legally responsible for its development and bears the prudential and organisational constraints of the license, all the while being responsible for the transactions with regard to the customers, with whom it has signed a framework payment services contract.

Lastly, the increase in networks of agents and the development of the "reverse agent" model also resulted in the emergence of "multi-mandated" agents, the same agent being able to operate under mandates given by several institutions. The classification of the multi-agent type currently follows two main groups: "physical point-of-sale" agents that belong to several major networks

⁶ L. 521-1, I of the Monetary and Financial Code: "Payment service providers are payment institutions, electronic money institutions, credit institutions and account information service providers"

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(e.g. networks of tobacconists) and "reversed agents" that multiply the number of mandates they hold to extend their services (by way of illustration, the ACPR noticed the case of one agent appointed by three different institutions).

These new uses of the agent status raise a number of issues, for example in terms of risk management - notably of ML-FT by the principal or the clarity of the business relationship for customers.

The reverse agent case thus translates into particular risks in the area of ML-FT: in these situations, it is in practice the agent who develops products itself, defines a business policy and builds its own IT solutions, often using subcontractors itself. It is essential that the licensed institution maintain full control of the operations of its agent, including the identification and assessment of the risks of ML-FT, in order to take appropriate measures to manage and mitigate those risks, in accordance with the regulations⁷. This also means that the licensed institution must intervene at the product design stage to ensure that the due diligence procedures (both for automated tools and for the number and quality of human resources) are adapted to the applicable requirements even before the products are marketed.

Risks are further increased and supervision is complicated in the case of multi-mandated agents, sometimes by institutions from different countries. An agent may offer payment services from different PSPs to a single client or even offer other financial services as intermediary of other financial organisations.

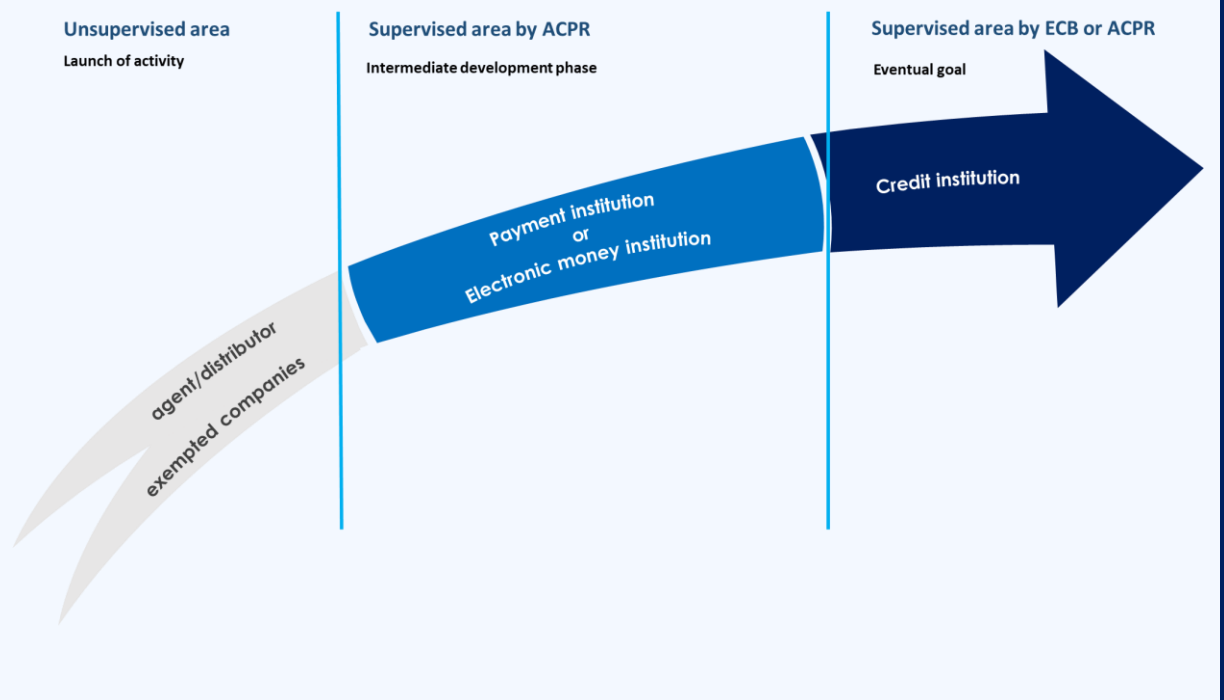
In this context, it should be recalled that the current regulation requires agents to mention the names of the principals when entering into the relationship so that they can be clearly identified by the users, and that, regardless of the contractual relationship between the agent and the user, a framework payment services contract has to be concluded between the principal PSP and the user. However, the agent may be empowered to conclude the contract on behalf of the PSP. The ACPR also makes sure, at the time of registration, that the principal has properly planned to include the payment services activity conducted via the agent within the scope of its own internal control. Lastly, the ACPR also conducts off-site and on-site inspections to ensure that AML-CFT vigilance procedures are properly adapted. Recent controls have shown that this is not always the case, leading to uncontrolled risks and the need for the principal to suspend or restrict existing client operations.

