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REQUEST FOR CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	Consolidation of comments to the Presidency Questionnaire on on PSR Art. 85-end, Ddl 24 March 2025 Replies from 18 MS

From: HR, FI, EL, DK, DE, CZ, BE, AT, ES, SK, SI, SE, PT, NL, LV, LU, IT, IE **Updated: 02/05/2025 13:23**

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Note from the Presidency: The areas in light blue represent the provisions that are still under discussion and analysis - mainly the issues discussed at the Council Working Party meetings in January and February. Written contributions from Member States following these meetings are still being analysed.

Commission proposal	Legacy text of previous Presidencies	PL PRES drafting suggestions	MS drafting suggestions and comments
Article 85			
Strong customer authentication			
		[1]	
1. A payment service provider shall apply strong customer authentication where the payer:			
(a) accesses its payment account online;			
(b) accesses payment account information;	b) accesses payment account information online;		
(c) places a payment order for an electronic payment transaction;			
	(c1) orders the creation or replacement of a token of a		NL (MS drafting suggestions and comments):

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	payment instrument via a remote channel;		Does this mean that SCA is applicable to e-money tokens? We are in favor of CASPs also having to provide SCA, especially for the transfers of EMTs. IT (MS drafting suggestions and comments): **IT**. We have no objections to the proposal.
(d) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.	d) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses, including, but not limited to, increasing their payment transaction limit online, changing their password online, changing their contact information online;	d) carries out any other action through a remote channel which may imply a risk of payment fraud or other abuses, including, but not limited to, increasing their ~~payment transaction~~ spending limits according to Article 51 ~~online~~, changing their password online, changing their contact information online; *[**PRES comment**: The proposal presented at the January CWP meeting.]*	AT (MS drafting suggestions and comments): As already discussed in former working group meetings, also the activation of a banking app on another device could be listed as one of the non-exhaustive examples of applying SCA. PT (MS drafting suggestions and comments): As previously stated, we still support that sub § d) follows the COM's approach in not stating examples in the wording, as setting a non-

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			exhaustive list in the Article could lead to misinterpretations. As suggested, we would prefer this list to be placed in recitals. **Drafting suggestion:** (d) carries out any other action through a remote channel which may imply a risk of payment fraud or other abuses~~., including, but not limited to, increasing their spending limits according to Article 51, changing their password online, changing their contact information online~~; LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): d) carries out any other action through a remote channel which may imply a risk of payment fraud or other abuses, including, but not limited to, increasing their ~~payment transaction~~

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			spending limits according to Article 51 ~~online~~, changing their password online, changing their contact information online; *[**PRES comment**: The proposal presented at the January CWP meeting.]* IT (MS drafting suggestions and comments): **IT**. We agree.
2. Payment transactions that are not initiated by the payer but by the payee only shall not be subject to strong customer authentication to the extent that those transactions are initiated without any interaction or involvement of the payer.	(2) Payment transactions that are ~~not~~ initiated by ~~the payer but by the~~ payee ~~only~~ shall not be subject to strong customer authentication to the extent that those transactions are initiated without any interaction or involvement of the payer.		ES (MS drafting suggestions and comments): To clarify that refunds by the original payee, now payer, to the original payer, now payee, shall not require SCA, we would suggest to include at the end: *Such exemptions shall also apply to refunds that are initiated by the original payee in favour of the payer.* NL

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			(MS drafting suggestions and comments): "the" is missing inbetween "initiated by" and "payee"
3. Where the payer has given a mandate authorising the payee to place a payment order for a payment transaction or a series of payment transactions through a particular payment instrument that is issued to be used by the payer to place payment orders for the payment transactions, and where the mandate is based on an agreement between the payer and the payee for the provision of products or services, the payment transactions initiated thereafter by the payee on the basis of such a mandate may be qualified as payee initiated transactions, provided that those transactions do not need	~~3.Where the payer has given a mandate authorising the payee to place a payment order for a payment transaction or a series of payment transactions through a particular payment instrument that is issued to be used by the payer to place payment orders for the payment transactions, and where the mandate is based on an agreement between the payer and the payee for the provision of products or services, the payment transactions initiated thereafter by the payee on the basis of such a mandate may be qualified as payee initiated transactions, provided that those transactions do not need to be preceded by a specific action of the payer to trigger their initiation by the payee.~~		

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to be preceded by a specific action of the payer to trigger their initiation by the payee.			
4. The payment transactions for which payment orders are placed by the payee that are based on the mandate given by the payer shall be subject to the general provisions that apply to payee-initiated transactions as referred to in Articles 61, 62 and 63.	~~4.The payment transactions for which payment orders are placed by the payee that are based on the mandate given by the payer shall be subject to the general provisions that apply to payee-initiated transactions as referred to in Articles 61, 62 and 63.~~		
5. Where the mandate of the payer to the payee to place payment orders for transactions referred to in paragraph 3 is provided through a remote channel with the involvement of the payment service provider, the setting up of such a mandate shall be subject to strong customer authentication.	(~~5~~ 3) Where the mandate of the payer to the payee to place payment orders for merchant-initiated transactions ~~referred to in paragraph 3~~ is provided through a remote channel ~~with the involvement of the payment service provider~~, the setting up of such a mandate shall be subject to strong customer authentication.		PT (MS drafting suggestions and comments): We support a part of the original wording should be maintained, considering in particular (i) that there is a generalized abusive practice of classifying transactions as MOTO for the purpose of circumventing the application of SCA, so any unclear wording should be avoided, and (ii) as the term MOTO may be used in international card schemes to classify

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			transactions other than the ones we intend to take out of the scope of SCA, the more neutral phrasing of the previous drafting of article 85 (5) may help avoid misinterpretations. **Drafting suggestion:** 3. Where the mandate of the payer to the payee to place payment orders for merchant-initiated transactions is provided through a remote channel **with the involvement of the payment service provider**, the setting up of such a mandate shall be subject to strong customer authentication.
		3bis. By way of derogation from paragraphs 2 and 3, in the context of one or several credit transfers, when the payment service provider of the payer initiates the transaction following a mandate issued by the merchant, provided that the mandate is based on the conditions agreed between the	HR (MS drafting suggestions and comments): We are not familiar with such a model and we cannot support this proposal without a detailed explanation (e.g., non-paper) of what kind of service is being regulated here.

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		payer and the merchant and that the setting up of the mandate by the payment service provider of the payer is subject to strong customer authentication, those transactions shall not be subject to strong customer authentication, provided that the transactions do not need to be preceded by a specific action of the payer to trigger the initiation.	EL (MS drafting suggestions and comments): **EL:** We suggest to clarify that this case covers "direct debits" in order to avoid confusion. DE (MS drafting suggestions and comments): **Important Remark** Scrutiny Reservation We have strong concerns regarding this new exemptions, which has to our knowledge not been discussed before. - it is not clear which business model this provision adresses; does it apply to PIS-models or to something else? - paras 2 and 3 are not restricted to card-based payments, but can be apllied to all kinds of payments

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			where a payment instrument has been issued - the meaning of a payment initiated by the payer's PSP is not clear; the use of the term "mandate" deviates froom the usual usage - could be seen as a circumvention of direct debit rules We will apply comments to these amendments at a later point. CZ (MS drafting suggestions and comments): **The provisions is legally incorrect**. **PSP never initiates the transaction** (it the payer or the payee)**. It is not clear at all what the provision is trying to regulate.** Mandate is given by payer in all case. **It is not the case that para** 2 and 3 are limited to card-based payments as a consequence **CZ suggest deleting the provision**.

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			We strongly disagree with the statement that: "*credit transfers are, by definition, payer-initiated transactions* ". What about direct debits? The provision has been never discussed during CWG and its aim and impact is ambiguous. AT (MS drafting suggestions and comments): This approach seems fine to us. ES (MS drafting suggestions and comments): We welcome the inclusion of a level playing field for alternativa payment solutions that use ICT and we propose the following drafting amendment as a standalone article rather than a new paragraph under Article 85. New proposal

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			The new proposal is based on a new stand alone article 85 bis, applicable to ICT payment solutions other than card-based transactions, and differentiated from Article 85, which applies to card-based transactions. Instead of including the referred SCA exemption under the existing Article 85, we propose to have a stand alone article in order to avoid unintended misinterpretation consequences of Article 85. We highlight our intention is not to amend the already existing SCA exemptions, but to add an additional one for instant credit transfers in order to promote level playing field and enhance the development of instant payment solutions. The 3 main changes to the previous draft are the following: • Amendments in the draft for a better understanding of the involvement of the payer in the mandate/ agreement, and his no latter involvement in the transfer initiation; and

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			• Specifying that the *unconditional right of refund* also applies in the same terms as for MITs under arts 62 and 63 of PSR. • Specifying that article 61 on p*ayment transactions where the transaction amount is not known in advance* is also applicable. ***Article 85 bis*** *"in the context of one or several credit transfers, when the payment service provider of the payer initiates the transaction following a request issued by the merchant, provided that the request is based on the conditions previously agreed between the payer and the merchant and that the setting up of the agreement by the payment service provider of the payer is subject to strong customer authentication, those transactions shall not be subject to strong customer authentication, provided that the transactions do not need an additional action of the payer*

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			to trigger the initiation. In this context, the provisions referred to in Articles 61, 62 and 63*, will be applicable".* *The EBA shall develop Regulatory Technical Standards to specify the conditions of the exemption referred to in the first subparagraph.* *The EBA shall submit the Regulatory Technical Standards referred to in the second subparagraph to the Commission by [OP please insert the date= one year after the date of entry into force of this Regulation]. Power is delegated on the Commission to adopt the Regulatory Technical Standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.* *In accordance with Article 10 of Regulation (EU) No 1093/2010, the EBA shall review and, if appropriate, update the regulatory technical standards on a regular basis in order, inter alia, to take account of innovation and technological developments."*

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			Rationale The new article 85 bis applies exclusively to credit transfers. Article 85 focusses on transactions where payee-initiated transactions are possible, thereby limiting their scope to card-based transactions. The purpose of this new Article 85bis is to establish a framework for exemption from strong customer authentication (SCA) tailored to the circumstances of credit transfers, with the same safeguards, and ensuring a level playing field among different payment instruments. The paragraph refers to a merchant that, in the context of providing goods or services, that issues a request to the payer's payment service provider, which is the entity that ultimately initiates the payment. The merchant's request comes from an agreement with the payer (in which the payment conditions regarding frequency or

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			amounts paid should be laid out) reached through the means enabled by the payment service provider of the payer. It is proposed that the transaction be exempt from SCA if the payer does not need to intervene in the initiation of the transaction after an initial authentication with the payer's PSP to establish the agreement. This solution combines respecting the fact that credit transfers are, by definition, payer-initiated transactions with the technological innovation already established in the realm of credit transfers, ensuring that the regulation remains up to date. Additionally, as already detailed in PSD2, the Payer's payment service provider always retains the right to request the authentication of these transactions if they deem necessary. The solution should be at level I text in order to be at the same level than card-based transactions. However, should MSs consider that additional details should be provided at level II,

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			ES remains open to this option, and is therefore including in the proposed drafting a hook in level I text for EBA´s potential action. PT (MS drafting suggestions and comments): We generally agree with the proposal presented by the PL Presidency. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): 3bis. By way of derogation from paragraphs 2 and 3, in the context of one or several credit transfers, when the payment service provider of the payer initiates the transaction following a mandate issued by the merchant, provided that the mandate is based on the conditions agreed

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			between the payer and the merchant and that the setting up of the mandate by the payment service provider of the payer is subject to strong customer authentication, those transactions shall not be subject to strong customer authentication, provided that the transactions do not need to be preceded by a specific action of the payer to trigger the initiation.
		The EBA shall develop Regulatory Technical Standards to specify the conditions of the exemption referred to in the first subparagraph.	DE (MS drafting suggestions and comments): **Remark** This provision is in stark contrast to the default rule that EBA designs the exemptions itself. NL (MS drafting suggestions and comments): It would be more logical to create this mandate under Article 89, which is specifically about EBA mandates.

