Council of the European Union

Brussels, 16 December 2024
(OR. en)

16726/24

LIMITE

EF 379
ECOFIN 1486
CODEC 2305

Interinstitutional Files:
2023/0209(COD)
2023/0210(COD)

PUBLIC

REPORT

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services in the internal market and amending Regulation (EU) No 1093/2010 *- Progress report*

I. General introduction

This Progress Report has been prepared by the Hungarian Presidency. It is the Presidency's assessment of the outcome of the discussions held at the Working Party meetings in the second half of 2024 on Payment services directive proposal[1] and Payment services regulation proposal[2] ("PSD3" and "PSR"). This report may not be relied upon as binding on the delegations but is intended to provide continuity and facilitate the task of the incoming Presidency. The Presidency invites COREPER to take note of this report, with a view to progressing work further. The incoming Polish Presidency is invited to build on the progress made when taking over and to continue to work on PSD3 and PSR proposals.

[1] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC

[2] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services in the internal market and amending Regulation (EU) No 1093/2010

The PSD3/PSR package is one of the most important among the financial services files being discussed in the Council, affects almost all EU citizens, especially as electronic payments are significantly increasing in the EU and the number of people without a bank or a payment account is very low and decreasing. One of the reasons for this ongoing decrease is the demand and openness of the younger generation to digitalisation. In addition the PSD3/PSR package has attracted more interest and attention than usual because it responds to an unfortunate problem that affects the whole of society, namely online fraud, which also affects the financial sector. Consumers expect services to be broad, convenient and as flexible as possible, with the highest level of security and trust.

Many elements of the package build on the current Payment services directive[3] (PSD2) rules unchanged, and where amendments are made, it reduces the misalignment between the PSD2 rules and the rules on e-money, and responds to the recent shift in open banking towards both account servicing payment service providers and third party providers.

The PSR proposal seeks to reshape the landscape of payment services, establishing clear rules for both payment service providers and payment service users. The proposal largely maintains the existing scope of payment services under the PSD2, while introducing definitions for Merchant-Initiated Transactions (MIT) and Mail Order Telephone Order (MOTO) transactions. The proposal boosts the rules concerning the access to accounts held with credit institutions and contains transparency requirements regarding the conditions and information for payment services. One of the reasons behind the PSD2 revision was to make open banking – introduced by PSD2 – more attractive for the third party providers (TPP). Finally the proposal tackles the extremely important issue of fraud. The discussion on fraud can be divided to the following sections: i) preventive measures to avoid fraudulent transactions from occuring, ii) what constitutes an authorized transaction, iii) liability for the damage caused by fraudsters and the correlative prejudice suffered by payment service users. The PSR contains actions for all of these.

[3] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)

Given that PSD3 is largely based on the foundations of PSD2, it comprises only a limited number of amendments. The Commission's proposal consisted only of a few targeted amendments to the existing PSD2.

The Hungarian Presidency considered the package approach to be important, as basically every issue had been discussed at least once in the previous year, but many issues had already been closed. In order to move forward, it was essential to follow the structure of the Directive and the Regulation and discuss all related issues that were still open, that were re-opened for discussion or had emerged during the discussions in the Council. This made it possible to narrow down the open issues. The Hungarian Presidency carried out intensive work, with issues and chapters of the legislative package being repeatedly revisited. The Working Party met seven times during the Hungarian Presidency and meetings required considerable activity on the part of the Member States in order to achieve the desired progress on the legislative package as it is expected by society.

II. Progress during the previous Presidencies

The **Spanish Presidency** of the Council of the EU made significant progress on the PSD3/PSR package, with the aim of reviewing the issues and conducting a first comprehensive discussion.

The Spanish Presidency also worked on alignment with other legislation and sought to ensure coherence with relating digital financial initiatives, in particular the Instant Payments Regulation, which contains important changes to enhance competition in payment services.

Fraud prevention was the centre of attention, with current forms of fraud such as social engineering playing a central role in the debate. Member States agreed on the need for updated rules to take account of changing market developments, such as the tokenisation of payment instruments. The Spanish Presidency emphasised cooperation, transparency and responsiveness to challenges in the payments environment, setting the stage for further refinement under the Belgian Presidency.

The Spanish Presidency proposal also sought to address the challenges of fraud prevention, liability sharing and customer protection.

Member States emphasised the need to distinguish between authorised and unauthorised transactions in order to keep payment services predictable and affordable. These definitions also play a key role in the discussion on liability for fraudulent transactions. The liability provisions for fraud in relation to the misuse of personal data were also discussed. The Spanish Presidency concluded that the clarification of the concept of "gross negligence" was crucial for the allocation of liability between payment service providers and payment service users.

Under the Spanish Presidency, Member States supported increased cooperation and information sharing between payment service providers, online platforms and TELCOs and other relevant authorities to combat fraud.

The Spanish Presidency emphasised the importance of the SCA in preventing fraud, supporting the current rules, extending the SCA to tokens and payment cards, clarifying liability regarding exceptions, and ensuring access for all, including those without smart devices. With regard to MIT and MOTO, it was concluded that SCA should be carried out when setting up an order to authorise subsequent payment transactions in order to prevent fraud. Financial literacy and inclusion were considered as complementary to anti-fraud measures.

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Discussions on the scope of the PSD3/PSR package have also involved non-financial market players such as technical service providers, payment system operators and electronic communications service providers, with a focus on fraud prevention and level playing field provisions (e.g. strong customer authentication and access rights for payment institutions). Discussions were held on identifying critical technical service providers (e.g. digital wallets) and aligning operational flexibility requirements with existing frameworks such as DORA and the Eurosystem's PISA framework.