⁷ Art. 2 of the Ministry Decree of January 6th 2021

Box 2: Continuity of the authorisation process

New players are increasingly using the various statutes mentioned here above in a sequence, forming an "authorisation funnel". The exemption - in a classic way - but also increasingly the agent status (see Box 1) is being used by players as preparatory stages for licenses as a payment institution or as an electronic money institution. Credit institution status is also a possible outcome at a later stage and, although there is still no example in France that illustrates this point⁸, several applications are under consideration. Emerging market participants see these new statutes as a way to test, under the auspices of an authorised institution, the market-fit of their product before they apply for a license themselves (see Box 1).

Figure 3. Continuity of the statutes and supervised areas



In the light of the new methods of distribution, the increase in the number of licenses issued by the ACPR in the field of payment automatically generated an increase in agent registrations. At the end of 2021, the ACPR registered 11,092 agents (of which 166 using the "reverse" distribution model described in the box above). The annual rate of increase in registered agents has more than doubled between 2017 (1,259 registered units) and 2018 (2,714 registered units), to stabilise at these levels since then (2,140 in 2019 and 2,282 in 2020).

⁸ For example, a European company offering online accounts for individuals was licensed as an electronic money institution before becoming a credit institution in 2020.

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- **Market players in charge of electronic money distribution**

Electronic money institutions supervised by the ACPR may appoint natural or legal persons to distribute electronic money in their name and for their account. The latter may bring the electronic money into circulation and redeem it but is not allowed to issue it. They are within the scope of the regulatory provisions relating to outsourcing and internal control of the principal.

Unlike the agents mentioned here above, these electronic money distributors are not registered by the ACPR and do not appear in the public register of financial agents (REGAFI).

- **Market players that are exempted from licensing**

At the fringe of the activities supervised by the ACPR, companies can offer payment services and issue electronic money, without obtaining a specific license, within the limits set by law⁹ and specified in ACPR's Position 2017-P-01¹⁰.

Those **exempt from authorisation** may provide payment services for the acquisition of goods or services¹¹ in France provided that the means of payment are accepted only within the premises of the exempted company - or in a limited network of persons accepting such payment - or that such means enable the acquisition of only a limited range of goods or services. For example, a carpooling company has this status when it comes to collecting payments for drivers.

In addition, subject to certain thresholds¹² for micro-payment transactions on invoices, a network or electronic communication service provider (telephone operator) may also provide payment services and issue electronic money for the purchase of digital content, the collection of gifts and the purchase of electronic tickets (e.g. parking spaces) subject to an exemption from authorisation.

Following the expansion of marketplaces, the number of companies that are exempt from licensing rose sharply in recent years to reach 80 in 2021¹³.

⁹ Art. L. 521-3 and L. 525-5 of the Monetary and Financial Code

¹⁰ <https://acpr.banque-france.fr/sites/default/files/media/2017/10/26/201710-position-2017-p-01-de-l-acp.pdf>

¹¹ Thus, it excludes donation platforms and purely financial transactions from the scope of the exemption.