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			Now there are two places where mandates are being created. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): The EBA shall develop Regulatory Technical Standards to specify the conditions of the exemption referred to in the first subparagraph.
		The EBA shall submit the Regulatory Technical Standards referred to in the second subparagraph to the Commission by [OP please insert the date= one year after the date of entry into force of this Regulation]. Power is delegated on the Commission to adopt the Regulatory Technical Standards referred to in the second subparagraph in accordance with	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): The EBA shall submit the Regulatory Technical Standards referred to in the second subparagraph to the Commission by [OP please insert the date= one year

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		Articles 10 to 14 of Regulation (EU) No 1093/2010.	after the date of entry into force of this Regulation]. Power is delegated on the Commission to adopt the Regulatory Technical Standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
		In accordance with Article 10 of Regulation (EU) No 1093/2010, the EBA shall review and, if appropriate, update the regulatory technical standards on a regular basis in order, inter alia, to take account of innovation and technological developments. *[**PRES comment**:The addition of para. 3bis is based on the proposal of MS to ensure level-playing field between card-based and account-to-account payments. The new 3bis paragraph is an exception to the two preceding ones and applies exclusively to credit transfers.*	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): In accordance with Article 10 of Regulation (EU) No 1093/2010, the EBA shall review and, if appropriate, update the regulatory technical standards on a regular basis in order, inter alia, to take account of innovation and technological developments. *[**PRES comment**:The addition of para. 3bis is based on the proposal of MS to ensure level-playing field*

		The two previous paragraphs focus on transactions where payee-initiated transactions are possible, thereby limiting their scope to card-based transactions. *The purpose of this new paragraph is to establish a framework for exemption from strong customer authentication (SCA) tailored to the circumstances of credit transfers, with the same safeguards, and ensuring a level playing field among different payment instruments. The paragraph refers to a merchant that, in the context of providing goods or services, that issues a mandate to the payer's payment service provider, which is the entity that ultimately initiates the payment. The merchant's mandate comes from an agreement with the payer (in which the payment conditions regarding frequency or amounts*	*between card-based and account-to-account payments. The new 3bis paragraph is an exception to the two preceding ones and applies exclusively to credit transfers. The two previous paragraphs focus on transactions where payee-initiated transactions are possible, thereby limiting their scope to card-based transactions.* *The purpose of this new paragraph is to establish a framework for exemption from strong customer authentication (SCA) tailored to the circumstances of credit transfers, with the same safeguards, and ensuring a level playing field among different payment instruments. The paragraph refers to a merchant that, in the context of providing goods or services, that issues a mandate to the payer's payment service provider, which is the entity that ultimately initiates the payment. The merchant's mandate comes from an agreement with the payer (in which the payment conditions regarding frequency or*

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		paid should be layed out) reached through the means enabled by the payment service provider of the payer. It is proposed that the transaction be exempt from SCA if the payer does not need to intervene in the initiation of the transaction after an initial authentication with the payer's PSP to create that mandate. *This solution combines respecting the fact that credit transfers are, by definition, payer-initiated transactions with the technological innovation already established in the realm of credit transfers, ensuring that the regulation remains up-to-date. Additionally, as already detailed in PSD2, the payer's payment service provider always retains the right to request the authentication of these transactions if they deem necessary.]*	*amounts paid should be layed out) reached through the means enabled by the payment service provider of the payer. It is proposed that the transaction be exempt from SCA if the payer does not need to intervene in the initiation of the transaction after an initial authentication with the payer's PSP to create that mandate.* *This solution combines respecting the fact that credit transfers are, by definition, payer-initiated transactions with the technological innovation already established in the realm of credit transfers, ensuring that the regulation remains up-to-date. Additionally, as already detailed in PSD2, the payer's payment service provider always retains the right to request the authentication of these transactions if they deem necessary.]*

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6. For direct debits, where the mandate given by the payer to the payee to initiate one or several direct debit transactions is provided through a remote channel with the direct involvement of a payment service provider in the setting up of such a mandate, strong customer authentication shall be applied.	(~~6~~ 4) For direct debits where the mandate given by the payer to the payee to initiate one or several direct debit transactions is provided through a remote channel with the direct involvement of ~~a~~ the payer's payment service provider ~~- in the setting up of such a mandate, strong customer authentication shall be applied.~~ in setting up of such a mandate shall be subject to strong customer authentication.		
7. Payment transactions for which payment orders are placed by the payer with modalities other than the use of electronic platforms or devices, such as paper-based payment orders, mail orders or telephone orders, shall not be subject to strong customer authentication, irrespective of whether or not the execution of the transaction is performed electronically, provided that	(~~7~~ 5) MOTO transactions ~~Payment transactions for which payment orders are placed by the payer with modalities other than the use of electronic platforms or devices, such as paper-based payment orders, mail orders or telephone orders,~~ shall not be subject to strong customer authentication, ~~- irrespective of whether or not the execution of the transaction is performed electronically,~~ provided that		DE (MS drafting suggestions and comments): **Remark** The term "non-electronic transactions" would be better. The term "MOTO" is too narrow and belongs to the jargon of certain systems. (The definition in Art. 3(XX) would have to be adapted as well.)

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security requirements and checks are carried out by the payment service provider of the payer allowing a form of authentication of the payment transaction.	security requirements and checks are carried out by the payment service provider of the payer allowing a form of authentication of the payment transaction.		
8. For the remote placement of a payment order as referred to in paragraph 1, point (c), payment service providers shall apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.			ES (MS drafting suggestions and comments): For the sake of allowing certain flexibility regarding online purchases (such as weighed goods) and for coherence with the proposal in MIT, we suggest to include the possibility of a slightly different paid amount without SCA as long as the consumer has been informed. Therefore, we suggest including the following at the end of the paragraph: *Payment service providers shall apply a tolerance up to 10% above the original amount before requiring strong customer authentication again as long as the consumer has been informed.*

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9. For the placement of a payment order as referred to in paragraph 1, point (c), through a payer's device using proximity technology for the exchange of information with the payee's infrastructure, the authentication of which requires the use of internet on the payer's device, payment service providers shall apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee or harmonised security measures of identical effect, which ensure the confidentiality, authenticity and integrity of the amount of the transaction and the payee throughout all of the phases of initiation.	(~~9~~ 7) For the placement of a payment order as referred to in paragraph 1, point<u>s</u> c) <u>and d)</u> through a payer's device using proximity technology for the exchange of information with the payee's infrastructure, the authentication of which requires the use of internet on the payer's device, payment service providers shall apply strong customer authentication that includes either elements which dynamically link the transaction to a specific amount and a specific payee or harmonised security measures of identical effect, which ensure the confidentiality, authenticity and integrity of the amount of the transaction and the payee throughout all of the phases of initiation.		ES (MS drafting suggestions and comments): The reference to letter d) of paragraph 1 does not seem to fit. This article deals with additional security measures in payment orders (dynamic linking), while 85.1.d deals with other actions that may have a risk of fraud, such as changing a password. IT (MS drafting suggestions and comments): **IT.** We do not understand why letter (d) is referenced, as it does not refer to "payment orders".

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10. For the purposes of paragraph 1, payment service providers shall have in place adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials.			
11. Any exemptions from the application of strong customer authentication to be designed by the EBA under Article 89 shall be based on one or more of the following criteria:	(~~11~~ 9) ~~Exemptions from the application of strong customer authentication shall not be mandatory, the payment service provider shall have the right to decide if, under the circumstances, the application of strong customer authentication is indeed necessary.~~ Any exemptions from the application of strong customer authentication to be designed by the EBA under Article 89 shall be based on one or more of the following criteria:		PT (MS drafting suggestions and comments): Given there is only one criterion, we suggest merging this line and the one bellow. **Drafting suggestion:** 9. Any exemptions from the application of strong customer authentication to be designed by the EBA under Article 89 shall be based on the level of fraud risk involved in the service provided.**~~one or more of the following criteria:~~**
(a) the level of risk involved in the service provided;	a) the level of fraud risk involved in the service provided;		

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(b) the amount, the recurrence of the transaction, or both;			
(c) the payment channel used for the execution of the transaction.			
	Exemptions from the application of strong customer authentication shall not be mandatory, the payment service provider shall have the right to decide if, under the circumstances, the application of strong customer authentication is indeed necessary.	Exemptions from the application of strong customer authentication shall not be mandatory~~.~~ T~~t~~he payment service provider shall have the right to decide if, under the circumstances, the application of strong customer authentication or an exemption is indeed necessary. *[**PRES comment**: The proposal presented at the January CWP meeting.]*	FI (MS drafting suggestions and comments): FI: We support the PCY's proposal. DE (MS drafting suggestions and comments): **Drafting suggestion** This emphasises, that the optionality exists on two levels: whether a PSP implements the exemption at all and whether it want to use it in a secific situation. Hence, we propose the following drafting (changes in green): " Exemptions from the application of strong customer authentication shall

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			not be mandatory~~,~~. A payment service provider implementing an exemption always retains the right to decide that under the circumstances, strong customer authentication is necessary.~~Tthe payment service provider shall have the right to decide if, under the circumstances, the application of strong customer authentication or an exemption is indeed necessary~~.~~" LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): Exemptions from the application of strong customer authentication shall not be mandatory~~,~~. T~~t~~he payment service provider shall have the right to decide if, under the circumstances, the application of strong customer authentication or an exemption is indeed necessary.