During the Spanish Presidency, cash-in-shop and cash-back services were discussed, although opinions differed among Member States on the risks involved. Member States have welcomed the fact that ATM deployers (formerly known as independent ATMs) must be registered with the national competent authority.

As regards to authorisation, the requirements for payment institutions were clarified during the Spanish Presidency to ensure a smooth transition under PSD3. In order to minimise disruption during the transition to the new rules, it has been proposed that existing entities, such as ATM deployers, should be subject to general regulation.

The **Belgian Presidency** continued the work initiated by the Spanish Presidency on the PSD3/PSR package. During its six-month term, the Belgian Presidency held four Council Working Party meetings.

The first meeting of the Working Party under the Belgian Presidency provided an initial platform to address the comprehensive issues within the payments package. This meeting laid the groundwork for subsequent in-depth discussions.

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The April meeting allowed Member States to focus on the main aspects of the payments package. The discussions were designed to give Member States the opportunity to present their views and to ensure a comprehensive examination of the issues. The meeting set the stage for a full reading of the payments package in the Council Working Party by the end of the semester. Specific issues discussed before the fraud debate included the following: the open banking framework, the right of access to bank accounts for payment institutions, information and transparency requirements, prudential supervision of payment institutions and cross-border payment services provided by payment institutions.

The Belgian Presidency devoted the May meeting to fraud, in response to the priority given to this issue by Member States. Member States were invited to present their views, focusing on two critical aspects: the concept of authorisation and its impact on liability for fraudulent payments and the measures to safeguard against fraud.

In the last meeting of the semester, Member States revisited the discussions on fraud. This meeting focused on further elaborating on liability issues related to fraudulent payments and on refining approaches to fraud prevention measures.

Throughout these meetings the Belgian Presidency ensured that the work on the PSD3 and PSR progressed in a structured and inclusive manner. By addressing Member States' concerns and providing in-depth discussions on critical issues, the Presidency paved the way for further progress. The focus on fraud, combined with discussions on open banking, transparency requirements and cross-border payments, reflects a comprehensive approach to modernising the EU payments framework.

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Drafting proposals were successfully agreed in several critical areas, including the inclusion of independent ATM deployers in both PSD3 and PSR, thereby strengthening the regulatory framework for these entities. Licensing requirements under PSD3 were clarified, as was the scope of the EBA mandate to strengthen oversight. In addition, the registration requirements for account information service providers have been streamlined to promote consistency and transparency. Finally, amendments to the transposition requirements were finalised to ensure smoother implementation across Member States.

The definition of sensitive payment data in Article 3(38) of the PSD3 has been clarified, strengthening data protection measures. The definition of personalised security credentials in Article 3(37) of the PSR has been replicated in Article 2(40) of PSD3 for greater consistency. Clarifications have also been made to Article 2(2) of the PSR, in particular two new excluded services have been introduced under points (b') and (e').

Article 85(12) of the PSR has been clarified to require SCA on the basis of two or more elements from different categories. Provisions for SCA outsourcing arrangements have been included in Article 87, while Article 88 sets out requirements for the availability of SCA. Article 84 introduces clear guidelines for monitoring payment fraud risks and trends. Article 82 details robust fraud reporting protocols that strengthen the overall fraud management strategy.

III. The approach and working method of the Hungarian Presidency

By continuing the work of the two previous Presidencies, the Hungarian Presidency aimed to make progress on the outstanding issues. The outstanding issues are different for each Member State, because although many issues have been discussed several times, the directions indicated that not all Member States agree on all issues. The Hungarian Presidency tried to address these issues and succeeded in making progress on some elements.

Between July and December the Member States discussed a range of topics relating to the PSD3 and PSR proposals during the seven meetings held under the Hungarian Presidency. The discussions covered the following issues:

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- 7 July: Payment fraud cases; the role of electronic communication service providers in combating payment fraud; enforcement procedures, competent authorities, and penalties (specifically Chapter 8 of PSR); and mandatory alternative dispute resolution (ADR) procedures.
- 17 September: Fraud prevention, including obligations of payment service providers (PSPs) and payment service users (PSUs); authorization rules; drafting proposals for Strong Customer Authentication (SCA); additional fraud prevention measures proposed by the Presidency; liability regime options; ADR procedures; and the enforcement regime.
- 11 October: In-depth discussions on Titles I, II, and III of PSR, covering Articles 1-48 and their related Recitals.
- 28 October: Recitals, scope, and definitions in PSD3, including e-money tokens and services; Titles II-IV of PSD3; enforcement and ADR procedures in PSR; SCA rules in PSR; and virtual IBAN.
- 15 November: Interplay between PSR and FIDA; ECB reference rate; EBA mandates; ECSP definition; virtual IBAN; PSR drafting suggestions; PSD3 interplay with MICA; large networks of agents; cash-in-shop; and PSD3 drafting suggestions.
- 26 November: Fraud discussions, including authorization, liability, and refunds; prevention strategies such as transaction monitoring, data sharing, spending limits, cooling-off periods, blocking, and suspension; and the role of electronic communication service providers in fighting payment fraud.
- 6 December: Interplay between PSD3/PSR and FIDA/MiCA (the treatment of EMTs in PSD3/PSR); and large networks of agents.