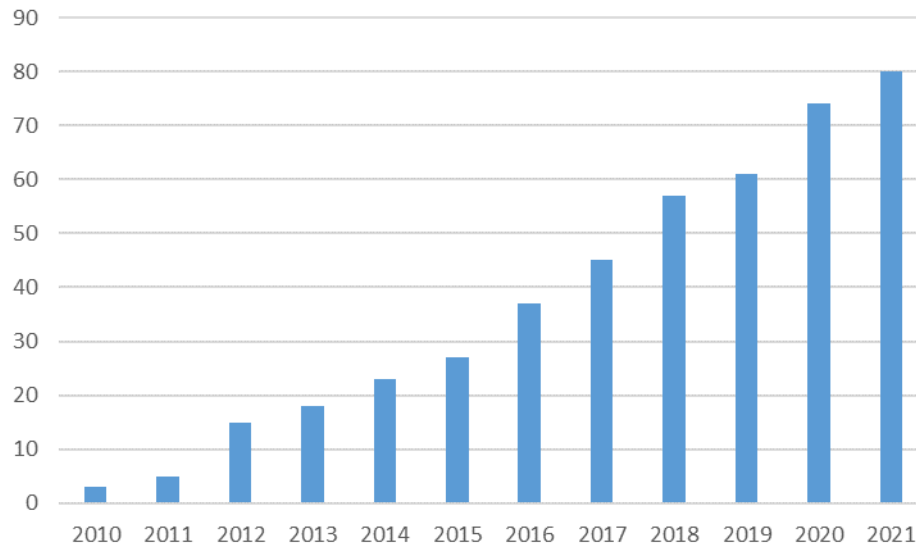
¹² See Article L. 521-3-1 of the Monetary and Financial Code and Article L. 525-6-1 of the same Code.

¹³ 16 entities exempted by the ACPR are no longer operating.

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Figure 4. Number of companies exempted by the ACPR



It should be noted that the exemptions granted are not only limited to small market players. The observations of the French market show that exempted companies may process volumes that are sometimes higher than those of fully licensed institutions. For example, a French company operating a marketplace in the field of do-it-yourself products and some fuel cards issuers generate volumes of more than €1 billion per year. By way of comparison, some small payment institutions were operating at six times lower amounts in 2020 even though they must comply with all the prudential and security rules that the companies mentioned above are exempted from¹⁴.

Companies exempt from licensing are still subject to a reporting obligation¹⁵ and must provide ACPR an annual update of their notification of exemption, which allows ACPR to ensure that conditions to their exemption are met.

- ***Market players holding a foreign license and using passporting rights***

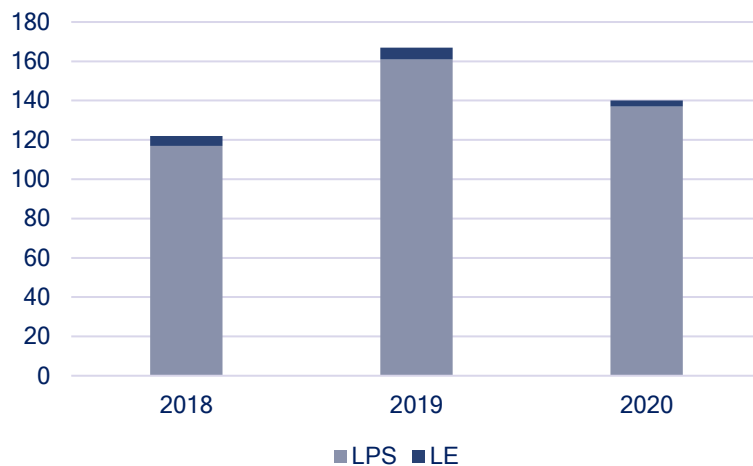
At the end of 2021, 172 electronic money institutions and 282 foreign payment institutions declared that they provided services on the French territory, of which 97% were in FPS, i.e. without physical presence on the territory. **In recent years, foreign competition has substantially strengthened (see table below).**

¹⁴ This was recognised by the European legislator, which states in recital 13 of PSD2 that "[...] payment activities to which the limited network exclusion applies often comprise significant payment volumes and values and give consumers access to hundreds or thousands of different products and services".