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			*[**PRES comment**: The proposal presented at the January CWP meeting.]* IT (MS drafting suggestions and comments): **IT**. As proposed, the wording seems to suggest that the SCA is also subject to the discretion of the PSP. Moreover, we would not use the term "necessary" in reference to "exemption", as an exemption – in this context - cannot truly be necessary. We propose reverting to the previous wording, or alternatively amending the paragraph as follows: *Exemptions from the application of strong customer authentication shall not be mandatory~~,~~. T~~t~~he payment service provider shall have the right to decide if, under the circumstances, the application of* ***~~strong customer~~***

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			~~***authentication or***~~ *an exemption is* ~~*indeed*~~ *appropriate*.
12. The two or more elements referred to in Article 3, point (35), on which strong customer authentication shall be based do not necessarily need to belong to different categories, as long as their independence is fully preserved.	(~~12~~ 10) The two or more elements referred to in Article 3, point (35), on which strong customer authentication shall be based ~~do not necessarily~~ need to belong to different categories~~, as long as their independence is fully preserved~~.		HR (MS drafting suggestions and comments): We support this drafting keeping the requirement that the two elements should belong to different categories. DE (MS drafting suggestions and comments): **Drafting suggestion** We strongly support this position but would propose the following wording (changes in green): " The two or more elements referred to in Article 3, point (35), on which strong customer authentication shall be based ~~do not necessarily~~ ~~need to~~ belong to at least two different categories~~, as long as their independence is fully preserved~~." ES

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			(MS drafting suggestions and comments): We consider appropriate to rely on 2 factors, either inherence or possession factors, **not necessarily from different categories.** We would favour keeping the Comission's proposal wording. In particular, in our view, allowing 2 elements from the inherence category would foster both innovation, and financial inclusion, two of the main objectives of the Regulation. LU (): LU: we are in favour of an outcome based, future oriented and technical neutral approach therefore we prefer the initial wording proposed by the COM. IT (MS drafting suggestions and comments): **IT**. We agree.
Article 86			

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Strong customer authentication in respect of payment initiation and account information services			
1. Article 85(9) shall also apply where payments are initiated through a payment initiation service provider. Article 85(10) shall also apply where payments are initiated through a payment initiation service provider and when the information is requested through an account information service provider.	1. Article 85(6), ~~and~~ (7) and (10) shall also apply where payments are initiated through a payment initiation service provider. Article 85(8) shall also apply where payments are initiated through a payment initiation service provider and when the information is requested through an account information service provider.		
2. Account servicing payment service providers shall allow payment initiation service providers and the account information service providers to rely on the authentication procedures provided by the account servicing payment service	2. Account servicing payment service providers shall allow payment initiation service providers and the account information service providers to rely on the authentication procedures provided by the account servicing payment service provider to the payment		

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provider to the payment service user in accordance with Article 85(1) and (10) and, where the payment initiation service provider is involved, in accordance with Article 85(1), (8), (9), (10) and (11).	service user in accordance with Article 85(1) and (8) and, where the payment initiation service provider is involved, in accordance with Article 85(1), (6), (7), (8) and (10)~~(11)~~.		
3. Without prejudice to paragraph 2, where payment account information is accessed by an account information service provider, the account servicing payment service provider shall only apply strong customer authentication for the first access to payment account data by a given account information service provider, unless the account servicing payment service provider has reasonable grounds to suspect fraud, but not for the subsequent access to that payment account by that	3. Without prejudice to paragraph 2, where payment account information is accessed by an account information service provider, the account servicing payment service provider shall only apply strong customer authentication for the first access to payment account data by a given account information service provider, unless the account servicing payment service provider has reasonable grounds to suspect fraud, but not for the subsequent access to that payment account by that account information service provider, unless the account servicing		DE (MS drafting suggestions and comments): **Editorial suggestion** In the paragraph, the phrase " unless the account servicing payment service provider has reasonable grounds to suspect fraud" appars twice. We suggest to delete on of those phrases. SK (MS drafting suggestions and comments): As regards Article 86(3) and (4), it is not clear, what is meant by a reasonable suspicion of fraud by an AISP, whether such a reasonable suspicion can also be considered if the

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account information service provider.	payment service provider has reasonable grounds to suspect fraud.		ASPSP registers even one complaint of unauthorised or fraudulent access to a payment account by an AISP. And also the situation where the AISP does not issue its own personalised security features to the PSU through which the AISP would carry out its own SCA of the PSU is not addressed. In this case, there should be an explicit obligation for the AISP to request the ASPSP to perform the SCA. PT (MS drafting suggestions and comments): We suggest minor adjustments to simplify and clarify the idea conveyed. **Drafting suggestion:** 3. Without prejudice to paragraph 2, where payment account information is accessed by an account information service provider, the account servicing payment service provider shall only apply strong customer authentication for the first access to

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			payment account data by a given account information service provider, ~~**unless the account servicing payment service provider has reasonable grounds to suspect fraud**~~, but not for the subsequent access to that payment account by that account information service provider, unless, **in either case**, the account servicing payment service provider has reasonable grounds to suspect fraud.
4. Unless the account servicing payment service provider has reasonable grounds to suspect fraud, account information service providers shall apply their own strong customer authentication when the payment services user accesses the payment account information retrieved by that account information service provider at least 180 days after strong customer	4. ~~Unless the account servicing payment service provider has reasonable grounds to suspect fraud,~~ Account information service providers shall apply their own strong customer authentication when the payment services user accesses the payment account information retrieved by that account information service provider at least 180 days after strong customer authentication was last applied.		

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authentication was last applied.			
Article 87			
Outsourcing agreements for the application of strong customer authentication			
A payer payment service provider shall enter into an outsourcing agreement with its technical service provider in case that technical service provider is providing and verifying the elements of strong customer authentication. A payer's payment service provider shall, under such agreement, retain full liability for any failure to apply strong customer authentication and have the right to audit and control security provisions.	1. The ~~payer~~ payment service provider of the payer shall enter into an outsourcing agreement with its ~~the~~ technical service provider in case that technical service provider is providing and verifying the elements of strong customer authentication. ~~A payer's payment service provider shall, under such agreement, retain full liability for any failure to apply strong customer authentication and have the right to audit and control security provisions.~~		
	2. The ~~A payer's~~ payment service provider of the payer shall, under		

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	such agreement, retain full liability towards the payer for any failure to apply strong customer authentication and have the right to audit and control security provisions.		
	3. The technical service provider shall be liable towards the payment service provider of the payer for any financial damage caused to the payer or to the payment service provider of the payer for its failure to provide ~~and verify the elements of~~ strong customer authentication.	~~3. The technical service provider shall be liable towards the payment service provider of the payer for any financial damage caused to the payer or to the payment service provider of the payer for its failure to provide and verify the elements of strong customer authentication.~~ *[**PRES comment**: As this paragraph refers to the liability of TSPs for failure to allow the implementation of SCA that is already governed in Article 58, the PRES suggests deletion of this paragraph.]*	ES (MS drafting suggestions and comments): We agree with the changes proposed. NL (MS drafting suggestions and comments): Article 58 only regulates the liability of TSP for failures to allow the implementation of SCA as regards the financial damage caused to the payee, to the payment service provider of the payee or of the payer, but not the liability for the financial damage caused to the payer. Paragraph (3) here therefore does not contain duplicate regulation and cannot be simply deleted. LV

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			(MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): ~~3. The technical service provider shall be liable towards the payment service provider of the payer for any financial damage caused to the payer or to the payment service provider of the payer for its failure to provide and verify the elements of strong customer authentication.~~ ***[PRES comment**: As this paragraph refers to the liability of TSPs for failure to allow the implementation of SCA that is already governed in Article 58, the PRES suggests deletion of this paragraph.]* LU (): LU: we welcome this deletion. IT

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			(MS drafting suggestions and comments): **IT.** We agree with proposed amendment.
Article 88			
Accessibility requirements regarding strong customer authentication			
1. Without prejudice to the accessibility requirements under Directive (EU) 2019/882, payment service providers shall ensure that all their customers, including persons with disabilities, older persons, with low digital skills and those who do not have access to digital channels or payment instruments, have at their disposal at least a means, adapted to their specific situation, which enables them to perform strong customer authentication.	1. Without prejudice to the accessibility requirements under Directive (EU) 2019/882, payment service providers shall ensure that all their customers, including persons with disabilities, older persons, with low digital skills and those who do not have access to digital channels or payment instruments, have at their disposal at least a means, adapted to their specific situation, which enables them to perform strong customer authentication. In case the payment service user requests	1. Without prejudice to the accessibility requirements under Directive (EU) 2019/882, payment service providers shall ensure that all their customers, including persons with disabilities, older persons, with low digital skills and those who do not have access to digital channels or payment instruments, have at their disposal at least a means, adapted to their specific situation, which enables them to perform strong customer authentication free of charge. In case the payment service user	DE (MS drafting suggestions and comments): **Change Request** While we do support the purpose of this paragraph to foster financial inclusion of digital illiterate PSU, we are speptical about the blank provision to make available means to perform strong customer authentication “free of charge”. In fact, it is likely that such provision would lead increasing prices for payment accounts for all PSUs. Given

	help or is in need of assistance, the payment service provider shall ensure that support is provided. This requirement does not extend to providing devices to the payment service user. Payment service providers shall ensure that payment service users are adequately informed about the different means available to them to perform strong customer authentication.	requests help or is in need of assistance, the payment service provider shall ensure that support is provided. This requirement does not extend to providing devices to the payment service user. Payment service providers shall ensure that payment service users are adequately informed about the different means available to them to perform strong customer authentication. *[**PRES comment**: The proposal presented at the January CWP meeting.]*	that it is not clear that those PSU receiving free of charge are of lower income the distributional consequences of such cross-financing are unclear. Hence, we propose the following drafting: "(…) which enables them to perform strong customer authentication ~~free of charge~~where any charges shall be reasonable and limited to the payment service provider's costs for providing the means to perform strong customer authentication." ES (MS drafting suggestions and comments): We agree with the changes proposed. NL (MS drafting suggestions and comments): In favor of addition of "free of charge" by Presidency. LV