It should be also noted that the Hungarian Presidency has re-examined a number of closed issues in response to Member State requests and comments, and in some cases the former supporting majority was convincing so that the drafting has not been amended. However, in some cases the majority position of Member States has changed, so that the previous drafting has been amended despite the former Belgian Presidency treating the topics as closed.

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IV. Progress on the PSD3 and PSR proposals under the Hungarian Presidency

1. PSD3 - Introduction

Given that PSD3 is largely based on the foundational text of PSD2, the Commission's proposal consisted of targeted modifications to the existing PSD2 text.

In comparison to the text of PSR, there were significantly fewer requests for amendments from Member States. This indicates that overall, there is a more limited demand for major amendments to the established framework.

A major change introduced by PSD3 concerned the integration of electronic money services into the broader category of payment services. This change was intended to streamline and harmonise the regulatory framework, and as a result some additional changes had to be made to the text of the proposal. These relate to electronic money and traditional payment services. These changes were necessary to ensure clarity, consistency, and simplicity in the regulatory language. The Presidency's aim was to make the Directive easier to implement in different Member States, thereby reducing potential administrative burdens and improving overall compliance.

2. Definitions

The PSD3 and the PSR form a single set of rules. PSD3 concerns market entry, authorisation, operation, obligations and rights, and supervision of payment institutions. PSR concerns payment services provided by all payment service providers, including the aforementioned payment institutions. It sets out in detail the rules on contracts and related information requirements, the rules on the provision and use of payment services, the content and execution of payment transactions, the management of operational and security risks, including fraud, and the rules on enforcement. Together, the two sets of rules constitute the regulatory basis of the payments market, not forgetting, for example, the detailed rules governing the operation of credit institutions as payment service providers in the CRD/CRR regime.

The definitions in the PSD3 and the PSR are the same, but at the same time it is unnecessary and unreasonable to duplicate the definitions in them with the potential to lead to many problems. Considering that the definitions in the Directive will be transposed in all Member States, i.e. 27 Member States + three EEA States making them part of national law, all differing from each other in terms of wording. Although the essence of the definitions will not change with the transposition, there remains the potential for problems of interpretation in the event that the directly applicable Regulation also contains these definitions.

On the basis of all this, our suggestion is to split the definitions in the proposals, in such a way that all definitions must be included in the legal act where they receive their actual content (i.e. where the related rights and obligations are described).

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The institutional definitions and the content of the payment services activity are laid down in the PSD3.

The institutional definitions include definitions related to the institution itself and its authorisation, such as „payment institution" and its forms, e.g. „account information service provider", „payment institution providing electronic money services", and „independent ATM deployer", as well as definitions related to authorisation and operation, such as „home Member State" and „host Member State", „own funds" or „group". Definitions related to payment services include the „payment service" itself and its types, such as „payment initiation service", „account information service", „electronic money service", „issuing of payment instruments" etc.

The PSR, as a directly applicable legal act, delivers the definitions related to the provision of payment services.

Here are the definitions of the parties involved in the process, e.g. „payer", „payee", „payment service user", „payment system operator", „payment service provider", and the definitions related to the payment transactions, such as „payment transaction", „execution of payment transaction", „payment order", „payment instrument" etc.

In the Presidency's view, this provides a logical and transparent regulatory regime.

3. Agent – distributor

Directive 2009/110/EC, as amended by PSD2, requires Member States to allow electronic money institutions to distribute and redeem electronic money through natural or legal persons which act on their behalf. In parallel, it also stated that electronic money institutions shall not issue electronic money through agents.

The original PSD3 proposal upheld the separate treatment of the two activities, defining a distributor as the natural or legal person that distributes or redeems electronic money on behalf of a payment institution.

subset of agents, was not consistently implemented throughout the whole text due to lack of time, and also some Member States regularly expressed objections. At the same time, it is undisputed that the inclusion of e-money services in payment services means that separate treatment can no longer be maintained. It was therefore necessary to delete the separate treatment of distributors from the original PSD3 proposal (so that Articles 19 and 20 can be used as a single article in the future), and this had to be carried out consistently throughout the whole text.

4. Cash-in-shop (Article 37)

The issue of cash-in-shop services (Article 37 of PSD3) has been examined by a number of Member States and has been discussed twice during the Spanish Presidency. As set out in Article 37 of PSD3, this service has been in the negative scope of the PSR (Article 2(2)(e)), except for the requirement that the provider of this service informs the PSU of the applicable charges before providing the requested amount of cash. It is clear that Member States have recognised the need for this service to ensure and facilitate access to cash in remote and rural regions.

Article 37 of the PSD3 clearly sets out the conditions to be met in order to provide the service of cash provision without a purchase. These are: the service must be provided in a retail outlet; it must be independent of the purchase made in that outlet; it must be provided by a natural or legal person who is regularly involved in the sale of goods or the provision of services; and the (withdrawal) limit per transaction is EUR 50.

The payout limit is EUR 50. However, as several Member States have noted, this poses some money laundering risks, as PSD3 does not provide clear guidance on how to supervise or enforce the limit, especially as there is no limit on transactions per person. On the other hand, some Member States have signaled openess to increase the payout limit, to further strengthen the accesss to cash in remote areas.

This issue was last discussed by Member States at the Working Party meeting on 15 November. In the light of the above considerations, the Hungarian Presidency considered at this stage that the issue of the limit could be addressed in two possible ways:

1. Establishing a maximum limit that would require the development of a specific system, which could be costly and difficult to communicate to payment service users.

2. Alternatively, the Commission's original proposal could be maintained with subsequent amendments to be made to the text of the Directive, if deemed necessary, following a review period based on lessons learned from implementation experience.

