



Council of the European Union
General Secretariat

Brussels, 14 February 2025

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

WK 2069/2025 INIT

LIMITE

EF
ECOFIN
CODEC

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés

Subject:	IE Non Paper: Fraud prevention measures - PSD3/PSR
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Background

In response to the ongoing discussion on fraud in the PSD3/PSR working parties, IE prepared a non-paper on some fraud prevention measures, which was discussed in the PSD3/PSR CWP on December 6 2024. The non-paper outlined a proposed addition to the draft PSR, to include a requirement on all electronic communication service providers to verify with national competent authorities (NCAs) that links purporting to lead to regulated financial service providers are legitimate.

The paper has received a positive response from other member states and industry bodies but there have also been some concerns that the proposal as drafted would face challenges in meeting its stated aims. Taking account of this, as well as the feedback from the European Commission and the importance of the topic in mind, we have refined the proposals in our original non-paper.

Action

There are two elements to our refined proposal. The first concerns the fact that Article 59.5 of PSR relates only to impersonation fraud by a customer's PSP as specified in Article 59.1. The duty on electronic communication service providers to cooperate therefore, only relates to fraud of that type. We propose that it should be possible for PSPs to report any frauds where the source can be traced back to electronic communications. We further propose that the cooperation required by Article 59.5 should include a requirement to establish dedicated communication channels for PSPs to report frauds, and to take swift action in response to reports made through those dedicated communication channels or explain why they did not.

The second element concerns advertisements for financial services, which are often the first link in the fraud chain. Measures to ensure the legitimacy of financial services advertisements on social media platforms and search engines are therefore required. Our refined proposal locates the actions required of the electronic services providers within what is possible and achievable within the Digital Services Act (DSA).¹ Specifically, the proposal is not in conflict with Article 8 of the DSA as it relates to the verification of the identity of the advertisers and their authorised status prior to any advertisement being disseminated to the public and will be limited to very large online platforms (VLOPs) and very large online search engines (VLOSEs). This is also reflective of the fact that some of these entities, such as Google and Meta, are already doing this on a pilot basis in several countries.

Given the different nature of the two elements our proposal, we would suggest that second element regarding advertising should be inserted as a new Article. The Commission would be best placed to advise on where it should be inserted in the PSR.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065>



Drafting

DEFINITIONS

'advertisement' means 'advertisement' as defined in Article 3, point (r), of EU Regulation 2022/2065;

'dissemination to the public' means 'dissemination to the public' as defined in Article 3, point (k), of EU Regulation 2022/2065;

'financial service' means

- i. Any of services and activities listed in points 1 to 15 of Annex I to Directive 2013/36/EU;
- ii. Any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I to Directive 2014/65/EU;
- iii. Any of the services and activities as defined in point (16) of Art 3 of Regulation (EU) 2023/1114;
- iv. Any of the services and activities set out in Annex I to Directive 2015/2366;
- v. Any of the services and activities set out in Annex I and Annex II of Directive 2009/138/EC;
- vi. Any service or activity involved in presenting, offering, advising on, intermediating, broking and proposing any of the preceding categories of services or activities or of carrying out other work preparatory to the conclusion of contracts for those services or activities.

AMENDMENTS

Article 59

(5) ~~To facilitate the reporting of~~ ~~Where informed by a payment service provider of the occurrence of the type of fraud,~~ ~~including that as referred to in paragraph 1,~~ ~~by payment service providers,~~ electronic communications services providers ~~shall establish dedicated communication channels.~~ ~~Once in receipt of such reports, electronic communications services providers shall cooperate closely with payment service providers and act swiftly to~~

- (i) Ensure that appropriate organizational and technical measures are in place to safeguard the security and confidentiality of communications in accordance with Directive 2002/58/EC, including with regard to calling line identification and electronic mail address.
- (ii) ~~Remove or block access to content of relevance to the cause of the reported fraud;~~
~~and~~
- (iii) ~~Where it is inappropriate to take such action, electronic communications services providers shall explain the reasons.~~

Article XX

Verification of advertisers of financial products

Very large online platforms and very large online search engines, within the meaning of Article 33 of EU Regulation 2022/2065, shall not engage in the dissemination to the public in any Member



State of any advertisement for any regulated financial service in that Member State unless the advertiser:

1. is a regulated financial service provider that is
 - (i) authorised to provide that regulated financial service in that Member State; or
 - (ii) an entity authorised to do so as a result of it establishing a branch or by providing services, where it is authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorization, or
 - (iii) an entity otherwise authorised to provide those services by the competent authorities of that Member State;or
2. is exempt under the law of that Member State from requiring to be authorised to provide that regulated financial service in that Member State; or
3. is acting on behalf of or as agent of a regulated financial service provider that itself is authorised to provide that regulated financial service in that Member State; or
4. is acting on behalf of or as agent of an entity that is exempt under the law of that Member State from requiring to be authorised to provide that regulated financial service in that Member State.

Outcome

The proposal as originally drafted would face challenges in meeting the aims stated in the paper and so our amendments are intended to make the provisions both consistent with Digital Services Act (DSA) and feasible for industry to implement. These adjustments will clarify the scope, aligning with advertisements as defined in Article 3, point (r) of the DSA. This clarifies that the provision applies to advertisers of financial services, situations where platforms are involved in placing the content and can be expected to have awareness, rather than requiring platforms to assess all and any content, which could be seen as amounting to a general monitoring obligation contrary to Article 8 of the DSA. The measures focus on the actor placing the content, not the content itself, and does not require the platform to monitor the advertiser for any fact or circumstance that indicates illegal activity by the advertiser – it merely requires that before an entity becomes an advertiser, the platform verifies that it is an authorised financial service provider.