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			(MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): 1. Without prejudice to the accessibility requirements under Directive (EU) 2019/882, payment service providers shall ensure that all their customers, including persons with disabilities, older persons, with low digital skills and those who do not have access to digital channels or payment instruments, have at their disposal at least a means, adapted to their specific situation, which enables them to perform strong customer authentication free of charge. In case the payment service user requests help or is in need of assistance, the payment service provider shall ensure that support is provided. This requirement does not extend to providing devices to the payment

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			service user. Payment service providers shall ensure that payment service users are adequately informed about the different means available to them to perform strong customer authentication. *[**PRES comment**: The proposal presented at the January CWP meeting.]*
2. Payment services providers shall not make the performance of strong customer authentication dependant on the exclusive use of a single means of authentication and shall not make the performance of strong customer authentication depend, explicitly or implicitly, on the possession of a smartphone. Payment services providers shall develop a diversity of means for application of strong customer authentication to cater for the	(2) Payment services providers shall not make the performance of strong customer authentication dependant on the exclusive use of a single means of authentication and shall not make the performance of strong customer authentication depend, explicitly or implicitly, on the possession of a mobile device, unless the business model of the payment service provider consists in providing services exclusively through a mobile device ~~smartphone~~. Payment services providers shall develop a diversity of means for application	(2) Payment services providers shall not make the performance of strong customer authentication dependant on the exclusive use of a single means of authentication and shall not make the performance of strong customer authentication depend, explicitly or implicitly, on the possession of a mobile device, unless the business model of the payment service provider consists in providing services exclusively through ~~a mobile device~~ smartphone. Payment services providers shall develop a diversity of means for application	HR (MS drafting suggestions and comments): We prefer to use the term "mobile device" because it is a broader term than "smartphone" and can include a tablet and any other device that can enable SCA. DE (MS drafting suggestions and comments): **Change Request**

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specific situation of all their customers.	of strong customer authentication to cater for the specific situation of all their customers.	of strong customer authentication to cater for the specific situation of all their customers. *[**PRES comment**: Amendment based on the objections of many Member States during the January CWP meeting.]*	First, the provision now uses both the term "mobile device" and "smartphone". Is this intended? Second, in order to reflect that certain PSPs offer an arry of payment account packages, where some of those packages are based on providing services exclusively through a smartphone, while other packages are not, the drafting should be augmented as follows (changes in green): " mobile device, unless the business model or the payment account package chosen by the payment service user of the payment service provider consists in providing services exclusively through ~~a mobile device~~ smartphone." CZ (MS drafting suggestions and comments): We **appreciate** the return of the word smartphone instead of the word

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			mobile device as discussed during CWG. However, the change must be made in both occurrences in the text: *... on the possession of a* ~~***mobile device***~~ ***smartphone****, unless the business model of the payment service provider consists in providing services exclusively through* ~~*a mobile device*~~ *smartphone.* NL (MS drafting suggestions and comments): This now reads as "through smarthphone" it should be "through a smarthphone. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (2) Payment services providers shall not make the performance of strong customer authentication dependant on

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			the exclusive use of a single means of authentication and shall not make the performance of strong customer authentication depend, explicitly or implicitly, on the possession of a mobile device, unless the business model of the payment service provider consists in providing services exclusively through ~~a mobile device~~ smartphone. Payment services providers shall develop a diversity of means for application of strong customer authentication to cater for the specific situation of all their customers. *[**PRES comment**: Amendment based on the objections of many Member States during the January CWP meeting.]* IT (MS drafting suggestions and comments): IT. The term "smartphone" instead of "mobile devices" could help address some of the issues outlined below. However, we fear that this term lacks

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			technological neutrality and could lead to some interpretation problems, as it is not unambiguous. We therefore suggest changing the proposed addition "~~***unless the business model of the payment service provider consists in providing services exclusively through a mobile device/smartphone***~~" with the following wording "***unless the payment service provider offers its services exclusively online***", for the following reasons. First, very few PSPs provides services exclusively through a mobile device: in almost all cases, the services can also be accessed through an "ordinary" website. The exception would therefore be very limited in scope, while it seems reasonable to apply it to all PSPs whose business model does not include a physical presence and whose services are reasonably sought after only by people with sufficient digital skills.

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			Second, the notion of "mobile device" encompasses not only smartphone, but also "ordinary" mobile phone. Therefore, the "SMS OTP" would not be an acceptable mean, nor would a "mail OTP", since the EBA has clarified that it would be necessary that "*the email address where the OTP is sent to* [is] *accessible only via a registered device*" (Q&A EBA 2018_4315). More in general, without a physical presence of the PSU and without the use of a mobile device, it seems very difficult at a technical level to ascertain the factors of "inherence" or "possession". The proposal would force virtually all PSPs to adopt complex and potentially costly technical solutions, but these would cater to a very small segment of users, namely those who do not have access even to a "ordinary" mobile phone, although they do have access to a PC.

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Article 89			
Regulatory technical standards on authentication, communication and transaction monitoring mechanisms			
1. The EBA shall develop draft regulatory technical standards which shall specify:			
(a) the requirements of strong customer authentication as referred to in Article 85;			
(b) the exemptions from the application of Article 85(1), (8) and (9), based on the criteria laid down in Article 85(11);			
(c) the requirements with which security measures have to comply, in accordance with Article 85(10) in order to protect the confidentiality and			

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the integrity of the payment service users' personalised security credentials;			
(d) the requirements applicable, in accordance with Article 87, to the outsourcing agreements between the payers' payments service providers and technical service providers concerning the provision and verification of the elements of strong customer authentication by technical service providers;			
(e) the requirements under Title III, Chapter 3 for common and secure open standards of communication for the purpose of identification, authentication, notification, and information, as well as for the implementation of security measures, between account servicing payment service providers, payment initiation			

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service providers, account information service providers, payers, payees and other payment service providers;			
(f) supplementary provisions on secure open standards of communication using dedicated interfaces;			
(g) the technical requirements for transaction monitoring mechanisms referred to in Article 83.			
For the purposes of point (b), as regards the exemption from the application of strong customer authentication for payment transactions, based on transaction risk analysis the draft regulatory technical standards shall specify, inter alia:			DE (MS drafting suggestions and comments): **Drafting suggestion** For better clarity, this should be a new paragraph. In addition, it should be clarfied that EBA has discretion whether and to what extent it allows an exemption based on transaction risk analysis. (Currently, the TRA exemption can only be used for remote electronic card-based payments und remote electronic

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			credit transfers, not for other means of payment.) Hence, we propose the following drafting (changes in green): "For the purposes of paragraph 1**,** point (b), ~~as regards the~~ for any exemption from the application of strong customer authentication for payment transactions~~,~~ based on transaction risk analysis the draft regulatory technical standards shall specify, inter alia:"
(i) the conditions that have to be met for a remote electronic payment transaction to be considered as posing a low level of risk;			
(ii) the methodologies and models to implement transaction risk analysis;			
(iii) the criteria for the calculation of fraud rates, including on the allocation of fraud rates between payment			

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service providers providing issuing and acquiring services, or within payment service providers providing issuing and acquiring services through a single legal entity;			
(iv) detailed and proportionate reporting and audit requirements.			
2. When developing the draft regulatory technical standards referred to in paragraph 1, the EBA shall take into account:			
(a) the need to ensure an appropriate level of security for payment service users and payment service providers, through the adoption of effective and risk-based requirements;			
(b) the need to ensure the safety of payment service users' funds and personal data;			

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(c) the need to secure and maintain fair competition among all payment service providers;			
(d) the need to ensure technology and business-model neutrality;			
(e) the need to allow for the development of user-friendly, accessible and innovative means of payment.			
The EBA shall submit the draft regulatory technical standards referred to in paragraph 1 to the Commission by [OP please insert the date= 1 year after the date of entry into force of this Regulation]. Power is delegated on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.			DE (MS drafting suggestions and comments): **Change request** **(important point)** There should be a transitory phase after the entry into force of this new RTS, so that PSPs can adapt to the new exemptions. In this period, the old RTS should still be applicable. Hence, we propose to add the following sentence at the end of the paragraph:

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			"These regulatory technical standards shall become applicable 18 months after they enter into force. Until this point of time, PSP's shall apply the exemptions according to the regulatory technical standards based on Article 98 of Directive (EU) 2015/2366."
3. In accordance with Article 10 of Regulation (EU) No 1093/2010, the EBA shall review and, if appropriate, update the regulatory technical standards on a regular basis in order, inter alia, to take account of innovation and technological developments, and the provisions of Chapter II of Regulation (EU) 2022/2554, and the European Digital Identity Wallets implemented under Regulation (EU) No 910/2014.			
CHAPTER 8			

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Enforcement procedures, competent authorities and penalties			
		Section 1	LU (MS drafting suggestions and comments): **Section 1**
		Prohibition of persons other than payment service providers from providing payment services	LU (MS drafting suggestions and comments): **Prohibition of persons other than payment service providers from providing payment services**
		Article 89a	LU (MS drafting suggestions and comments): Article 89a
		Member States shall prohibit natural or legal persons that are neither authorised payment service providers nor explicitly excluded from the scope of this Regulation from providing payment services.	HR (MS drafting suggestions and comments): We support this proposal. However, it should be noted that there are also registered PSPs (AISPs, "small" PIs and ATM deployers), so we suggest

		*[**PRES comment**: The addition of the missing provision as compared to Article 37(1) PSD2.]*	either deleting the word "authorised" or adding the text "or registered" in this provision. ES (MS drafting suggestions and comments): We agree with the changes proposed. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): Member States shall prohibit natural or legal persons that are neither authorised payment service providers nor explicitly excluded from the scope of this Regulation from providing payment services. *[**PRES comment**: The addition of the missing provision as compared to Article 37(1) PSD2.]* LU ():

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			LU: as the requirements on authorisation are in the PSD, this provision should also be mirrored in the text of the PSD3.
Section 1		**Section ~~1~~2**	LU (MS drafting suggestions and comments): **Section ~~1~~2**
Complaint procedures		**Complaint procedures and prosecution of infringements**	LU (MS drafting suggestions and comments): **Complaint procedures and prosecution of infringements**
Article 90			
Complaints			
1. Member States shall set up procedures which allow payment service users and other interested parties including consumer associations, to submit complaints to the competent authorities designated to ensure enforcement of this Regulation, with regard to			