¹⁵ Affects companies using the exemption in Article L. 521-3 CMF and the total value of payment transactions executed in the preceding 12 months exceeds EUR 1 million

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Figure 5. Flow of new EPIs, EMIs and AISPs declaring to have operations in France under the cover of the "passporting rights"



Although reporting formalities are imposed on these market players when they wish to operate in France, the ACPR does not supervise FPS players and therefore does not have information on the volume of their activities, including for significant entities.

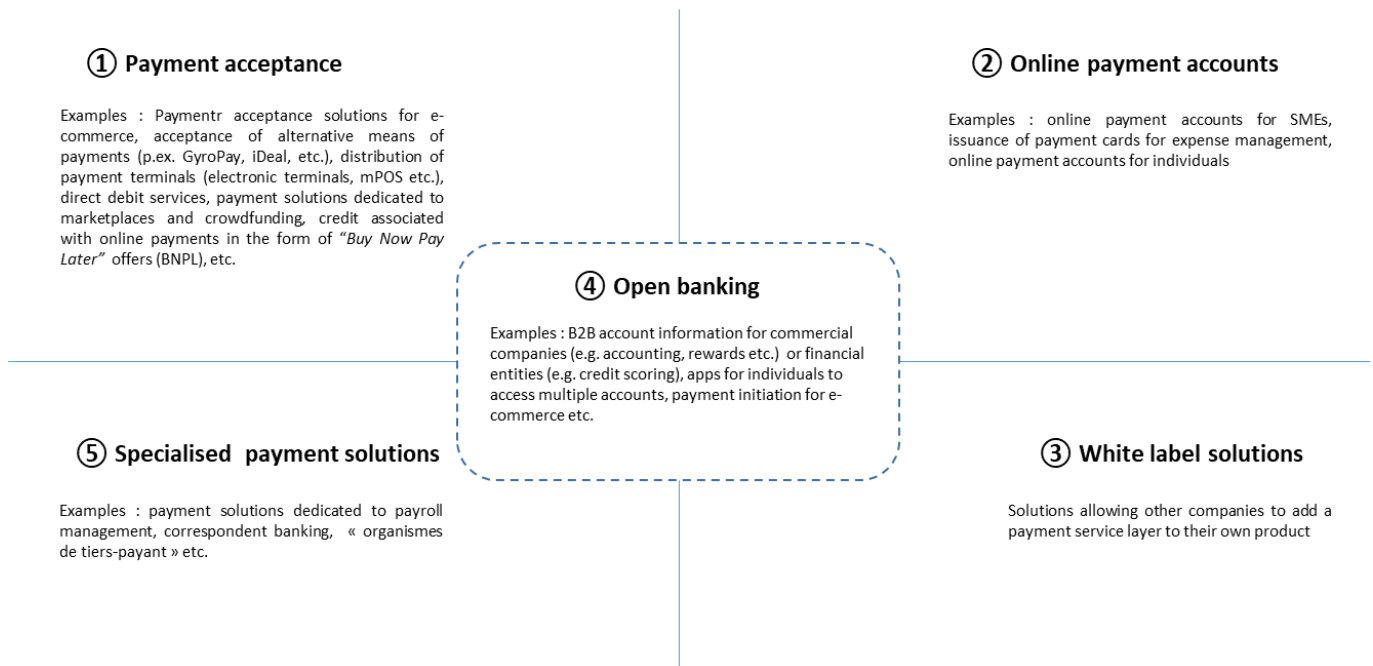
The entities operating under the right of establishment (ROE), whether through a branch or a network of agents or distributors physically established in France, are supervised by the ACPR in particular under AML-CFT and must provide an annual questionnaire focusing in this area. For example, the main money remittance companies operate under the ROE regime in France.

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3. Type of services offered by new players

The entities authorised by the ACPR, whether they are licensed or not, provide payment services which can be classified into five broad categories¹⁶.