Some Member States also supported increasing the EUR 50 limit proposed by the Commission, but many Member States did not support any further modification. For the reason that Member States are divided on this issue, and there is no absolute support in either direction, the Presidency suggests the Commission's original proposal be maintained with a subsequent review period based on lessons learned from implementation experience.

Article 7 – Method B (Calculation of own funds for payment institutions not offering electronic money services)

Article 7 of the PSD3 proposal introduces a primary rule requiring the use of Method B for the calculation of own funds requirements. The initial application of this method automatically triggers the application of data for an incomplete year.

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However, in order to ensure a comprehensive and impartial implementation of this process, an additional rule is proposed. This supplementary rule is analogous to those established for other methods, allowing the relevant metrics to be based on full year projections, thus ensuring consistency and completeness in the application of data even in the absence of complete data for the year in question.

In essence, the primary rule defines the basic procedure, while the supplementary rule serves as a complementary measure to address potential deficiencies or exceptional circumstances that may arise due to the timing of data application.

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5. Large network of agents

The Hungarian Presidency made progress on the PSD3 file concerning the regulation of the large network of agents. An important development is that, on the basis of a detailed presentation of the problem, one Member State submitted two amendments to the Presidency aimed at (1) reinterpreting the concept of "agent" and (2) establishing simplified registration rules for networks operating within a large network of agents. These proposals served as the basis for an important discussion and refinement of the legislative text.

Definition of agent

Recognising the importance of the issue, the Hungarian Presidency included these proposals on the agenda of the 15 November meeting. This meeting provided an opportunity for Member States to express their comments, provide feedback, and develop a more coherent and harmonised approach. One element of the discussions was the proposed redefinition of the term "agent".

The redefinition proposed by the Member State introduced a new perspective based on two separate criteria to determine whether a market player qualifies as an "agent". According to the proposal, an entity can be considered as an agent if it holds funds on behalf of PSUs or is directly involved in the provision of payment services. The proposal has defined three core activities that constitute essential payment services and therefore fall under the responsibility of the agent. These are:

1. Taking a payment order and obtaining consent for its execution.

2. Forwarding the order to the PSP and providing consent for execution.

3. The execution of the payment order itself.

On the basis of this proposal, the Hungarian Presidency suggested targeted amendments to the PSD3, in particular to Article 2(28), in order to reflect the updated definition and ensure clarity. These adjustments show a significant deviation compared to the PSD2-based system previously adopted by Member States, and therefore many Member States did not show openness to the concept. Further work appears to be required in order to assess whether more precise criteria in the definition of agents are needed.

Large network of agents

On the basis of the overview received from one Member State concerned, a new approach on agent models has been developed in order to improve transparency and to simplify the administrative registration procedures of agents. The new suggestion aimed at amending Article 19 PSD3 in order to simplify the registration procedures for large networks of agents-distributors, focused on limiting the registration obligation to the heads of network, while requiring PSPs to keep a public register, instead of the NCA being obliged to supervise the registration of each agent.

The rationale behind this proposal stems from the operational realities of certain PSPs, which often manage extensive networks of agents coordinated by a central entity known as the 'network leader'. Once appointed by the PSP, the network leader oversees the operation of the network and recruits additional agents according to pre-defined criteria set by the principal. Typically, the members of such networks adhere to a uniform business model and provide standardised services, such as enabling customers to open payment accounts or deposit cash at locations such as tobacco shops.

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To address this dynamic, one Member State suggested adding a new paragraph in Article 19 of the PSD3. This amendment would simplify the regulatory procedures of national competent authorities while ensuring robust supervision. Specifically, the proposal recommends that:

1. The PSP shall be responsible for verifying the suitability and compliance of its agents, maintaining a comprehensive and up-to-date register of all "secondary agents" used by the network and continuously monitoring their standardised activities.

2. When registering a network agent manager, the NCA's primary concern is to confirm that the PSP has put in place appropriate procedures for the recruitment of agents. These procedures are implemented by the network agent manager under the full responsibility of the PSP.

3. The PSP must ensure that its risk management and internal control frameworks, including anti-money laundering (AML) compliance, address the suitability, compliance and operations of its agents.

Some Member States have opposed a conceptual change to the term 'agent' and emphasized that – with regard to the proposals regarding large networks of agents – supervision should not be weaknened in light of the proposed simplifications. In the last Working Party on 6 December it was concluded that the discussion on the large network of agents and regarding the agent definition should be continued.

So while some Member States have raised concerns when it comes to the supervision of AML/CFT risks especially in a cross-border context, some others have shown interest in such simplification of the registration process of agents and have encouraged such proposal. Further work will be necessary in order to find a balanced approach that ensures a simplification of the registration process of agents belonging to large networks while ensuring proper supervision of AML/CFT risks.

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6. Interplay of PSD3/PSR with MiCA

The Hungarian Presidency focused on the electronic money tokens (EMT) when assessing the interplay of the PSD3 with the Regulation on Markets in Crypto-Assets (MiCA).

MiCA identifies three types of crypto-assets, asset-referenced tokens (ART), EMTs and crypto-assets other than asset-referenced tokens or e-money tokens, and the scope builds on these three types of crypto-assets. The only crypto-asset type that can fall under the scope of both MiCA and Payment Services Directive/Payment Services Regulation is the EMT.

The definition of electronic money under the PSD3/PSR framework states that '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 other natural or legal persons than the issuer'(Article 3 (50) PSR proposal), MiCA deems EMTs to be e-money.