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payment service providers' alleged infringements of the provisions of this Regulation.			
2. Where appropriate and without prejudice to the right to bring proceedings before a court in accordance with national procedural law, the reply from the competent authorities to the complaints referred to in paragraph 1 shall inform the complainant of the existence of the alternative dispute resolution (ADR) procedures set up in accordance with Article 95.			
Article 91			
Competent authorities and investigatory powers			
		*[**PRES comment**: Based on MS's comments, amendments to Article 91(3) are suggested in order to maintain the same level of supervisory powers as compared to PSD 2 (both against*	DE (MS drafting suggestions and comments): **Remark**

		licenced and non-licenced activities) and in order to align the supervisory powers in the area of payments mainly to those in the area of MiCA and FIDA Regulations. The proposed extensions seem to be essential in order guarantee an adequate level of supervisory powers under PSD 3.]	We strogly welcome and support the intended harmonisation. CZ (MS drafting suggestions and comments): We do not support changes in Article 91 (3); mostly the provisions are redundant as they can be derived from general rules applied to supervisory powers. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): *[**PRES comment**: Based on MS's comments, amendments to Article 91(3) are suggested in order to maintain the same level of supervisory powers as compared to PSD 2 (both against licenced and non-licenced activities) and in order to align the supervisory powers in the*

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			area of payments mainly to those in the area of MiCA and FIDA Regulations. The proposed extensions seem to be essential in order guarantee an adequate level of supervisory powers under PSD 3.]
	1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation. Member States shall notify those competent authorities to the EBA and the Commission.		DE (MS drafting suggestions and comments): **Change request** Notification should only be to one body, preferably the Commission.
	2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one competent authority as the single point of contact for cross-border administrative cooperation between competent authorities as well as with the EBA. Member States may designate a different		

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	single point of contact for each of those types of administrative cooperation.		
	3. The EBA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 and 2.	~~3. The EBA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 and 2.~~ ***[PRES comment**: Paragraph moved below – to paragraph 6.]*	LU (MS drafting suggestions and comments): ~~3. The EBA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 and 2.~~ ***[PRES comment**: Paragraph moved below – to paragraph 6.]*
1. Competent authorities shall exercise their powers to investigate potential infringements of this Regulation, and impose administrative sanctions and administrative measures laid down in their national legal frameworks in accordance with this Regulation, in any of the following ways:		~~3~~1. Competent authorities shall exercise their powers to investigate potential infringements of this Regulation, and impose administrative sanctions and administrative measures laid down in their national legal frameworks in accordance with this Regulation, in any of the following ways:	LU (MS drafting suggestions and comments): ~~3~~1. Competent authorities shall exercise their powers to investigate potential infringements of this Regulation, and impose administrative sanctions and administrative measures laid down in their national legal frameworks in accordance with this Regulation, in any of the following ways: IE

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			(MS drafting suggestions and comments): The phrase '*administrative sanctions and administrative measures*' is used at a number of points in the PSR text. In order to avoid confusion as to whether PPPs are 'administrative sanctions' or 'administrative measures' and to increase harmonisation, we would suggest using the terminology used in CRDVI: "*The administrative penalties, **periodic penalty payments** and **other** administrative measures*".
(a) directly;			
(b) in collaboration with other authorities;			
(c) by delegating powers to other authorities or bodies, while retaining the responsibility for overseeing the delegated authority or body;			
(d) by applying to the competent judicial authorities.			

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Where competent authorities delegate the exercise of their powers to other authorities or bodies in accordance with point (c) the delegation of power shall specify the delegated tasks, the conditions under which they are to be carried out, and the conditions under which the delegation of power may be revoked. The authorities or bodies to which the powers are delegated shall be organised in such a manner as to ensure that conflicts of interest are avoided. Competent authorities shall oversee the activity of the authorities or bodies to which the powers are delegated.			
2. Member States shall designate competent authorities to ensure and monitor effective compliance with this Regulation. Those competent authorities shall		~~24~~. ~~Member States shall designate~~ The competent authorities designated under paragraph 1 of this Article shall take all appropriate measures to ensure and monitor effective	ES (MS drafting suggestions and comments): We agree with the changes proposed. LV

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take all appropriate measures to ensure such compliance.		compliance with this Regulation. ~~Those competent authorities shall take all appropriate measures to ensure such compliance.~~	(MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): ~~24~~. ~~Member States shall designate~~ The competent authorities designated under paragraph 1 of this Article shall take all appropriate measures to ensure and monitor effective compliance with this Regulation. ~~Those competent authorities shall take all appropriate measures to ensure such compliance.~~ IT (MS drafting suggestions and comments): **IT.** If we are not mistaken, the proposed amendments to Art. 91 have not been discussed in any previous WP, nor has there been a PCY note outlining the rationale behind the proposal. Given that these amendments are substantial and represent a significant shift from the

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			current framework, we strongly believe they warrant a more explicit and comprehensive discussion. While the proposal appears to mirror the existing MiCAR framework, we believe it would be preferable to assess whether such extensive and far-reaching powers are coherent and proportionate to the objectives of the PSR and the specific market context, which differs from that of crypto-assets (where no prior regulation existed). In our view, a more general formulation, focused on the essential objectives, would be preferable, as it would provide authorities with greater flexibility in exercising supervisory powers. For instance, in the Italian context, many of the proposed powers could not be exercised directly by the current NCA (Bank of Italy), as they would have a significant impact on the legal sphere of private entities (including individuals) and would therefore require the approval of the judiciary. A more general formulation would help ensure compatibility with the legal frameworks of each MS and

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			facilitate a smoother implementation. We reserve to send further comments at a later stage.
The competent authorities shall be either:			
(a) public authorities;			
(b) bodies recognised by national law or by public authorities expressly empowered for that purpose by national law, including national central banks.			
The competent authorities shall be independent from economic bodies and avoid conflicts of interest. Without prejudice to paragraph 2, point (b), payment institutions, credit institutions, or post office giro institutions shall	The competent authorities shall be independent from economic bodies and avoid conflicts of interest. Without prejudice to paragraph 4 ~~2~~, point (b), payment institutions, credit institutions, or post office giro institutions shall not be designated as competent authorities.		

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not be designated as competent authorities.			
3. The competent authorities referred to in paragraph 2 shall possess all investigatory powers and adequate resources necessary for the performance of their tasks.		~~3~~5. The competent authorities referred to in paragraph ~~4~~2 shall ~~possess~~ have all supervisory and investigatory powers and adequate resources necessary for the ~~performance of their tasks~~ exercise of their functions.	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): ~~3~~5. The competent authorities referred to in paragraph ~~4~~2 shall ~~possess~~ have all supervisory and investigatory powers and adequate resources necessary for the ~~performance of their tasks~~ exercise of their functions.
Those powers shall include:		Those powers shall include at least:	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): Those powers shall include at least:

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(a) in the course of procedures to investigate potential breaches of this Regulation, the power to require from, *inter alia*, the following natural or legal persons, all information necessary to carry out that investigation:		(a) in the course of procedures to investigate potential breaches of this Regulation, the power to require ~~from, *inter alia*, the following natural or legal persons, all information necessary to carry out that investigation~~ any person to provide information and documents which the competent authorities consider could be relevant for the performance of their duties, including the following natural or legal persons:	FI (MS drafting suggestions and comments): FI: We suggest the following addition (changes in bold and underlined): "(a) in the course of procedures to investigate potential breaches of this Regulation, the power to require, **insofar as permitted by national law**, any person to provide information and documents which the competent authorities consider could be relevant for the performance of their duties, including the following natural or legal persons:" The addition is necessary as the processing of communications data is subject to conditions under, inter alia, the ePrivacy Directive 2002/58/EC and national laws through which it has been transposed, and MSs may also have other legislation relating to the processing of such data which should be taken into account when processing such data. Furthermore,

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			through this amendment, the wording would be aligned with the wording under point (e). ES (MS drafting suggestions and comments): We agree with the changes proposed. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (a) in the course of procedures to investigate potential breaches of this Regulation, the power to require ~~from, *inter alia*, the following natural or legal persons, all information necessary to carry out that investigation~~ any person to provide information and documents which the competent authorities consider could be relevant for the performance of

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			their duties, including the following natural or legal persons:
(i) payment services providers;			
(ii) technical service providers and payment system operators;			
(iii) ATM deployers which do not service payment accounts;		(iii) ATM deployers which do not service payment accounts, including providers of intermediary services within the meaning of Regulation (EU) 2022/2065;	DE (MS drafting suggestions and comments): **Editorial remark** The addition (" including providers of intermediary services within the meaning of Regulation (EU) 2022/2065) apparently belongs to the electronic communications services providers under (iv). CZ (MS drafting suggestions and comments): The reference to Regulation 2022/2065 should be deleted. It has nothing to do wit ATM deployers. LV

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			(MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (iii) ATM deployers which do not service payment accounts, including providers of intermediary services within the meaning of Regulation (EU) 2022/2065; IE (MS drafting suggestions and comments): What does this mean? Does this insertion represent a subset of ATM deployers which do not service payment accounts?
(iv) electronic communications services providers;	(iv) electronic communications services providers within the meaning of Article 59(5);		DE (MS drafting suggestions and comments): **Editorial remark** See remark above ES

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			(MS drafting suggestions and comments): This referrence will need to be revisited following the final drafting on fraud, since it is not clear that article 59 will stay.
(v) natural persons belonging to the entities referred to in points (i), (ii) and (iii);			
(vi) third parties to whom the entities referred to in points (i), (ii) and (iii) have outsourced operational functions or activities;			
(vii) agents and distributors of the entities referred to in points (i), (ii) and (iii) and their branches established in the Member State concerned;	(vii) agents ~~and distributors~~ of the entities referred to in points (i), (ii) and (iii) and their branches established in the Member State concerned;		
		(viii) any other person involved in the initiation, conclusion or processing of payment services, regardless of negligence and regardless of knowledge of involvement;	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments):

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			(viii) any other person involved in the initiation, conclusion or processing of payment services, regardless of negligence and regardless of knowledge of involvement; LU (): LU: drafting suggestion: "(viii) any other person involved in the initiation, conclusion or processing of payment services, ~~regardless of negligence and regardless of knowledge of involvement~~;" IE (MS drafting suggestions and comments): It is not apparent to us what "regardless of negligence" is trying to capture here?
(b) the power to conduct all necessary investigations of any person referred to in points (a) (i) to (vii) established or located in the			DE (MS drafting suggestions and comments): **Editorial Remark**

