How PSD2 is impacting online marketplaces and what needs to be done to stay compliant

Find out how European regulations affect platform businesses around the world, and what steps can be taken to keep in line with PSD2.
# Table of Content

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>3</td>
</tr>
<tr>
<td>What Are Platforms And Marketplaces?</td>
<td>4</td>
</tr>
<tr>
<td>How Do Platforms Work?</td>
<td>4</td>
</tr>
<tr>
<td>How Can Platforms And Marketplaces Comply With PSD2?</td>
<td>5</td>
</tr>
<tr>
<td>What Is The Commercial Agent Exemption? And Does It Apply To Platforms And Marketplaces?</td>
<td>7</td>
</tr>
<tr>
<td>What Are The Implications Of The ‘Commercial Agent Under PSD2?</td>
<td>8</td>
</tr>
<tr>
<td>What Are The Consequences For Non-Compliance?</td>
<td>8</td>
</tr>
<tr>
<td>How ConnectPay Can Help Platforms Navigate PSD2</td>
<td>9</td>
</tr>
<tr>
<td>Beyond SD2 – ConnectPay Provides More Than Just Compliance Protection</td>
<td>10</td>
</tr>
<tr>
<td>Platforms &amp; Marketplaces</td>
<td>11</td>
</tr>
<tr>
<td>About ConnectPay</td>
<td>11</td>
</tr>
</tbody>
</table>
Looking back, it’s not difficult to understand why marketplace owners loved the original Payment Service Directive (PSD) when it came into force in 2007. It was a solid framework but the “commercial agent exclusion” part meant that marketplaces could go on about their business without having to become a regulated payments provider.

This gave entrepreneurs the wiggle room they needed to get their ventures up and running faster. However, the downside was that this relative regulatory laxity also meant that more nefarious bad actors could exploit loopholes.

Introduced in 2017, Payment Services Directive 2 (PSD2) came along to fill in these gaps, and act as a sturdier regulatory bulwark. The problem was, alongside the greater burden this placed on businesses, there was the issue of the non-uniform way in which it was applied across EU member states. It became difficult to see and prove who was ultimately responsible for the transfer of funds between the buyers and the seller.

What are the implications of this for marketplaces and similar platforms? Well, unintended ambiguity can easily end up interpreted as non-compliance. And, if you are treated as equivalent to a payment provider, non-compliance can result in hefty fines. It’s a risk no marketplace should be exposed to. And it’s ConnectPay’s mission to make sure they’re not.

Platforms that use ConnectPay can relax about handling payments, because we won’t. We help marketplace owners focus on growth, while we, as a licensed payments provider, take care of the fine print. We want marketplaces across Europe to be able to operate in a transparent and sustainable fashion. And it is to ensure that the community we serve has the right information to make the best payment decision for their business growth that we’ve put together this guide.

I truly hope you find much here that is of value and that it helps you pave a clearer path to growth.

 Platforms that use ConnectPay can relax about handling payments, because we won’t. We help marketplace owners focus on growth, while we, as a licensed payments provider, take care of the fine print.
What Are Platforms And Marketplaces?

Even though most companies use ‘marketplace’ and ‘platform’ synonymously, industry experts typically draw the line at the checkout. Put simply, a marketplace has a direct role to play in the transaction itself, while a platform connects buyers with sellers, but steps aside at the final stages of the sale.

Marketplaces bear a similarity to grocery stores because customers pay at the same ‘cash register’. Platforms, on the other hand, are more akin to farmer’s markets, where customers browse the goods of multiple vendors and then pay each directly.

The growing popularity of marketplaces and platforms comes down primarily to their convenience and the level of service provided.

How Do Platforms Work?

Most online platforms today operate by facilitating monetary transactions between vendors and buyers. This allows them to pass on the associated economic risks directly to sellers.

The usual contract flow

The usual fund flow

In contracts between platforms and sellers you’ll often find such operational cliches as “The responsibility of the platform shall be limited to facilitating the availability of the site, application, and services”. Just to be on the safe side, platforms also typically avoid signing contracts directly with buyers, instead preferring the seller to sign one with both – the buyer and the platform itself.
Under the PSD2, platforms and marketplaces are feeling the squeeze in terms of the number and extent of regulations, many of which are beneficial, to be sure, but also make it more difficult for businesses to get it right.

PSD2’s biggest virtue is that it has cleared up the gray area for platforms and marketplaces when it comes to handling payments and the need to be licensed.