Figure 6. Typology of solutions offered by electronic money and payment institutions



First, one-third of the electronic money and payment institutions developed **payment acceptance solutions** that allow merchants to accept payments (see Figure 6, point 1). This activity has been spurred by the growth in e-commerce and the emergence of marketplaces¹⁷. These payment solutions for marketplace managers allow for a single payment to be distributed to several beneficiaries (multi-merchants baskets) and integrate a wide range of payment instruments which are adapted to consumers' payment habits. Payment and electronic money institutions developed service offerings which met the needs of e-commerce vendors, which were at the time barely addressed by banks.

¹⁶ Exempted companies shall operate only within a very limited circumstances and their service shall be based exclusively on means of payment which allow only the purchase of goods or services.

¹⁷ See *publication du contrôle bancaire n°21* de l'ACPR, « La régulation des nouveaux intervenants du marché des services de paiement » (2015)

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These solutions now seem to evolve to integrate financing solutions based on payment facilities (split payments or "buy now, pay later" solutions). These new offers, which are sometimes excluded from the scope of consumer credit regulation, raise new challenges, specifically in terms of consumer protection¹⁸.

In addition, to cope with the increasing digitalisation of customer relations, several French institutions have also developed pure online offers, particularly on mobile phones, enabling users to have access to **online payment instruments and accounts** (point 2 in Figure 6). In this context, new players are trying to provide more competitive and transparent offers than traditional banks, whether in terms of fees (credit card, account maintenance, charges for irregularities, etc.)¹⁹ or of innovative features, such as advanced setup for payment instruments (merchant blocking, daily ceilings, etc.), automated accounting system and cash²⁰ management services.

Some licensed players also offer technical gateways that enable unlicensed companies to offer payment solutions under the guise of their license (see Box 1 on the role of "reverse agents").

These include white label solutions²¹ enabling undertakings to use products provided by licensed institutions to build their own commercial offers (point 3 in Figure 6), leading to an increasing "platformisation"²² of the payment industry.

Several institutions authorised in France have specialised in this sector, allowing other players to start their services without having to go through the license process and bearing the costs of such license as well as the associated supervisory framework. By way of illustration, the ACPR spotted the case of a French company that allows "P2P" payments and several other financial services through its mobile payment application by using different mandates as an agent or an intermediary for several licensed institutions.

More recently, new payment services related to the concept of "open banking" have emerged (**point 4 in Figure 6**). **These two new services are:**

- account information or aggregation service (as defined in Appendix I), which is used to collect and use online payment account data to offer financial (e.g. accounting analysis for credit risk assessment) or business services (e.g.

¹⁸ See the Parliamentary Mission report on the prevention of debt overhangs and microcredit development (October 2021)

¹⁹ See BEAUDEMOULIN, BIENVENU, FLICHE (2018), « Études sur les modèles d'affaires des banques en ligne et des néobanques », *Analyses et Synthèses*, n°95, ACPR.

²⁰ In this respect, we recall that the concept of "neo-bank" has no legal basis and is likely to create confusion in the public mind, as emphasised by the ACPR communiqué published in its April 2021 "Revue". This is because payment and electronic money institutions are not banks and the use of the term to label them is prohibited by law.

²¹ Sometimes called "Payment-as-a-Service"

²² See DHAR and STEIN (2017), *FinTech Platforms and Strategy*, MIT Sloan Research Paper No. 5183-16

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automation of corporate accounting or management of loyalty programs based on payment data).

- payment initiation service (as defined in Appendix I) which allows online merchants to accept credit transfers initiated on behalf of buyers.

Half of the licensed payment and electronic money institutions since the implementation of PSD2 in 2018 have incorporated an open banking component in their business models.

Finally, the Payment Services Directives have also enabled the development of **payment solutions associated with specialised services** (point 5 in Figure 6), sometimes integrated with regulated payment services. For example, the processing of “*tiers-payant*” -which broadly consists in collecting contributions, paying healthcare professionals, and in parallel manage the transmission of digitalized treatment forms- can be seen as payment services (i.e. execution of direct debits associated with a payment account, for the collection of contributions; execution of transfers linked to a payment account for the payment of the healthcare professional; and acquiring of payment²³ transactions). It can even involve the provision of credit, which requires a license.