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Member State of the competent authority or providing services therein, where necessary to carry out the tasks of the competent authorities, including the power to:			"(b) the power to conduct all necessary investigations of any person referred to in points (a) (i) to (viii) established or located in the Member State of the competent authority or providing services therein, where necessary to carry out the tasks of the competent authorities, including the power to:" IE (MS drafting suggestions and comments): (b) the power to conduct all necessary investigations of any person referred to in points (a) (i) to (vii) established or located in the Member State of the competent authority or providing services therein, where necessary to carry out the tasks of the competent authorities, including at least the power to:
(i) require the submission of documents;			
(ii) examine the books and records of the persons referred			DE

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to in points (a) (i) to (vii) and take copies or extracts from such books and records;			(MS drafting suggestions and comments): **Editorial Remark** "(ii) examine the books and records of the persons referred to in points (a) (i) to (viii) and take copies or extracts from such books and records;"
(iii) obtain written or oral explanations from any person referred to in points (a) (i) to (vii) or their representatives or staff, where applicable;			DE (MS drafting suggestions and comments): **Editorial Remark** "(iii) obtain written or oral explanations from any person referred to in points (a) (i) to (viii) or their representatives or staff, where applicable;"
(iv) interview any other natural person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;			IE (MS drafting suggestions and comments): We are concerned that the text of Article 91(3)(b)(iv) would negatively impact our Competent Authority's ability to compel individuals to attend

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			for interview and to respond to questions at the investigation stage
(c) the power to conduct all necessary inspections at the business premises of the legal persons or of the natural persons referred to in points (a)(i) to (vii), subject to the prior notification of the competent authorities concerned.		(c) the power to conduct all necessary inspections at the business premises and at sites other than the private residence of the legal persons or of the natural persons referred to in points (a)~~(i) to (vii)~~, as well as of any other legal person included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned.	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (c) the power to conduct all necessary inspections at the business premises and at sites other than the private residence of the legal persons or of the natural persons referred to in points (a)~~(i) to (vii)~~, as well as of any other legal person included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. LU ():

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			LU: it is not clear what is meant by consolidated supervision in the context of the PSD/ PSR We do not agree with the wording proposed here as the mere reference to consolidated supervision is vague; Furthermore, the extension of powers to all legal entities which are included in the consolidated supervision of a parent credit institution pursuant to directive 2013/36/eu (as we understand the wording) is disproportionate and not fit-for-purpose.
		(d) to enter the premises of natural and legal persons, in line with national law, in order to seize items, documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be necessary and relevant to prove a case of	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (d) to enter the premises of natural and legal persons, in line with national law, in order to seize items, documents and data in any form

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		breach of provisions of this Regulation;	where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be necessary and relevant to prove a case of breach of provisions of this Regulation;
		(e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of a breach and where such records may be relevant to the investigation of a breach of this Regulation;	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of a breach and where such records may be relevant to the investigation of a breach of this Regulation;
		(f) to request the freezing or sequestration of assets, or both;	LV (MS drafting suggestions and comments): We support.

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			LU (MS drafting suggestions and comments): (f) to request the freezing or sequestration of assets, or both;
		(g) to refer matters for criminal investigation;	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (g) to refer matters for criminal investigation;
		(h) in the absence of other available means to bring about the cessation or the prevention of any breach of this Regulation and in order to avoid the risk of serious harm to the interests of consumers, competent authorities shall be entitled to take any of the following measures, including by requesting a third party or other	CZ (MS drafting suggestions and comments): We suggest deleting the provision. It unreasonably interferes with the content neutrality of internet content. LV (MS drafting suggestions and comments): We support.

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		public authority to implement them:	LU (MS drafting suggestions and comments): (h) in the absence of other available means to bring about the cessation or the prevention of any breach of this Regulation and in order to avoid the risk of serious harm to the interests of consumers, competent authorities shall be entitled to take any of the following measures, including by requesting a third party or other public authority to implement them:
		(i) to remove content or to restrict access to an online interface or to order that a warning is explicitly displayed to customers when they access an online interface;	CZ (MS drafting suggestions and comments): The above measures are sensitively perceived by the public from the perspective of the right to free access to information and freedom of expression; we do not consider the measures necessary from the perspective of the goal. Such powers belong rather to the competent court, not to an administrative authority. LV

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			(MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (i) to remove content or to restrict access to an online interface or to order that a warning is explicitly displayed to customers when they access an online interface;
		(ii) to order a hosting service provider to remove, disable or restrict access to an online interface;	CZ (MS drafting suggestions and comments): The above measures are sensitively perceived by the public from the perspective of the right to free access to information and freedom of expression; we do not consider the measures necessary from the perspective of the goal. Such powers belong rather to the competent court, not to an administrative authority. LV

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			(MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (ii) to order a hosting service provider to remove, disable or restrict access to an online interface;
		(iii) to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to record such deletion.	CZ (MS drafting suggestions and comments): The above measures are sensitively perceived by the public from the perspective of the right to free access to information and freedom of expression; we do not consider the measures necessary from the perspective of the goal. Such powers belong rather to the competent court, not to an administrative authority. LV (MS drafting suggestions and comments): We support.

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			LU (MS drafting suggestions and comments): (iii) to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to record such deletion.
		The implementation of this paragraph and the exercise of powers set out therein shall be proportionate and comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement.	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): The implementation of this paragraph and the exercise of powers set out therein shall be proportionate and comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this

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			Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement.
		(i) to prohibit an offer to the public where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it will be infringed;	CZ (MS drafting suggestions and comments): The provision does not legislatively follow on from previous articles. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (i) to prohibit an offer to the public where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it will be infringed;
		(j) to suspend or prohibit marketing communications where there are reasonable grounds for suspecting that this Regulation has been infringed;	CZ (MS drafting suggestions and comments): The above measures are sensitively perceived by the public from the

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			perspective of the right to free access to information and freedom of expression; we do not consider the measures necessary from the perspective of the goal. Such powers belong rather to the competent court, not to an administrative authority. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (j) to suspend or prohibit marketing communications where there are reasonable grounds for suspecting that this Regulation has been infringed;
		(k) to prohibit the provision of payment services where they find that this Regulation has been infringed;	LV (MS drafting suggestions and comments): We support. LU

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			(MS drafting suggestions and comments): (k) to prohibit the provision of payment services where they find that this Regulation has been infringed;
		(l) where there is a reason to assume that a person is providing payment services without the required authorisation or the required registration, to order the immediate cessation of the activity without prior warning or imposition of a deadline;	CZ (MS drafting suggestions and comments): The aforementioned provision is disproportionate. The "assumption" is too weak for implementation of such measure. It unjustifiably interferes with the constitutionally guaranteed rights to freedom of enterprise based on mere suspicion without the need for administrative or judicial proceedings. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments):

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			(l) where there is a reason to assume that a person is providing payment services without the required authorisation or the required registration, to order the immediate cessation of the activity without prior warning or imposition of a deadline; LU (): LU: this is not in the remit of the NCA which has only enforcement powers in regard to authorized entities. This is a constitutional aspect related to the separation of powers. Only the prosecutor can sanction persons that offer services without authorisation.
		(m) if payment services are provided without the required authorisation or the required registration, the competent authority shall order the immediate cessation of business operations and the immediate settlement of these activity vis-à-vis the company, its shareholders	CZ (MS drafting suggestions and comments): The aforementioned provision is disproportionate. It unjustifiably interferes with the constitutionally guaranteed rights to freedom of enterprise based on mere suspicion without the need for administrative or

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		and the members of its executive bodies;	judicial proceedings. Of course, a penalty can be imposed for unauthorized business. However, the entrepreneur can defend himself in court. The proposed measure, in combination with periodic penalty payments, is essentially liquidating. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (m) if payment services are provided without the required authorisation or the required registration, the competent authority shall order the immediate cessation of business operations and the immediate settlement of these activity vis-à-vis the company, its shareholders and the members of its executive bodies; LU ():

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			LU: this is not in the remit of the NCA which has only enforcement powers in regard to authorized entities. This is a constitutional aspect related to the separation of powers. Only the prosecutor can sanction persons that offer services without authorisation.
		(n) the competent authority may	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (n) the competent authority may
		(i) issue instructions for the settlement and	BE (MS drafting suggestions and comments): BE: Issueing instructions for the liquidation and appointing a person as liquidator are tasks of the courts in Belgium and do not fall under the competent authorities. Why is a role in this context necessary?

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			LU (MS drafting suggestions and comments): (i) issue instructions for the settlement and
		(ii) appoint a suitable person as liquidator;	LU (MS drafting suggestions and comments): (ii) appoint a suitable person as liquidator;
		(l) to publish its measures; personal data may only be published insofar as this is necessary to avert danger;	DE (MS drafting suggestions and comments): Please see our comments regarding Article 101(2). BE (MS drafting suggestions and comments): BE: The word "danger" should be further specified. It is currently unclear when personal data may or may not be published. LV (MS drafting suggestions and comments):

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			We support. LU (MS drafting suggestions and comments): (l) to publish its measures; personal data may only be published insofar as this is necessary to avert danger;
		(o) if and as long as facts justify the assumption or it is established that a person is providing unauthorised payment services, also if a company does not provide unauthorised payment services but gives the impression of doing so to the public, the competent authority may inform the public of the suspicion or this finding, stating the name or company name of the company.	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (o) if and as long as facts justify the assumption or it is established that a person is providing unauthorised payment services, also if a company does not provide unauthorised payment services but gives the impression of doing so to the public, the competent authority may inform the public of the suspicion or this finding, stating the name or company name of the company.

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		(p) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring a payment service provider, or any other person who has published or disseminated false or misleading information to publish a corrective statement;	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (p) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring a payment service provider, or any other person who has published or disseminated false or misleading information to publish a corrective statement;
		(q) to make public the fact that a payment service provider fails to fulfil its obligations;	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments):

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			(q) to make public the fact that a payment service provider fails to fulfil its obligations;
		(r) if the information published by the competent authority proves to be false or the underlying circumstances incorrect, the competent authority shall inform the public of this in the same way as it previously published the information in question.	LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (r) if the information published by the competent authority proves to be false or the underlying circumstances incorrect, the competent authority shall inform the public of this in the same way as it previously published the information in question.
		6. The EBA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 and 2.	LU (MS drafting suggestions and comments): 6. The EBA shall publish on its website a list of the competent authorities designated in accordance with paragraphs 1 and 2.