As regards the authorisation of crypto-asset service providers (CASP), when a payment institution wishes to provide services which classify both as crypto-asset service (CAS) and payment service, there is a need to have an authorisation under MiCA and also under PSD3/PSR. Therefore, it seems to be logical to allow payment institutions to provide CAS that could potentially overlap with the PSD3/PSR framework which they are authorised under, without applying for authorisation under MiCA.

In addition the Hungarian Presidency suggests amendments that promote general clarity in relation to CAS that are also considered as payment services.

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At the Working Party meeting on 6 December the Presidency tabled some proposals in relation to the treatment of EMTs in future PSD3/PSR for discussion. Member States discussed the scope of application of PSD3/PSR to real payment use cases with EMTs, meaning potential exclusions in Article 2(2) PSR. Furthermore, the application of certain PSR provisions to payment transaction with EMTs has also been discussed. Several Member States argued that first it should be clarified which crypto-asset services related to EMTs qualify as payment services and how a distinction can be made between them. Several Member States also argued that a regulation should avoid the necessity for a double licence. Further discussion is needed on the interplay of future PSD3/PSR with MiCA, in particular – among other issues – how certain requirements (e.g. open banking requirements, application of SCA) will apply to CASPs where they execute payment transactions with EMTs.

7. PSR - Introduction

The proposal for a Payment Services Regulation aims to reshape the payment services landscape and set clear guidelines for payment service providers. The Hungarian Presidency started its work with the most ambiguous issue - fraud, which consists of the following sections: i) prevention, ii) authorisation, iii) liability. We presented some new preventive measures for the consideration of the delegations, which put more liability on the payment service users, then we tried to define an authorised transaction in a coherent way and finally we set up a gradual system for different stages of liability for fraudulent transactions. Following in the footsteps of the previous Presidencies, we prepared some minor amendments to Title I in terms of definitions, such as the proposal to delete distributors, the definition of electronic communications service providers, which the Spanish Presidency included in the positive scope, and the inclusion of ATM deployers and independent ATM deployers in the Regulation.

With regard to Title II, the Hungarian Presidency, following the Belgian Presidency, introduced some technical changes in response to comments made by some Member States. With regard to the second part of Title III - namely enforcement procedures, competent authorities and sanctions - the Presidency initiated discussions and a follow-up of the discussions on the basis of the comments made by delegations. With regard to Title IV, the Hungarian Presidency did not consider it necessary to make any changes as the previous Presidencies had done an excellent job on this part.

8. Definitions

As we indicated in relation to PSD3, the definitions in the two legal acts of the Payments Package have been structured in a uniform way similar to CRD and CRR. This helps the uniformity of the regulation and eliminates unjustified deviations. Member States agreed with this solution and supported it.

Electronic communications service providers (ECSP) is still an open definition for PSR, and it is largely dependent on the final structure of the fraud provisions, notably the final role of ECSPs in the fraud regime.

9. Virtual IBANs

At the request of MS, the Presidency reopened the discussion on positions on the regulation of virtual IBANs (vIBANs).

Some MS are either against regulating vIBANs within the PSR/PSD3 or believe that the issue should be addressed through a review clause after further evaluation. Others support a more restrictive approach due to the potential risks (e.g., money laundering, frauds, scams) associated with vIBANs.

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Some MS strongly support the Belgian Presidency's draft on vIBANs, including specific requirements for the country code of the vIBAN to match the master account and the inclusion of a bank identifier in the vIBAN.

Many MS express concerns about the legal clarity and the potential non-compliance of certain business models involving vIBANs, in particular in relation to SEPA rules and customer protection. Some MS argue that the regulation of vIBANs should be dealt with under AML rules rather than the PSR/PSD3 framework, as vIBANs are already addressed in the AMLR.

While MS are divided on the regulation of vIBANs within the PSR/PSD3, there is support from some Member States for a review clause, in particular focusing on the alignment of virtual IBAN regulations with AML requirements and consumer protection. Several MS are either open to or explicitly support the inclusion of a review clause. This would allow for a later, more thorough assessment of vIBANs following further legislative developments, in particular in relation to AML rules and international standards. Nevertheless, further discussion is needed to find a compromise among MS.

10. Use of ECB reference rates in PSR

Recital 50, Article 13(1)(f), and Article 20(c)(v) of the PSR stipulate which foreign exchange reference rate shall apply to the estimated charges for currency conversion in relation to credit transfers and money remittance transactions.

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In its opinion of 30 April 2024 (CON/2024/13), the ECB argued that the euro foreign exchange reference rates of the ECB (ECBRRs) are not intended for use for transaction purposes, and are published for information purposes only. The ECB firmly suggests that the reference in the PSR to the ECBRRs or a foreign exchange rate issued by the relevant central bank should be removed and replaced by an appropriate reference to a foreign exchange benchmark rate that falls within the scope of Regulation (EU) 2016/1011 of the European Parliament and of the Council (Benchmark Regulation).

The European Parliament in its mandate changed the wording and inserted a reference to BMR: "foreign exchange benchmark rate which complies with Regulation (EU) 2016/1011".

The Presidency gathered the positions of the Member States, but no clear majority has emerged on this issue. Several MS agree with the suggestion and explanation of the ECB and would prefer the amendment to a foreign exchange benchmark rate that falls within the scope of the Benchmark Regulation. Several other MS, however, would stick to the foreign exchange reference rates of the ECB for the sake of comparability. One MS would prefer for the reference to be made to the relevant central bank. For consistency reasons, some MS also refer to Article 4 of Regulation (EU) 2021/1230 on cross-border payments in the Union (CBPR) where the ECB's foreign exchange reference rates are currently used to express currency conversion charges related to card-based transactions. Therefore, given the current state of the discussions,the Presidency has not suggested an amendment compared to the former Belgian Presidency progress report.