From now on, all businesses that act as intermediaries between a buyer and a seller must obtain an e-money, PSP, or banking license issued by an EU central bank.

Luckily, there’s also a number of exemptions (outlined below).

Not so luckily, though – they probably don’t apply to your business.

How Can Platforms And Marketplaces Comply With PSD2?

Exemptions

1. The first exemption relates to companies that only act on behalf of either the buyer or the seller, rather than mediating between them both. In other words, if your business is structured around the ‘commercial agent exemption’, you won’t be subject to PSD2. We’ll discuss this exemption in greater detail later on, so don’t worry if it seems unclear at the moment.

2. The second exemption applies to businesses that use the platforms of already licensed organisations, thereby separating their funds from those of their sellers. As PSD2 licensing requirement is meant for companies whose core activities is payments, partnering with a licensed payments provider (like ConnectPay) would relieve a marketplace or platform from the headache of getting licensed on their own.

3. The third exemption applies to a narrow range of commercial activities (e.g., ‘closed-loop’ payments) not exceeding €1M annually. If they do exceed that amount, the marketplace or platform in question must notify its regulator, who will, in all likelihood, require the business to obtain a financial license.
How Can Platforms And Marketplaces Comply With PSD2?

Compliance

In addition to the exemptions listed above, platforms and marketplaces have two ways to comply with the PSD2:

Seek accreditation by an EU central bank. This option is chosen primarily by large, already established organisations that have the resources it takes to endure the lengthy and complex accreditation process.

Seek a partnership with a licensed Payment Service Provider (PSP). This option is by far the most popular thanks to it being low-touch. Companies are then able to avoid long and tortuous licensing processes, meaning they can allocate resources to developing their core business. Such a partnership also brings quite a few additional benefits, such as fast integration and less complicated cross-border transactions.

We’re here for you

ConnectPay is here to provide you with a comprehensive, reliable payment solution that’s already in use, compliant with all current regulations, and designed to relieve you of the hassle associated with securing a financial license. Let’s take a closer look at how we do this.
To avoid the red tape of licensing, platforms sometimes claim to be acting on behalf of the seller, which allows them to invoke the so-called ‘commercial agent exemption’. In such instances, the buyer is considered to be paying the seller indirectly. In this case, the platform is playing the role of an intermediary commercial agent, and not a recipient of funds. The seller – or so the claim goes – then receives the payment the very moment it’s been transferred to the platform.

European regulators typically hold the view that platforms, by using a website or app to bring together buyers and sellers, are acting on behalf of both. This makes sense because platforms take orders from buyers and send them, as well as money, to sellers. In some cases they also offer various benefits, such as member discounts, to buyers.

Prior to PSD2, the application of this exemption was more lax, resulting in lots of confusion. Since different rules applied in different countries (not to mention changes within countries over time!), platforms and marketplaces were endlessly running into all kinds of trouble. For instance, some countries allowed commercial agents to mediate between buyers and sellers, while others only allowed them to act on behalf of either the buyer or the seller. With this in mind, it’s no surprise that some platforms and marketplaces actually prefer PSD2 because, provided they manage to obtain a financial license, it’s actually valid across the European continent, which the country-specific exemptions weren’t.
What Are The Implications Of The Commercial Agent Exemption Under PSD2?

Let’s cut to the chase here – PSD2 has amended the commercial agent exemption, making it no longer applicable to companies that act on behalf of both parties in a transaction. The exemption is now possible only through an express agreement set up for the purposes of negotiating or concluding a sale or purchase on behalf of either the buyer or the seller, but not both.

That’s serious business! Ever since PSD2 came into effect, only licensed platforms and marketplaces are allowed to possess or control funds in a transaction. So, the question now is – how should platforms and marketplaces behave? The most likely outcome is that they’ll start using licensed payment service providers. This way, the commercial agent exemption will still apply because only the payment service provider will enter into possession or control of funds, but not the platform or marketplace itself.

What Are The Consequences Of Non-Compliance?

Well, ignoring it and hoping it’ll go away isn’t an option. PSD2 is a legal requirement, and, as such, payment providers and banks are legally required to enforce it.

So, any online business that has decided to try to get around the legislation will find themselves facing the risk of getting cut off from the financial institution that services them. If a financial institution is allowing the marketplace to distribute funds on its own, the local regulator can order the financial institution to stop servicing that marketplace. This leaves the marketplace in the nightmare scenario where it cannot continue doing business. And any financial institution that lets this happen and puts you in front of a bullet is not worth putting your trust in.