²³ See the public presentation « Organismes de tiers-payant (OTP) et services de paiement » (ACPR).

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Conclusion

In line with the objectives of the Second Payment Services (PSD2) and Electronic Money Directives (EMD2), competition on the payments market has increased, especially with the emergence of Fintechs.

These new players have helped to reshape the market and modernize the means of payment that are available for consumers and businesses.

After more than ten years of monitoring the implementation of these new regulatory requirements in France, the ACPR can now draw several lessons from the supervision of these new players. In this regard, the ACPR would like to put forward several observations addressed to these new market players, to their banking partners and to the supervisory and regulatory authorities at European level.

Observations addressed to payment and electronic money institutions

Firstly, the ACPR notes that there are significant differences between the business plans presented by the new players during the license process and the results they actually achieve.

In this context, many of them still show little - to no - profitability, which is usually the consequence of the marketing and R&D investments they have to make in order to succeed in a highly competitive market.

These investments usually result in, among other things, staff costs and external costs (in particular relating to technical providers and IT hosting) which are much higher than foreseen in initial development plans. For electronic money and payment institutions, which had not yet reached their break-even point, these charges represented on average 373% of the operating income. The capacity of these new players to achieve sustainability therefore mostly depends on their ability to obtain long-term funding, especially from venture capital investors.

In this regard, the ACPR points out that despite the adequate level of capital of many electronic money and payment institutions (the median coverage rate of own funds requirements reached 300% in 2020), some of them did not comply with the prudential requirements applicable to them by December 31st, 2020. Remediation measures have been taken to ensure that these institutions comply with the regulatory requirements. **These situations underline the need to find long-term funding sources, especially in case of adverse conditions restricting the possibility of raising funds from venture capital investors.**

To cope with these difficulties, and in line with the EBA Guidelines on authorisations under PSD2, the ACPR requests a business plan that includes financial projections for at least three years, and a stressed scenario. Every assumption, including

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on funding, must therefore be described before a license is granted. The initial own funds requirements take into account the stressed scenario forecast, which enables the ACPR to ensure that the company has sufficient financial resources to cover the losses observed at the start of the activity and the risks it faces.

The ACPR therefore invites applicants for a license to factor this in their business plans, since those are often too ambitious.

Secondly, we note that these institutions have a strong propensity to outsource, including core services. **In this regard, we recall that institutions remain fully responsible for delegated actions undertaken by these outsourced service providers, including agents, and that therefore they need a system of ongoing supervision and oversight over these operations²⁴. They must therefore perform regular internal controls on them. With this in mind, it is important that these services are governed by a consistent contractual framework, including commitments on the level of quality of service and audit rights provisions enabling the institution to conduct offsite and on-site inspections without restriction. Outsourcing is addressed by guidelines from the European²⁵ Banking Authority and a reminder from the ACPR²⁶, which enables institutions and candidates for a license to know in advance the expectations of supervisory authorities in this area.**

Thirdly, it is important that consumers and merchants who rely on these new players have clear information on the regulatory regime under which operations are conducted by the party responsible for providing the payment service and on the associated protections. **Communication from different market players should therefore ensure that their offers are transparent, in particular with regard to the regulatory status under which they are offered**, whether for payment institutions (or electronic money) or for agents. Such communications shall not cause any confusion²⁷.

Finally, institutions must continue their efforts to improve the quality of the supervisory data reported to the ACPR and the Banque de France. For example, in the second quarter of 2020, 70% of PI-EMIs that were not part of a banking group submitted their reportings after the regulatory deadline.

It is therefore important that those institutions ensure that they comply with the deadlines for the submission of regulatory reportings, and that they

²⁴ See press release of 22 July 2021 « Externalisation : l'ACPR rappelle les parties prenantes au respect de leurs obligations »

²⁵ EBA/GL/2019/02

²⁶ See press release of 22 July 2021 « Externalisation : l'ACPR rappelle les parties prenantes au respect de leurs obligations »

²⁷ See the ACPR communiqué on the use of the term "neobank": https://acpr.banque-france.fr/sites/default/files/medias/documents/20210413_regle_usage_terme_neobanque.pdf

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check the quality and consistency of the data, and the compliance of the signature used for the submissions.

