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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	Working Party on Financial Services and the Banking Union (PSD/PSR) 8 September 2025 - Preparatory note for the technical meetings: fraud related issues

Danish Presidency
Council of the European Union

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Working Party on Financial Services and the Banking Union

Payment services package proposals (PSD3/PSR)

Date: 8 September 2025

Brussels, 8. September 2025

Preparatory note for the technical meetings: fraud related issues

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1 Introduction

This note treats the fraud related topics (art. 49 to 89 PSR) which were delegated to technical level at the kick off trilogue on the 6th of July. Fraud related topics for discussion at an upcoming political trilogue are included in the note: *Preparatory note for the second PSD3/R trilogue: Fraud*.

In this note the Presidency has included specific articles where the Presidency believes that input from Member States would be beneficial in the preparations of coming technical meetings with the EP on this topic. The focus of this note has been targeted at articles where the EP has made amendments which have not been discussed in the Council.

2 Technical elements

2.1 IBAN discrimination: Art. 50a – line 668a to 668c

The EP has included a new article (art. 50a) to combat IBAN discrimination by prohibiting that payers and payees can be required to specify in which Member State a payment account involved in the transaction is located. Some Member States have commented with different reservations towards the proposal. These reservations include that the Member State where the payment account is located is always identifiable due to the IBAN country-code and that it could be detrimental for PSPs management of AML/CFT risks if it is prohibited for payers and payees to specify in which Member State a payment account is located. Furthermore, certain regulatory obligations at both EU and national levels are linked to the jurisdiction of the account – for instance, tax reporting requirements or obligations related to cross-border supervision. It has also been noted that it could be very costly to adjust current systems. Finally, IBAN discrimination is already prohibited in the SEPA regulation[1]. The Presidency notices that the suggested wording from the EP is almost identical to the wording in art. 9 in the SEPA regulation. As such, the Presidency assumes that the EP intends to include this provision to extend the existing IBAN-discrimination ban to non-euro payments within the union since SEPA only covers payments in euros. However, as pointed out by one Member State the phrase “reachable” used by the EP is not further specified in the PSR and there are no requirements for accounts to be reachable for cross-border payments in any other currency than the euro. This requirement in relation to euros are specified in art. 3 of the SEPA regulation. The Member State argues that this would only work in practice if transactions are converted into euros.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0260

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The Presidency requests Member States input for possible solutions. One solution could be to make a similar reachability requirement as the one in the SEPA regulation art. 3 and include in the PSR for payments made within the Union in other currencies than the euro. The Presidency is interested in hearing if Member States could support such a solution or if other potential solutions could be found.

Q1: What is the position of Member States regarding the EPs proposal for an art. 50a, including Member States position to the Presidency's suggestion described above?

2.2 Art. 53 – line 683, 685a: Requirement for human support and requirements for communication from the PSP to the PSU:

The EP has suggested in art. 53 that PSPs shall, for the purpose of fraud notification or request for unblocking of a payment instrument by the PSU, ensure that the PSU at all times are able to contact the PSP and receive human support in the language of the host member state, through a free of charge communication channel, are available at all times. The Member States who have commented on the amendment are divided. Some Member States support the intention, while others are flagging that this could prove very expensive in operational costs as well as it is not aligned with technological developments.

Q2: What is the position of Member States regarding the EPs amendments to art. 53?

2.3 Other liability related provisions:

Besides the articles concerning liability mentioned in the discussion note on the fraud related topics for further discussion at political level, the Presidency has identified the following provisions where liability is relevant as well for the articles delegated to technical level:

- Art. 53(2a) EP version – line 687b
- Art. 56 – lines 696 to 699
- Art. 58 – lines 714 and 715
- Article 60(1)(subparagraph 2)(a) – line 727
- Article 62(1)(subparagraph 3) – line 746

Art. 53(2a) EP version – line 687b

The EP proposes that PSPs should be liable for any resulting financial losses if the PSP has not complied with art. 53(2a) concerning obligations for PSPs in relation to payment instruments.

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These obligations would also include two new additional requirements added by the EP in line 683 and line 685a. As an exception to this rule, the EP has included that PSPs should not be liable where PSUs has acted fraudulently. However, gross negligence from the PSU is not included as an exception. As such, the PSP would still be liable even if the PSU acted with gross negligence.

Art. 56 – lines 696 to 699
(Please notice that art. 56(2)(b) is covered below.)

Generally, only two amendments have been made to the lines covered in this sub-section. Both the Council and the EP has extended the deadlines for PSPs to investigate possible fraudulent actions from the PSU in art. 56(2) (line 698) to 14 and 15 business days respectively.

Art. 58 – line 714 and 715
The EP has amended the wording in art. 58, leading to a narrowing of the scope of liability for technical service providers (TSP). The Presidency notices support from some Member States and opposition from other Member States. Member States point towards that the substitution of the word "any" with "direct" as well as the inclusion of the word "proportionate" adds legal uncertainty.