What if you got licensed as a payment provider? Well, the potential risks are even greater. While the risk for non-compliant sellers is a diminishing bottom line, regulated payment providers face far, far heftier consequences. How do substantial fines and even the revoking of your payment license sound? Yep, for payment providers PSD2 compliance is serious business. And coming back to fines, unlike GDPR, there are no set fine limits for non-compliance. And, as different jurisdictions in the EEA are at differing stages of implementation, the fine can vary from country to country.
How ConnectPay Can Help Platforms Navigate PSD2

As we’ve already seen, PSD2 regulation has created a clear definition of what constitutes the commercial agent model, and has addressed those platforms that use this model directly. The upshot of this is that platforms can no longer utilize this model if they want to be compliant with PSD2. And as we’ve seen, non-compliance is not an option.

So, what can they do? Well, we at ConnectPay have an instant solution that’s tailor-made for platforms and marketplaces. We use our license as a plug and play fix.

Through our license, we collect funds from buyers into a dedicated account which has been specially set up for a particular marketplace. We then send the marketplace its pre-agreed cut, with the seller then receiving their share. And everything happens within the same ConnectPay ecosystem, meaning that at no point is the marketplace exposed to the funds collected from buyers.

By doing so, we are able to ensure that platforms cannot touch funds that are intended for trading parties. This insulates them from being deemed a commercial agent, and allows them to get on with business of facilitating trade between sellers and buyers.

How do we do this? Well, it’s all pretty straightforward.

First of all, we sign a contract with the platform in which it clearly defines the way the funds are being allocated to sellers and what fees need to be settled with the platforms. And following this, ConnectPay then opens a dedicated IBAN account with every seller, where it settles revenue and sales directly.

Below you’ll find an illustration of how the platform is removed from the flow of funds from buyer to seller with ConnectPay.

The ConnectPay flow
Beyond PSD2 – ConnectPay Provides More Than Just Compliance Protection

The benefits of using ConnectPay go well beyond simply ensuring that your business is compliant with all current regulations. These include functionalities that allow you to minimise user error and boost signups with ConnectPay’s onboarding, as well as to stay up-to-date with evolving payment verification requirements.

In addition, you’ll be able to run KYC on merchants, ensure compliance with PSD2, manage your balances, and reconcile them automatically via our API. Whenever your funds are settled in ConnectPay accounts, the platform you are using remains outside the money flow at all times, which makes it all PSD2-compliant.

From a regulatory standpoint, ConnectPay keeps sellers’ funds in dedicated accounts separated from the platform’s own funds, ensuring that the platform doesn’t ‘come in touch with’ money flows at any time. ConnectPay also takes care of the steps required before settlement, including the verification of sellers’ identity.

Besides accepting payments from bank accounts and credit/debit cards, you can also control the flow of funds by paying users quickly and reducing operational overhead with ConnectPay global payouts. Here, the functionality enables splitting funds between multiple users, instantly routing payments across borders, and specifying your earnings on each transaction. With ConnectPay, you can easily manage your platform, update user information, send funds, issue refunds, handle chargebacks, and build custom reports.

ConnectPay Whitepaper 2022

With the burden of compliance off your shoulders, you can simply focus on growing your business! You can relax about payments and compliance, because we won’t.
Relax
We Won’t.

ConnectPay takes care of your financial solutions so that you can concentrate on the things that matter to your business

Platforms & Marketplaces

- Accept payments from bank accounts & cards
- KYC your merchants and be compliant with PSD2
- Split payments into platform commission fees and merchant fees according to your needs
- Initiate flexible, instant, multicurrency payouts to your merchants via our API
- Manage your balances and reconcile automatically via our API. As your funds are settled to ConnectPay accounts, your platform is outside of the money flow and thus is PSD2 compliant

About ConnectPay

One of the fastest growing EMI companies in Europe, ConnectPay offers an all-in-one financial platform. With extensive functionality and expert support, the platform is able to be integrated into various online business, thus removing the need for companies to rely on multiple financial solutions and providers.

ConnectPay is licensed and regulated by the Bank of Lithuania and is subject to the regulatory framework of the European Central Bank.

ISO Certified
ISO/IEC 27001 certificate

The fastest growing fintech company in 2022

Best One-stop-shop for Banking Payment Services Lithuania 2022 & Fastest Growing Electronic Money Institutions in Lithuania 2022

Best 10 fintech companies to watch in 2021