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4. Where the law of a Member State lays down criminal sanctions applicable to infringements of this Regulation in accordance with Article 96, paragraph (2), that Member State shall have in place the necessary laws, regulations and administrative provisions to enable competent authorities:		74. Where the law of a Member State lays down criminal sanctions applicable to infringements of this Regulation in accordance with Article 96, paragraphs (1) and (2), that Member State shall have in place the necessary laws, regulations and administrative provisions to enable competent authorities: *[**PRES comment**: In the view of the PRES, criminal sanctions could be applicable also by virtue of Article 96(1), not only 96(2).]*	LU (MS drafting suggestions and comments): 74. Where the law of a Member State lays down criminal sanctions applicable to infringements of this Regulation in accordance with Article 96, paragraphs (1) and (2), that Member State shall have in place the necessary laws, regulations and administrative provisions to enable competent authorities: *[**PRES comment**: In the view of the PRES, criminal sanctions could be applicable also by virtue of Article 96(1), not only 96(2).]*
(a) to liaise with competent judicial authorities in order to receive specific information regarding criminal investigations of alleged infringements of this Regulation, criminal proceedings commenced in respect of such alleged infringements, and the			DE (MS drafting suggestions and comments): **Drafting suggestion** The "specific information" that competent authorities should receive from judicial authorities on criminal investigations (Art. 91(4) PSR) should be restricted to specific

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outcome of such proceedings including the final judgement;			information where that information is necessary to fulfil the tasks of the competent authority. Hence, we propose the following drafting (changes in green): "to liaise with competent judicial authorities in order to receive specific information regarding criminal investigations of alleged infringements of this Regulation, criminal proceedings commenced in respect of such alleged infringements, and the outcome of such proceedings including the final judgement where that information is necessary to fulfil the tasks of the competent authority;" IT (MS drafting suggestions and comments): **IT**. As regards the cooperation between the competent authority and judicial bodies, we would suggest to refrain from imposing on Member States the general obligation to

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			require judicial authorities to provide "specific information regarding criminal investigations of alleged infringements of this regulation" to competent authorities. Most jurisdictions have stringent rules on secrecy during criminal investigations that would need to be taken into consideration. We would, therefore, suggest a more cautious approach and limit the exchange of such information to the cases in which there is a chance that both an administrative sanctioning proceeding and a criminal proceeding is initiated against the same person for the same alleged violation. See, as an example, the new Article 70, par. 4, CRD, as amended by Directive (EU) 2024/1619. In that vein, we would suggest to consistently amend the provisions aimed to manage potential "bis in idem" as well (please, see our comment sub art. 99 (1)f): "(a) to liaise with competent judicial authorities in order to receive specific

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			information regarding ~~criminal investigations of alleged infringements of this Regulation,~~ criminal proceedings commenced ***against the same natural or legal person that may be held responsible for the same*** ~~in respect of such~~ alleged infringements ***of this Regulation***, and the outcome of such proceedings including the final judgement;"
(b) to provide such information to other competent authorities and the EBA to fulfil their obligation of cooperating with each other and with the EBA for the purposes of this Regulation.	(b) to provide such information in anonymised form to other competent authorities and the EBA to fulfil their obligation of cooperating with each other and with the EBA for the purposes of this Regulation.	(b) to provide such information ~~in anonymised form~~ to other competent authorities and the EBA to fulfil their obligation of cooperating with each other and with the EBA for the purposes of this Regulation. *[**PRES comment**: As some delegations mentioned, providing information, for example, on criminal investigations to other NCAs and EBA to fulfil a cooperation obligation is necessary in particular in cases with cross-*	DE (MS drafting suggestions and comments): **Remark** Esp. given that personal data concerning payments can be highly sensitive we see the need for more specific provisions on the transmission of personal data between competent authorities. Which authorities does this provision concern? What does cooperation mean in this context? What are the

		border relevance where other NCAs should be alerted. Requiring anonymisation would not allow other NCAs to do much with the information, so it would become pointless to share the information.]	specific purposes for which data can be transmitted? BE (MS drafting suggestions and comments): BE: we strongly support the deletion of the words "in anonymised form". Such anonymisation is neither desirable nor necessary, as it can hinder the proper conduct of an investigation. In any case, the other competent authorities receiving this information are bound by professional secrecy. ES (MS drafting suggestions and comments): We agree with the changes proposed. SE (MS drafting suggestions and comments): We welcome the amendment. LV (MS drafting suggestions and comments):

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			We support. LU (MS drafting suggestions and comments): (b) to provide such information ~~in anonymised form~~ to other competent authorities and the EBA to fulfil their obligation of cooperating with each other and with the EBA for the purposes of this Regulation. *[**PRES comment**: As some delegations mentioned, providing information, for example, on criminal investigations to other NCAs and EBA to fulfil a cooperation obligation is necessary in particular in cases with cross-border relevance where other NCAs should be alerted. Requiring anonymisation would not allow other NCAs to do much with the information, so it would become pointless to share the information.]* IT (MS drafting suggestions and comments): **IT.** We agree.

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5. The implementation and the exercise of powers set out in this Article shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted in application of this Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement.		~~8~~5. The implementation and the exercise of powers set out in this Article shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted in application of this Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement.	LU (MS drafting suggestions and comments): ~~8~~5. The implementation and the exercise of powers set out in this Article shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted in application of this Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement.
6. By [OP please insert the date= the date of entry into force of this Regulation], the EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, on complaints procedures, including the		~~9~~6. By [OP please insert the date= the date of entry into force of this Regulation], the EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, on complaints procedures, including the channels for	LU (MS drafting suggestions and comments): ~~9~~6. By [OP please insert the date= the date of entry into force of this Regulation], the EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010,

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channels for submission of complaints, the information requested from complainants, and the disclosure of the aggregate analysis of complaints referred to in Article 90(1).		submission of complaints, the information requested from complainants, and the disclosure of the aggregate analysis of complaints referred to in Article 90(1).	on complaints procedures, including the channels for submission of complaints, the information requested from complainants, and the disclosure of the aggregate analysis of complaints referred to in Article 90(1).
Article 92			
Professional secrecy			
1. Without prejudice to cases covered by national criminal law, all persons who work or who have worked for competent authorities, and any experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy regarding the information related to investigations conducted by the competent authorities.			IE (MS drafting suggestions and comments): Is this a narrower than usual professional secrecy obligation? The obligation of professional secrecy normally relates to information received in the course of duties and is not restricted to just information related to investigations. Would be interested to know the reason this language is used.
2. The information exchanged in accordance with			

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Article 93 shall be subject to the obligation of professional secrecy by both the sharing and recipient authority.			
	3. This Article may be applied taking into account, mutatis mutandis, Articles 53 to 61 of Directive 2013/36/EU and Member States may set up a system for the exchange and transmitting the information between /to the authorities responsible regarding the AML.	3. ~~This Article may be applied taking into account Articles 53 to 61 of Directive 2013/36/EU mutatis mutandis and Member States may set up a system for the exchange and transmitting the information between /to the authorities responsible regarding the AML.~~ Member States may apply this Article taking into account, mutatis mutandis, Articles 53 to 61 of Directive 2013/36/EU. *[**PRES comment**: The amendment following the MS's comment that indicated that preserving suggested wording would mean that information arisen and collected under this regulation may only be disclosed in the cases of Art. 92 paragraphs 1 and 2 PSR and it would remain*	PT (MS drafting suggestions and comments): We prefer to align this matter with what in established in CRD. **Drafting suggestion**: "Member States should ~~may~~ apply this Article taking into account, mutatis mutandis, Articles 53 to 61 of Directive 2013/36/EU." LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): 3. ~~This Article may be applied taking into account Articles 53 to 61 of~~

		unclear what the reasons for the different treatment of information pursuant to PSD or PSR would be.]	~~Directive 2013/36/EU mutatis mutandis and Member States may set up a system for the exchange and transmitting the information between /to the authorities responsible regarding the AML.~~ Member States may apply this Article taking into account, mutatis mutandis, Articles 53 to 61 of Directive 2013/36/EU. *[**PRES comment**: The amendment following the MS's comment that indicated that preserving suggested wording would mean that information arisen and collected under this regulation may only be disclosed in the cases of Art. 92 paragraphs 1 and 2 PSR and it would remain unclear what the reasons for the different treatment of information pursuant to PSD or PSR would be.]*
Article 93			

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Jurisdiction and cooperation of competent authorities			
1. In the event of infringement or suspected infringement of Titles II and III, the competent authorities shall be those of the home Member State of the payment service provider, except for agents and branches conducting business under the right of establishment, where the competent authorities shall be those of the host Member State.			DE (MS drafting suggestions and comments): **Remark** The term "infringement" is probably too narrow, given that there are also positiive comopetences in PSR (e.g. to grant exemptions or to receive notifications).
2. In the event of infringements or suspected infringements of Titles II and III by technical service providers, payment system operators ATM deployers which do not service payment accounts, electronic communications services			

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providers or by their agents or branches, the competent authorities shall be those of the Member State where the service concerned is provided.			
3. In the exercise of their investigatory and sanctioning powers, including in cross border cases, competent authorities shall cooperate with each other and with other authorities from any sector concerned as applicable to each case and in accordance with Union and national law by exchanging information with each other and ensuring the mutual assistance to other competent authorities concerned as necessary for the effective enforcement of administrative sanctions and administrative measures.	3. In the exercise of their investigatory and sanctioning powers, including in cross border cases, competent authorities shall cooperate with each other ~~and with other authorities from any sector concerned as applicable to each case and~~ in accordance with Union and national law by exchanging information with each other and ensuring the mutual assistance to other competent authorities concerned as necessary for the effective enforcement of administrative sanctions and administrative measures.		DE (MS drafting suggestions and comments): **Remark** As far as this exchange of information is also supposed to include personal data, we see the need for more specific provisions on the transmission of personal data between competent authorities. Which authorities does this provision concern? What does cooperation mean in this context? What are the specific purposes for which data can be transmitted? BE (MS drafting suggestions and comments): BE: we do not see immediately the need for a deletion of the cooperation

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			with other authorities from any sector concerned. We believe that it would be useful if the cooperation with authorities from other sectors were explicitly mentioned in PSR. In our opinion, this should contribute to a more effective supervision and better compliance with PSR.
4. The authorities from other sectors concerned, referred to in paragraph 3, shall cooperate with competent authorities for the effective enforcement of administrative sanctions and administrative measures.			
	5. Article 92 (1) shall not preclude the exchange of information between competent authorities and other authorities (including tax authorities) in the same Member State as well. Where the information originates in another Member State, it shall only be disclosed in accordance with the first sentence of this		IE (MS drafting suggestions and comments): While we note that Recital 130 gives examples, it would appear to us that this needs some parameters.