11. Fraud

One of the most important and most innovative parts of the package are the measures which seek to tackle fraud which are frequently complex concepts. The vast majority of payment transactions are problem-free, i.e. the client has willingly given payment order to the PSP. A small proportion of all transactions are affected by fraud, but even a very small proportion of the huge cash flow represents a large amount, and at an individual level the burden is even more significant. The sophisticated nature, complexity and technical development of fraud are a constant part of our lives. New trends emerge and with dematerialisation, it becomes more difficult to recognise fraud attempts.

Therefore, consumer protection appears to be a key issue for all Member States. It is important that the strengthening of information rules, the prioritisation of awareness-raising efforts and the raising of financial literacy are seen by PSPs as helping tools for clients. At the same time, the additional prevention measures mentioned under the next point also help to prevent fraud, so transaction monitoring methods play an important role. Unfortunately, fraud can still occur even with these lines of defence in place, so it is important to have answers and solutions in such case.

In the case of fraud, one of the key issues from a regulatory point of view is the authorisation of transactions. The category of authorised transaction is essentially treated by Member States as a key issue. The liability regime and possible reimbursement can be based on this. The Hungarian Presidency has raised the issue several times, trying to examine it comprehensively. The strong division was always evident, so an approach was needed to gather the currently available options and solutions in one document and to make visible how Member States relate to the interpretation of the authorisation and how liability rules can be built on it.

The Presidency took stock of a number of options on how the issue of authorisation of payment transactions and fraud could potentially be addressed in the PSR. The Presidency wished to facilitate a more structured debate and explore the views of the Member States as to which option, or elements of different options, would be preferable for them in order to find the compromise landing zone. The options tabled represent a scale as each of the options goes further in some aspects. The six options in the Presidency note for the CWP on 26 November were as follows:

- Option A is the current situation, the baseline scenario being set out in PSD2,
- Option B is the Commission proposal in the PSR,
- Option C is the former Belgian Presidency's proposal,
- Option D is a possible new approach building on the Belgian Presidency's proposal,
- Option E is the EP's mandate adopted earlier this year, and
- Option F is the UK's reimbursement regime for APP fraud.

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The key features on which the comparison of the six options was based are as follows: delineation between „authorised" and „unauthorised" payment transactions, allocation of liability, burden of proof, and the concept of "gross negligence". Along these lines, there are many differences and questions among the options which can determine the regulatory approach. Just to name a few:

- whether there is a subjective approach regarding the concept of "authorisation" (linked with the intent/will of the payer to carry out a payment transaction);
- who bears liability in case of „authorised" and „unauthorised" payment transactions and what are the exceptions from the liability regime;
- whether to impose a cap on the PSP's liability for the impersonation fraud;
- whether to introduce a shared liability between the payer's PSP and the payee's PSP;
- role and obligations of electronic communication service providers (ECSP);
- should refund rights extend to any types of impersonation fraud;
- whether to introduce a "duty to cooperate" between the PSU and the PSP;
- how gross negligence should be regulated, and many more questions.

The discussion fundamentally still shows split views, but it is worth examining it at the level of principles. If we assume that the authorisation in the case of options A, B and D is essentially based on PSD2, then the number of Member States supporting them give a clearer picture and we can turn to the liability rules.

The liability rules can be adapted appropriately to the different options. It is determined by the concept of authorisation and the application of gross negligence, but several versions can be designed for each option. It is possible to put full liability on the PSP, or to limit it by applying an upper limit as a percentage or in numerical terms. It is also possible to create rules where the PSP bears liability for certain types of fraud. In this respect, the range of Member States' positions is even more varied, because the issue of ECSPs raised by a significant number of Member States is involved here as well.

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To sum up the discussion, there is no clear majority for either option, each of the options A to D received considerable support. In addition, the written procedure is ongoing, in which we are mapping the precise position of Member States along structured questions, and this is expected to contribute greatly to the formation of a compromise solution.

PUBLIC

12. Prevention

Although we often add the term ’fraud’ to prevention, it is a separate regulatory part in itself. The press and the general public tend to focus on the fraud rules, even though prevention is the part with the greatest value added which helps to combat fraudsters effectively. We can also say that a well-functioning prevention regime can significantly reduce the burden of liability rules related to fraud. Accordingly, this is what the Hungarian Presidency tried to focus on.

The issue of prevention is central in PSR. If the liability of the PSPs is extended then the appropriate tools to prevent fraud and thus minimize their risks related to liability is needed. The Presidency suggested a number of regulatory measures that imposed additional tasks and obligations on service providers and PSUs alike. Some Member States showed some openness, but the majority was against such a move. With regard to PSUs, they did not support any unrealistic expectations beyond basic cooperation duties and with regard to service providers, cost-sensitive elements were rejected. Accordingly, the Presidency only presented these proposals in a much reduced form.

As to prevention, the transaction monitoring system represents a significant step forward in terms of lines of defence also regarding detection and mitigation of fraud, in particular with the addition of tools such as blocking of transfers, freezing of funds, cooling-off periods and spending limits.