Further, the Presidency notices the inclusion of the wording "*not exceeding the amount of the transaction in question*" means that a PSP potentially could be required to make a refund to a PSU which is larger than what the PSP receives from the TSP even if the TSP is entirely responsible for the mistake. For authorised transactions in art. 59(1) (line 717) the PSP is only liable for the full amount of the transaction in question. However, for unauthorised transactions in art. 56(3) (line 701) the PSP "*shall restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place*." The reason why a TSP should not be liable towards the PSP for the same amount that the PSP is liable towards the PSU, if the TSP is responsible for the financial damage, is not clear to the Presidency and the Presidency will ask the EP for clarification in this regard.

The Presidency is further aware of the fact that the EP has deleted the provision on TSPs (art. 87) while maintaining the provision on liability for TSPs.

Article 60(1)(subparagraph 2)(a) – line 727
The EP has added that the exception in the provision regarding the payer's liability for unauthorised transactions also applies to situations where the loss, theft or misappropriation of *security credentials* was not detectable to the payer. Consequently, the PSU would in this case not be liable for the 50 euro claim excess.

Article 62(1)(subparagraph 3) – line 746

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The EP has narrowed the scope for refund rights for MITs. In the Council text the refund rights are extended to "*authorised payment transactions which were initiated by a payee, including direct debits*". In the EP version the refund rights only cover direct debits.

Q3: What are Member States positions regarding the above-described amendments made by the EP to the liability related provisions?

2.4 Reporting requirements (related to art. 49 to 89):

The Presidency has identified the following additional reporting requirements in related to PSR art. 49 to 89 added by the EP:

- Art. 56(2)(b), EP version – line 700 – and art. 56(1), all versions – line 697
- Art. 57(2)(b), EP version – line 709
- Art. 59(2)(b), EP version – line 720
- Art. 82(1)(subparagraph 2), EP version – line 854a

Art. 56(2)(b), EP version – line 700 – and art. 56(1), all versions – line 697

The EP has included an obligation for PSPs to report to the relevant national authority when a decision has been made not to refund a payer in accordance with art. 56. Several Member States argue in the 4CT that this obligation is unnecessary. One Member State supports the addition. The Presidency would like to draw attention to the fact that the PSP is already obliged to report an initial decision to not refund the PSU immediately in accordance with art. 56(1) to the relevant national authority. As such, the EP's proposal can be seen as a follow up to the already included initial reporting since the EP proposes that the PSP must report their actual decision not to refund a PSU (56(2)(b)) and not only the decision to further investigate (56(1)). This leads the Presidency to believe that either both reporting requirements could be included or both could be deleted. In any case, if only one reporting requirement is to be included, the Presidency believes that it would probably be more relevant to include the reporting as suggested by the EP in 56(2)(b) while the one originally proposed in 56(1) could then be deleted.

Art. 57(2)(b), EP version – line 709

The EP suggests that PSPs should report to the relevant competent authority when a decision is made to not refund a payer. This applies in cases covered by art. 57, which concerns the refund rights for incorrect application of the verification of payee tool from the PSP. Many Member States have commented that they believe this would be burdensome to both PSPs and NCAs. One Member State suggests that such proofs could be provided to competent authorities upon request.

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Art. 59(2)(b), EP version – line 720

The EP has suggested that a decision to refuse to refund a consumer in accordance with art. 59 shall be reported to the NCA. Also here, several Member States comment that this would be burdensome. As one Member State points out, the wording of the EP also means that the justification would no longer have to be provided to the consumer but only to the relevant national authority. The Presidency assumes that this derivative consequence was not intentional from the EP side.

Art. 82(1)(subparagraph 2), EP version – line 854a

The EP has specified what kind of information should be included in the reporting by the PSPs. Several Member States are expressing scepticism towards this proposal since it would solely be for statistical purposes. One Member State supports the EP's proposal.

Q4: What are the positions of Member States on the above-described amendments made by the EP to the provisions on reporting requirements?

2.5 SCA (strong customer authentication)

In this section amendments from the EP to the following articles will be presented.

- Risk-based approach: art. 83(1)(a) and (b) and art. 85(1) – line 861, 862, and 884.
- Inherence category: 83(2)(subparagraph 5), art. 85(12) – line 874a, 902, and 902a
- Deletion of requirement to apply SCA in art. 85(1)(b) – line 886
- EBA mandate art. 85(11)(ca) – line 901b
- Smartphone and other smart device: Art. 88(2) – line 912

Risk-based approach: art. 83(1)(a) and (b), 83(2), and art. 85(1) – line 861, 862, and 884

The EP is proposing to make the application of SCA more risk based. In art. 85(1) (line 884) the EP has introduced that PSPs shall apply SCA "*on the basis of the risk assesment carried out under the transaction monitoring mechanism as set out in Article 83*". In art. 83(1)(a) (line 861) the EP also clarifies that the transaction monitoring mechanism (TMM) shall support a risk-based approach to the application of SCA, while in art. 83(1)(b) (line 862) the EP mentions that exemptions from SCA can be justified through the application of the TMM as described in art. 83(2). As described further below, the EP has proposed to include, under the inherence category of SCA elements, the data points mentioned in the first subparagraph of art. 83(2). However, the Presidency assumes that the EP's reference to a risk-based approach should be interpreted as giving the PSP's the possibility to not apply SCA based on their assessment of the risk-based factors in art. 83(2)(subparagraph 4) in the EP's version (lines 869 to 874), in addition to the exemptions to the application of SCA to be determined in the context of the RTS that are to be developed by the EBA pursuant to Article 89(1)(b). This subparagraph has been deleted in the Council version. The Presidency will ask the EP to elaborate on the

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intention with the proposal.