Observations to banking partners involved in this ecosystem

Both payment institutions and electronic money institutions are required to safeguard funds received from their customers for the execution of payment transactions and the issuance and management of electronic money. The regulation allows institutions to freely choose between two methods:

- a segregated account and investment method: the funds collected shall not be comingled with funds of any persons other than the users of payment or electronic money services. Accordingly, they must either be deposited in a separate account with a credit institution which is entitled to receive repayable funds from the public or be invested in financial instruments, which may only be securities issued by a qualified money market fund and held in accounts specifically set up for that purpose with custodian account providers.

- a hedging method: the funds received are covered by an insurance policy or some other comparable guarantee from an insurance company, a financing company or a credit institution which is not part of the same group as the payment or electronic money institution.

These two methods are not mutually exclusive as licensed institutions have the possibility to use them together for the safeguarding of funds received from customers.

However, it is becoming increasingly difficult for new players to find banks or insurers ready to provide them with the safeguarding services required by the regulations, for several reasons:

- banks are increasingly reluctant to offer these services in a general context of derisking of their activities and are therefore limiting the amounts covered by guarantees;

- when accepting to open segregated accounts for payment or e-money institutions, in view of the current interest rate environment, a growing number of banks are passing on the negative interest costs to these institutions;

- there are fewer and fewer providers of guarantees or comparable surety in the market.

It should be noted that the lack of safeguarding of customer funds is a cause for the withdrawal of a license.

In this regard, the European Banking Authority has recently recalled that unjustified derisking practice may affect competition and financial stability²⁸. Bank accessibility is therefore a major issue for all new players and Fintechs.

In this context, the ACPR therefore reminds the relevant entities that they must inform it of any refusal to open segregated accounts in accordance with Article L. 312-23 of the Financial and Monetary Code.

Observations to supervisory and regulatory authorities at European level

Having in mind the review of the European regulatory framework set by PSD2, the ACPR will pay particular attention to the following:

- the existing distinction between the activities of electronic money issuance and payment services should be reviewed. Indeed, these are now extremely similar and pose similar risks but involve the application of different prudential and AML-CFT regimes. For instance, the qualification of electronic money enables to benefit, under certain conditions²⁹, from a lighter AML-CFT regime - known as "anonymous electronic money" -, which does not exist for the provision of payment services. This may give rise to arbitrages when the type of license is chosen.
- the prudential requirements relating to the provision of payment services should be specified more precisely. Among the three methods offered by the regulation for the calculation of own funds requirements, most national authorities rely on the method based on the total amount of payment transactions executed by the institution in the preceding year ("Method B" defined in Article 9 PSD2). However, the way the total amount of payment transactions executed is computed is not specified in the Directive, which has led to different interpretations between authorities, which translates into different requirements for the provision of the same payment service. The lack of harmonisation can therefore jeopardize the level playing field between players operating on a single market but that are supervised by different authorities.
- specific consolidated supervision of groups encompassing companies that are different in nature, performing both regulated and non-regulated activities, should be introduced in order to give authorities a better and global overview of said activities. As such, the current European standards for prudential group consolidation with several types of institutions do not always take into account the specific features of the regulatory status applicable to these new payment market players and can thus be regarded by the latter as an obstacle to their development.
- the qualification of a "hybrid" activity - where an institution provides, under specific conditions, both regulated and non-regulated services as defined by PSD2³⁰, could be

²⁸ EBA/Op/2022/01

²⁹ Article R. 561-16-1 of the Monetary and Financial Code

³⁰ Article L.522-3 I of the Monetary and Financial Code

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simplified. This hybrid status has important organisational consequences (notably in the area of accounting, through the provision of a dedicated annex to the financial statements), which are in practice difficult to monitor by the ACPR as the supervisors have limited ways to measure the impact of the non-regulated activities on the regulated activities. The “hybrid” status could be applied only if income from the unregulated activity exceeds a certain threshold of total income. It should also be noted that, in the case of credit institutions, a principle of speciality limiting the provision of non-regulated services to 10% of income already exists in the French law.