Clarifying and finalising these provisions is the cornerstone of prevention and mitigation of fraud. Any further reinforcement of the prevention and mitigation measures by the payment service provider is welcome and may lead to a reduction in losses. The PSU must be given the opportunity to strengthen its own prevention and to ask for help from the PSP by also deepening its financial literacy. It is important for the PSP to help its clients with all information related to trends and the latest types of fraud, thus helping them to prevent fraud.

The anti-money laundering legislation already contains rules for refusing to execute a payment order. Nevertheless, it needs to be clarified in how far these rules could also facilitate the mitigation of payments fraud. It should also be noted that the refusal to execute the payment order logically also applies to the context of instant payments, where it also appears as a preventive and/or mitigative element.

The transaction monitoring system has been separated from the data sharing in relation to fraud, in order to clarify the distinct nature and different objectives and characteristics of the two areas. In the setup of the transaction monitoring rules the data fields shall be taken into account which enable that the monitoring fulfils its function.

PUBLIC

13. Electronic communications service providers (ECSPs)

With regard to ECSPs, in addition to the definition, some Member States considered their role important in terms of fraud prevention and liability. At the same time, according to some Member States, the involvement of the ECSPs also raises the question of which supervisory authority is involved in the case of fraud.

As regards ECSPs, there were two in-depth discussions during the Hungarian Presidency. On both occasions, the relevant experts from DG Connect were invited. First, the sectoral legislation relating to these service providers have been presented to the Member States. It was clear from the discussion that this issue has to be revisited in the framework of the fraud discussion. As regards the definition of ECSPs, Member States presented different views, but there was a consensus that the final drafting should be designed in the context of the fraud discussion.

In the Council Working Party on 26 November there was a fruitful discussion where Member States raised a number of questions to the experts of DG Connect being present, mainly on the possible role, involvement, active participation in prevention and liability. Several Member States also called for a more active role of ECSPs, at least in the field of fraud prevention and cooperation with the PSP. For Member States, the role of ECSPs is an important issue, but needs further discussion as one of the key issues in the finalisation of the fraud provisions.

PUBLIC

Strong customer authentication (SCA)

The Hungarian Presidency has raised the issue of strong customer authentication on two occasions, as we see this as an important part of fraud prevention. Our suggestions mainly concerned tightening the possibilities for exemptions (Article 85 (11)) from the application of SCA, as we had already expressed that the application of strong customer authentication might have an important role in terms of fraud prevention. An important and controversial part of the SCA rules is Article 85 (12) regarding the categories on which the authentication is based. The majority of Member States agree that authentication should be based on different categories of identification. Some Member States have voiced the possibility that two independent elements should suffice for performance of SCA. Some Member States are more open to the possibility of using two elements from the same category, especially with regard to the category of inherence.

Some Member States have mentioned the possibility to submit direct debit to strong customer authentication. One Member State pointed out that MOTO transactions should not be subject to strong customer authentication. Another issue discussed with regard to SCA was Article 88(1) on the technical feasibility of making strong customer authentication accessible. Member States agree on the need to make it accessible to vulnerable customers without access to smart devices, but the question is how to achieve this objective without overburdening PSPs.

PUBLIC

Enforcement, PPP

In order to clarify the role of the authorities and to improve cooperation and transparency between Member States and the EBA, the Hungarian Presidency suggested to complement the provisions on designating competent authorities, notification requirements and cross-border cooperation in order to ensure consistency with the provisions of the PSD3. As regards the investigatory powers and administrative sanctions it is emphasised that authorities should have clear and defined powers. There is a call for the inclusion of minimum powers to ensure that competent authorities can effectively address unauthorised activities, beyond those that are licensed.

Member States attach particular importance to the application of provisions on the confidentiality of information exchanged between competent authorities, in particular in relation to investigations, and to the exchange of information between authorities on matters relating to the fight against money laundering. As regards the provisions on jurisdiction and cooperation, Member States stress the importance of clear and well-defined procedures for the exchange of information and the enforcement of sanctions in cross-border cases, in particular the need to ensure explicit consent to the exchange of sensitive information between Member States.

Member States have supported a closer alignment of the provisions on professional secrecy with the Capital Requirements Directive and the development of a common approach to the provisions of the PSD3/PSR. To this end, the Presidency suggested the appropriate use of the relevant articles of Directive 2013/36/EU in the text. Some MS underline the importance of respecting confidentiality during criminal investigations, in particular when imposing criminal sanctions. MS propose to ensure that the exchange of information should generally not include the exchange of sensitive details of criminal investigations, except in cases where administrative sanctions could overlap with criminal proceedings (e.g., to avoid "bis in idem" – the prohibition of double jeopardy for the same act).

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With regard to the rules on periodic penalty payments (PPPs), MS suggested a quasi neutral approach as in CRD VI, leaving it to Member States to regulate them in accordance with their own legal frameworks and case law. It is stated that PPPs are not sanctions, but tools for enforcement, and should therefore not be categorised with sanctions. PPPs are considered as administrative enforcement measures, which are different from punitive sanctions and are seen as compliance rather than punitive measures. Some Member States stressed that the content and wording of the proposal should be better harmonised with CRD VI.

Having reviewed the range of infringements that form the basis for administrative sanctions and other administrative measures, as well as the types of sanctions and measures applicable, the Presidency has amended the relevant provisions, and clarified the monitoring of the procedures, sanctions and enforcement measures governing the reporting obligations and procedures of the competent authorities.