This addition from the EP would allow PSPs, to a much greater extent, to unilaterally decide when to exempt a transaction from the application of SCA and on what specific criteria. In contrast, under the Council proposal, exemptions from SCA that are not already specifically mentioned for example in art. 85a, will only be included in an EBA RTS, cf. art. 89(1)(b) (line 916) based on the criteria in art. 85(11) (line 898 to 901 and 901b).

In the 4CT a few Member States indicate openness to discuss the EP's proposal. However, several Member States are concerned that this will alter the functioning of SCA which they perceive to a key measure for fraud prevention. The Member States argue that the current system where EBA is mandated to develop an RTS with exemptions already provide flexibility needed.

Deletion of requirement to apply SCA in art. 85(1)(b) – line 886

The EP has deleted the requirement to apply SCA in cases as described in art. 85(1)(b). One MS has commented that this could lead to the theft of credentials online.

EBA mandate art. 85(11)(ca) – line 901b

The EP has proposed that the EBA in their RTS on exemptions from SCA can suggest exemptions based on "whether the parties to the transaction are consumers or corporate payers."

Inherence category: 83(2)(subparagraph 5), art. 85(12) – line 874a, 902, and 902a

In art. 83(2)(subparagraph 5) (line 874a) the EP suggests that the data points mentioned in art. 83(2) should be possible to include as part of the *inherence* category. However, for at least some of those data, the Presidency finds it hard to tell how these data can be considered to be inherence. In the 4CT some Member States support the proposal while others are opposing it. As such, the Presidency invites Member States to present their positions and include justifications.

In art. 85(12) (line 902) the EP has maintained the Commission's proposal to allow for the use of two elements from the same category while putting a greater emphasis on the need for the elements to be independent. In the Council version this this has been amended so two elements from the same category would not be allowed. In the 4CT four Member States support that two elements can belong to the inherence category, while there is opposition from five Member States who believes that the elements should be from different categories in all instances. However, this has already been extensively discussed in the Council.

In art. 85(12) (line 902a) the EP has furthermore added a new subparagraph 2 specifying that: "*The inherence element of strong customer authentication may include environmental and behavioural characteristics such as those related to the location of the payment service user,*

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the time when the transaction occurs or the device being used". In the 4CT Member States are evenly divided between support and opposition towards the proposal.

Smartphone and other smart devices: Art. 88(2) – line 912

In art. 88 – which stipulates that PSPs may not make SCA dependant on the PSU being in possession of a smartphone – the EP has decided to not only refer to a smart phone – as done by the Commission and the Council – but to both "*a smartphone or other smart device".* Further, the EP specifies that it is sufficient with "*more than one*" way to apply SCA whereas in the Council and Commission text the requirement is described as "*a diversity of means for application of SCA"*.

Q5: What are the positions of Member States on the above-described amendments made by the EP to the SCA?

2.7 Outsourcing: art. 87 – lines 908 to 909a:

As mentioned in the note for the CWP in July 2025, the Presidency is not aware of the reasoning from the EP to delete art. 87. In the 4CT several Member States are sceptical towards this deletion while no Member State supports it.

The Presidency will ask the EP for a clarification of the reasoning, when the article is discussed in a coming technical meeting. The Presidency will return to the Council if the EP maintains that the article should be deleted.

2.8 Other articles

The Presidency notices disagreement from several Member States to the addition from the EP to art. 61(1) (line 736) regarding payments initiated by or through a payee. Here, the EP has added references to account-to-account based transactions and credit transfers as examples of transactions which could be initiated by or through a payee where the amount might not be known at the moment when the payer authorizes the execution of the transaction. As of now, it is unclear what the motivation for the amendment is, the Presidency will ask the EP to elaborate on the motivation for their amendment. However, the amendment to art. 61(1) by the EP is also consistent with their amendment to art. 3(28) where credit transfers are defined. Here, the EP has included that a credit transfer can also be a transaction initiated "*by the payment service provider which holds the payee's payment account*". The definition of credit transfers is discussed in the note on subject matter, scope, and definitions (art. 1-3) which will also be discussed at the Council Working Party on the 8th of September.

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Q6 Do Member States have comments to amendments made by the EP to art. 49-89 which are not covered by this note or the discussion note on fraud related articles for political trilogues?