In addition, there may be discrepancies in interpretation between authorities as regards the qualification of innovative payment solutions which have not necessarily been anticipated by the Directives. These divergences were noted in particular by the ACPR during Brexit, when some UK institutions decided to set up their continental business in France. In certain cases, these divergences may lead institutions to select the geographical location according to the qualification adopted by the competent authority with regard to its business model. Supervisory convergence work by the European Banking Authority should therefore be continued to avoid such phenomena.

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APPENDICES

APPENDIX 1 - Definition of payment services and electronic money

- Article L. 314-1, II of the Monetary and Financial Code

"Payment services are:

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.
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.
7. Payment initiation services.
8. Account information services."

- Article D. 314-2 of the Monetary and Financial Code

"For the application of Article L. 314-1 is understood as:

1. Direct debit service means a service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;

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2. *Credit transfer service means a service provided by the payment service provider which holds the payer's payment account for crediting a payee's payment account with a payment transaction or a series of payment transactions from the payer's payment account on the basis of an instruction from the payer;*
3. *Payment instrument issuance service means a payment service provided by a payment service provider contracting to provide the payer with a payment instrument to initiate and process the payer's payment transactions;*
4. *Acquiring of payment transaction service means a service provided by a payment service provider contracting with a payee to accept and process payment transactions, so that funds are transferred to the payee;*
5. *Money remittance service means a service for which funds are received from a payer, without creating payment accounts on behalf of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or for which such funds are received on behalf of and made available to the payee;*
6. *Payment initiation service 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;*
7. *Account Information Service means an online service to provide consolidated information on one or more payment accounts held by the payment service user either with another payment service provider or with more than one payment service provider. "*

- **Article L. 315-1 of the Monetary and Financial Code**

"Electronic money is a monetary value that is stored electronically, including magnetically, as represented by a claim on the issuer that is issued on receipt of funds for the purpose of payment transactions as defined in Article L. 133-3 and which is accepted by a natural or legal person other than the issuer of electronic money."

APPENDIX 2 - Requirements according to the company's statutes

Requirement	Electronic money institution authorisation	Simplified authorisation for electronic money	Payment institution authorisation	Simplified authorisation of a payment institution	Account Information Service Provider	Exemption from authorisation
Governance	✓	✓	✓	✓	✓	X
Minimum Capital	✓ EUR 350 000	✓ EUR 100 000	✓ EUR 20 000 (money remittance) EUR 50,000 (payment initiation) EUR 125 000 (other payment services)	✓ EUR 40,000	X	X
Capital requirements	✓ 2 % of the average outstanding electronic money	X	✓ 3 calculation methods including one based on payment volumes	X	X	X
Insurance	✓ only if payment initiation and/or account information	X	✓ only if payment initiation and/or account information	X	✓	X
Internal control	✓	X	✓	X	✓	X
AML-CFT	✓	✓	✓	✓	X	X
Fund protection	✓	✓	✓	✓	X	X
Security of means of payment	✓	✓	✓	✓	✓	✓
Use of agents	✓ if payment services provided	X	✓	✓	✓	X

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EEA passport	✓	✗	✓	✗	✓	✗
SURFI Reporting	✓	✓	✓	✓	✗	✗
COREP Reporting	✓	✓ only CA 1 statement on own funds	✓	✗	✗	✗
Reporting to Banque de France	✓	✓	✓	✓	✓	✗
Other special conditions	- Where applicable, own funds requirements on payment services provided by the electronic money institution shall be imposed	- No payment services or related services - Less than EUR 5 million of outstanding e-money - Electronic money threshold per instrument limited to EUR 250	-	- No money remittance, payment initiation or account information services - Payment volume less than EUR 3M per month	-	- Compliance with the conditions for exemption provided for in the Monetary and Financial Code

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