14. ADR Procedures

The Hungarian Presidency discussed in three Working Party meetings (8 July, 17 September, 15 November) Alternative Dispute Resolution (ADR) procedures in the context of consumer disputes involving PSPs. The majority of Member States agree that ADR procedures have a positive impact on the enforcement of consumer rights. There is a consensus that the draft proposal needs to be clarified and aligned with the ADR Directive (ADRD) (Directive 2013/11/EU).

Some Member States emphasise the importance of voluntary participation in ADR procedures, as the ADRD operates on a voluntary participation basis. They argue that voluntary participation is essential to maintain a positive perception of ADR among market players. However, other Member States recognise that the ADRD allows for voluntary participation but also allows Member States to make participation mandatory.

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Some Member States suggest that the key issue is not whether PSPs participate in ADR, but whether the ADR body can make recommendations even if the PSP does not engage.

Based on feedback from Member states, the Presidency suggested amendments to ensure compliance with the ADRD and national law, balancing the need to protect consumer rights with respect to Member States' national autonomy in implementing such schemes. The new drafting suggestion allows any Member State that wishes to make ADR mandatory at national level to do so, in line with existing ADR rules.

However, for those who do not wish to impose mandatory ADR, EU law will not impose an obligation.

15. Interplay between PSD3/PSR and FIDA

The Hungarian Presidency has played an important role in fostering discussions on the interplay between the PSD3/PSR and the FIDA, focusing on harmonising their respective requirements. A central aspect of these discussions is the alignment of regulations for Account Information Service Providers (AISPs), Payment Initiation Service Providers (PISPs), and Financial Information Service Providers (FISPs).

There is significant backing among Member States for aligning standards, where possible, particularly by aligning the EBA technical rules for AISPs and FISPs. Key points of focus include capital requirements and guarantees like professional indemnity insurance (PII). Some MS suggest allowing AISPs and PISPs to use their own funds or initial capital instead of PII, addressing challenges in obtaining such insurance.

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A core issue in discussions is harmonising PSD3/PSR and FIDA. There is broad agreement on proportionate capital requirements and unified authorisation processes. As regards the more stringent obligations for FISPs compared to AISPs, the majority of Member States agree that there is no need to further clarify and harmonise authorisation/notification obligations to ensure fairness and minimise costs and disruption for operators and users.

One pressing challenge is the discrepancy between dashboard requirements in Article 43 of PSR and Article 8 of FIDA. These differences affect PSPs under both frameworks. For example PSR gives ASPSPs up to 24 hours to notify TPPs of permission changes, whereas FIDA emphasizes "real-time" notifications or updates "without undue delay." Similarly, PSR dashboards require updates within 24 hours through cooperation among ASPSPs, AISPs, and PISPs, while FIDA insists on immediate updates.

FIDA also requires dashboards to display more detailed information such as the date of data access, which reflects different use case priorities but may increase complexity and costs for PSPs as well as confusion for users.

Member States prefer to align, to the extent possible, the PSR and FIDA provisions on dashboards. These efforts aim to create a cohesive framework across PSD3, PSR, and FIDA, fostering clarity, fairness and support for innovation and consumer interests in financial services.

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16. Non-papers by the Member States

Member States actively participated in the Working Parties and took the initiative to discuss certain topics and were happy to present their own Member State practices for the purposes of completing the picture. The Hungarian Presidency welcomed these initiatives and in each case there was a lively discussion on the issues. There were easier topics, such as the specific regulatory requirement for their national bank presented by the Polish delegation, for which Member States gave their full support. The regulatory issue of privately owned ATMs, presented by the Danish delegation, has started a lively discussion, with a majority of Member States supporting to clarify the possibility to withdraw or deny a registration.

The Lithuanian delegation initiated discussions to clarify the concept of e-money and the treatment of client funds held by payment institutions in payment system accounts. Both discussions remain open for further work.

The Swedish and Irish delegations addressed certain issues relating to fraud and enriched the discussion with additional aspects and suggestions on the allocation of liability and fraud prevention, respectively.

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V. Conclusions and the future

It is clear that, even after the adoption of the payments package, the legislative work will not end there. The present report should help the incoming Polish Presidency to continue working on the legislative package in view of agreeing on a common position of the Council and being able to start negotiations with the European Parliament.

The adoption of the PSD3 and PSR will require further work by co-legislators. PAD[4], DORA[5], IPR[6], SEPA[7] and MiCA[8] will require alignment with the payments servicesproposals. Some of these are already included in the form of explicit review clauses, and some are already being discussed by the Member States in Commission working group meetings.

At the same time, there are issues that are settled in the way of adoption of specific legal acts, such as the issue of funds with regard to the CMDI.

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[4] Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts

[5] Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011

[6] REGULATION (EU) 2024/886 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro

[7] REGULATION (EU) No 260/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009

[8] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

The Hungarian Presidency has in many issues moved towards finalisation and has repeatedly and thoroughly discussed the issues with the Member States, both in meetings and in written procedures, so the Hungarian Presidency has significantly advanced the work on the PSD3/PSR package.

The Presidency endevoured to give the opportunity to delegations to discuss all issues with a view to finding a common solution, expressing positions and voicing concerns. On some issues, a visible majority brought the issue close to finalisation (e-money, agent, interplay with FIDA, prevention, ADR). However, on a couple of issues work needs to be continued in the Working Party (e.g. fraud, authorisation, liability, ECSP, interplay with MiCA).

The Hungarian Presidency invites the incoming Presidency to continue the work in the payment services package. Expectations of the society are high, fraud and its negative effects are becoming more and more severe, and both consumers and the industry are looking forward to a forward-looking and beneficial solution.

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