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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) 17.11.25 - Preparatory note for the political trilogue on the 26th of November concerning surcharges (Art. 28, PSR)

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: 17 November 2025

Brussels, 17 November 2025

Preparatory note for the political trilogue on the 26th of November concerning surcharges (Art. 28, PSR)

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1 Introduction

The topic of surcharges (Article 28, PSR) was at latest discussed at the political trilogue on the 23rd of October. During this discussion the European Parliament (EP) maintained its call for a full ban on surcharges for all payment instruments, while the Council and the Commission supported a more limited ban, providing Member States with flexibility to expand the ban. However, co-legislators agreed upon that a compromise on surcharging should be revisited at the Political trilogue on the 26th of November. The purpose of this Council Working Party is to explore possible compromise solutions that can bridge the differences between the institutions.

2 Possible compromises on surcharging (Article 28)

With the aim of finding a compromise in regards to surcharging, the Presidency has explored several possible solutions. It is clear that the EP and the Council have different priorities within this area, which the Presidency considers important to keep in mind when considering different compromises.

For the EP, the key objective is to protect consumers and create a level playing field. The EP finds that this is best ensured by a full ban on surcharges for all payment instruments. The Commission and the Council support a balanced approach. The two institutions want to maintain a partial ban and want to allow Member States some flexibility. Based on the previous discussions in the Council it appeared that delegations are divided as some Member States have already taken advantage of the Member State option in the PSD2 to broaden the scope of the partial surcharging ban in the PSD2, while others are concerned that a broad ban could lead to higher prices for all consumers and wish to retain national flexibility.

Given that this topic has not been discussed in the Council prior to the Council general agreement, the Presidency considers it necessary to discuss potential compromises in regards to this matter in the CWP. In order to bridge the positions between the co-legislators the Presidency can at present see the following four options.

1st compromise proposal: Full ban with MS option to exempt
An "inverted ban". This approach would establish **a general ban on surcharging for all payment instruments** at EU level, but allow Member States to opt out and permit surcharging in their national markets if they deem it appropriate.

If such an approach is to be accepted the Presidency propose to retain the EP's text in Article 28, paragraph 3, establishing a general ban on surcharging for all payment instruments. This will serve as the baseline provision, with the possibility for Member States to introduce derogations as outlined above.

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Drafting suggestion for the Presidency's proposed **compromise 1**:

Article 28
Compromise drafting suggestion in **red**

(…)

*4. By way of derogation from paragraph 3, Member States may permit payees to request charges for payment instruments for which interchange fees are **not** regulated under Chapter II of Regulation (EU) 2015/751 and for credit transfers, including instant credit transfers, and direct debit transactions within the Union."*

Q1: Can Member States support the Presidency's proposed 1st compromise proposal?

2nd compromise proposal: Full ban on all consumer cards

Another possible compromise identified by the Presidency is to introduce a full ban on surcharging, but to limit this prohibition to payment instruments issued for private consumer use. Under this approach, surcharging would remain possible for business or commercial cards, reflecting the different cost structures and market practices in the business-to-business segment. This solution aims to provide strong consumer protection and harmonisation for private individuals, while allowing greater flexibility for business payments.

In the bow below you can see the Presidency's compromise proposal for full ban on all consumer cards

Article 28
Compromise drafting suggestion in **red**
(…)

*3. The payee shall not request charges for the use of **any private** payment instruments ~~**for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751**~~ **issued for consumer use** and for credit transfers, including instant credit transfers, and direct debit transactions within the Union.*

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Q2: Can Member States support the Presidency's proposed 2nd compromise proposal?

3rd compromise proposal: Full ban on all consumer cards with MS option to exempt

The Presidency also considers a possible compromise to introduce a full ban on surcharging for consumer cards, while allowing each Member State the option to derogate from this rule. Under this approach, surcharging would be prohibited for all payment instruments issued for private use across the Union, while Member States would retain the flexibility to permit surcharging on private cards in their national markets. The Presidency invites Member States to consider whether this approach could serve as a basis for compromise in the ongoing negotiations.

In the column below you can see the Presidency's compromise proposal for a full ban on private cards with an MS option for derogation

Article 28

Compromise drafting suggestion in **red**

(…)

3. The payee shall not request charges for the use of ***any private*** *payment* ***instruments*** ~~***for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751***~~ ***issued for consumer use*** *and for credit transfers, including instant credit transfers, and direct debit transactions within the Union.*

3a. By way of derogation from paragraph 3, Member States may permit payees to request charges for the use of specific private payment instruments, taking into account the need to encourage competition and promote the use of efficient payment instruments. Member States shall notify the Commission of any such derogations.

Q3: Can Member States support the Presidency's proposed 3rd compromise proposal?

4th compromise proposal: Review clause + merchant rebate + Member state option

Finally, the Presidency believes that a compromise solution could be found by keeping the wording of the PSD2 combined with a review clause and an explicit right for merchants to offer discounts. A review clause could be included for the Commission to review the impact of the surcharging provisions; this should be included in order to ensure that an eventual ban

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is based on a proper assessment. As a part of this compromise the Presidency also proposes to retain the EP proposal allowing merchants to offer reductions or otherwise steer the payer towards a given payment instrument, as set out in Article 28(3b).

This approach addresses the EPs interest in consumer protection and transparency by ensuring that merchants can incentivise the use of efficient payment instruments through discounts. At the same time, it responds to the Council's and the Commission's concerns about flexibility and the potential unintended consequences of a full ban, such as higher prices for all consumers. The review clause ensures that the effectiveness and impact of the surcharging rules will be assessed after a set period, allowing for evidence-based adjustments in the future. By combining these elements, this compromise could bridge the gap between the institutions and provide a balanced, future-proof framework for the regulation of surcharging in the EU.

In the column below you can see the Presidency's compromise proposal for a review clause:

Article 28
Compromise drafting suggestion in **red**

3. The payee shall not request charges for the use of payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751 and for credit transfers, including instant credit transfers, and direct debit transactions within the Union.

3a. The payment service provider shall not prevent the payee from offering the payer a reduction or otherwise steering the payer towards the use of a given payment instrument.

4. By [three years after the date of application], the Commission shall review the impact of the surcharging provisions, including the effects on consumers, merchants, and competition, and shall assess the need for further harmonisation. The Commission shall submit a report to the European Parliament and the Council.

Q4: Can Member States support the Presidency's proposed 4th compromise proposal?