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	paragraph with the explicit agreement of the competent authorities which have disclosed the information in accordance with national law.		
Section 2			
Dispute resolution procedures and penalties			
Article 94			
Dispute resolution			
1. Payment service providers shall put in place and apply adequate and effective complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations under Titles II and III. The competent authorities shall monitor the performance of those procedures.			
Those procedures shall be applied in every Member			

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State where the payment service provider offers the payment services and shall be available in an official language of the relevant Member State or in another language if agreed between the payment service provider and the payment service user.			
2. Payment service providers shall make every possible effort to reply, on paper or, if agreed between the payment service provider and the payment service user, on another durable medium, to the payment service users' complaints. Such a reply shall address all points raised, within an adequate timeframe and at the latest within 15 business days of receipt of the complaint. In exceptional situations, if the answer cannot be given within 15 business days for reasons			

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beyond the control of the payment service provider, it shall send a holding reply, clearly indicating the reasons for a delay in answering to the complaint and specifying the deadline by which the payment service user will receive the final reply. In any event, the deadline for receiving the final reply shall not exceed 35 business days.			
Member States may introduce or maintain rules on dispute resolution procedures that are more advantageous to the payment service user than that referred to in the first subparagraph. Where Member States do so, those rules shall apply.			
3. The payment service provider shall inform the payment service user about at least one ADR entity which is competent to deal with			

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disputes concerning the rights and obligations under Titles II and III.			
4. The information referred to in paragraph 3 shall be mentioned in a clear, comprehensive and easily accessible way on the website of the payment service provider and on the respective mobile application, where they exist, at the branch, and in the general terms and conditions of the contract between the payment service provider and the payment service user. The payment service provider shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.			
Article 95			
ADR procedures			

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1. Member States shall establish adequate, independent, impartial, transparent and effective ADR procedures for the settlement of disputes between payment service users and payment service providers concerning the rights and obligations under Titles II and III according to the relevant Union and national law in accordance with the quality requirements laid down in Directive 2013/11/EU of the European Parliament and the Council[2], using existing competent bodies where appropriate. ADR procedures shall be applicable to payment service providers.			PT (MS drafting suggestions and comments): The participation of PSPs in out-of-court dispute settlement mechanisms should not be optional. Making this participation mandatory would allow PSUs, particularly consumers, to take full advantage of these procedures. It would also ensure that, irrespective of the PSP's home Member State, consumers are equally protected. In this vein, please consider adding the following provisions to this Article: **Drafting suggestion:** […]. Payment service providers should make ADR procedures available for payment service users for the settlement of disputes concerning the rights and obligations under Titles II and III.

[2] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

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			[…]. In order to do so, payment service providers must make available the access to at least two national ADR entities. […]. Payment service providers must inform the national competent authority of the ADR entities by which are covered. The identification and contacts of the said ADR entities must be permanently displayed in the payment service providers websites, apps and branches (if applicable).
	The first subparagraph is without prejudice to the right of the payment service user concerned to initiate, at any stage, proceedings to contest the disputed payment transaction by the payment service providers before a court in accordance with the applicable law.		IT (MS drafting suggestions and comments): **IT**. We strongly disagree with the drafting suggestion. We propose to delete the second subparagraph of art. 95(1) or, at the very least, delete the expression "*at any stage*". In our understanding, the proposed addition, by providing that the PSU can "*at any stage*" initiate a proceeding before a court, can be construed to mean that a MS cannot require prior implementation of an

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			out-of-court settlement procedure. It is not clear to us if the expression "*in accordance with the applicable law*" is meant to allow a MS to impose such requirement. If so, the paragraph should be made clearer. Of course, the right of the PSU to initiate proceedings before a court should not be impaired. However, the CGUE has already clarified that the principles of effective judicial protection (art. 47 CFRUE) do not preclude national legislation which imposes, in respect of certain disputes, prior implementation of an out-of-court settlement procedure (provided that that procedure does not lack certain requirements) (see Joined Cases C-317/08 to C-320/08). In other words, the proposed addition would create an even more intense protection than that required by the EU Charter of Fundamental Rights. It is not clear to us the reason for introducing such a provision, which would be inconsistent with the rest of the EU legislation and interfere with the judicial policy of the MSs.

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			We reiterate our conviction that the regulation of the effects of ADR procedures and their relationship with the ordinary Courts should be left to each MS. In Italy, having undertaken an ADR procedure is a legal condition for starting an ordinary civil litigation in certain areas of law (including banking and payments). It is of fundamental importance for us to maintain such regime, that allows to reduce the number of cases that go to Courts and to increase the overall effectiveness of the protective system.
2. The bodies referred to in paragraph 1 of this Article shall cooperate effectively for the resolution of cross-border disputes concerning the rights and obligations under Titles II and III.			
3. Member States shall designate a competent authority to accredit, monitor	3. Member States shall designate a competent authority ~~to accredit, monitor and publish the quality~~		

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and publish the quality level of the ADR entity or entities on their territory to resolve disputes concerning rights and obligations under Titles II and III, in line with Article 18 of Directive 2013/11/EU.	~~level of the ADR entity or entities on their territory to resolve disputes concerning rights and obligations under Titles II and III, in line with Article 18 of Directive 2013/11/EU.~~ in line with Article 18 of Directive 2013/11/EU which shall carry out the functions set out in Articles 19 and 20 of that Directive as regards ADR entity or entities on their territory to resolve disputes concerning rights and obligations under Titles II and III.		
4. Competent authorities, referred to in paragraph 3 shall notify ADR entity or entities in their territories to resolve disputes concerning rights and obligations under Titles II and III to the Commission, in line with Article 20 of Directive 2013/11/EU.			
5. The Commission shall make publicly available a list		5. Member States and t~~The~~ Commission shall make publicly	ES

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of the ADR entities notified to it in accordance with paragraph 4 and update that list whenever changes are communicated.		available a list of the ADR entities notified to it in accordance with paragraph 4 and update that list whenever changes are communicated. *[**PRES comment**: The proposal presented at the January CWP meeting following the suggestion of the Member States that the list should be made public by Member States or by Member States and the Commission as it is usually much easier for consumers to find information on national websites.]*	(MS drafting suggestions and comments): We agree with the changes proposed. NL (MS drafting suggestions and comments): It is a bit unclear if this means only the ADR entities of the own member state, or also the ADR entities of other member states (if applicable). For us it is fine to just have the Commission publishh the list. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): 5. Member States and t~~The~~ Commission shall make publicly available a list of the ADR entities notified to it in accordance with paragraph 4 and update that list whenever changes are communicated.

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			*[**PRES comment**: The proposal presented at the January CWP meeting following the suggestion of the Member States that the list should be made public by Member States or by Member States and the Commission as it is usually much easier for consumers to find information on national websites.]* IT (MS drafting suggestions and comments): **IT.** The expression ”notified to it” is applicable only to the Commission and not to Member States.
Article 96			
Administrative sanctions and administrative measures			
1. Without prejudice to the supervisory powers of competent authorities designated under Directive (EU) XXX (PSD3), in			

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accordance with Title II, Chapter 1, section 3 of that Directive, and the right of Member States to lay down criminal sanctions, Member States shall lay down rules on administrative sanctions and administrative measures applicable to infringements of this Regulation and shall ensure that they are implemented. The administrative sanctions and administrative measures shall be effective, proportionate and dissuasive.			
2. Member States may decide not to lay down rules on administrative sanctions and administrative measures applicable to breaches of this Regulation which are subject to sanctions under national criminal law. In such a case, Member States shall notify the Commission of the relevant			

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criminal law provisions and any subsequent amendments thereto in accordance with Article 103.			
3. Where the national rules referred to in paragraph 1 apply to payment service providers and other legal persons, in case of infringements and subject to the conditions laid down in national law, administrative sanctions and administrative measures shall be applicable to the members of the management body of such payment services providers and legal persons and to other natural persons found to be responsible for a breach of this Regulation.			DE (MS drafting suggestions and comments): **Drafting suggestion** It is is unclear in what way "other natural persons" can be responsible for infringements of legal persons. Hence, we propose the following changes (in green): " Where the national rules referred to in paragraph 1 apply to payment service providers and other legal persons, in case of infringements and subject to the conditions laid down in national law, administrative sanctions and administrative measures shall be applicable to the members of the management body of such payment services providers and legal persons

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			~~and to other natural persons~~ found to be responsible for a breach of this Regulation.”
4. Member States may lay down rules, in accordance with their national law, enabling their competent authorities to close an investigation concerning an alleged infringement of this Regulation, following a settlement agreement or an expedited enforcement procedure.			
The empowerment of competent authorities to settle or open expedite enforcement procedures does not affect the obligations upon Member States under paragraph 1.			
Article 97			
Administrative sanctions and other administrative measures for specific infringements			

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			DE (MS drafting suggestions and comments): **Remark** **(important point)** We consider it essential to clarify at least in a recital which effect counterclaims and other – under national law valid – grounds for refusing the compensation have on potential sanctions. Otherwise there is a risk of fragmentation and legal uncertainty.
1. Without prejudice to Article 96(2), national laws, regulations and administrative provisions shall lay down the administrative sanctions and other administrative measures referred to in paragraph 2 of this Article in respect of the breaching or circumvention of the following provisions:	1. Without prejudice to Article 96(2), national laws, regulations and administrative provisions shall lay down the administrative sanctions and other administrative measures referred to in paragraph 2 of this Article in respect of the breaching <u>of or non–compliance with</u> ~~or circumvention~~ ~~of~~ the following provisions:		FI (MS drafting suggestions and comments): FI: We support reverting back to the wording in COM's proposal ("*or circumvention of*") as the amended wording would make the provision much stricter. PT (MS drafting suggestions and comments): We suggest maintaining the original wording of Article 97(1). 'Breach and

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			circumvention' is a well-established formula in EU law-making, where the two words have their own individual meaning, aiming to include not only direct contradiction to the norms (i.e., breach), as well as indirect ways of avoiding their application (i.e., 'circumvention'). The wording subsequently proposed does not include the latter idea and sounds redundant, as "breaching" and "non-compliance with" appear to be synonyms. **Drafting suggestion:** 1. Without prejudice to Article 96(2), national laws, regulations and administrative provisions shall lay down the administrative sanctions and other administrative measures referred to in paragraph 2 of this Article in respect of the breaching **or circumvention of** ~~**or non-compliance with**~~ the following provisions:
(a) the rules on access to accounts maintained with a			

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credit institution laid down in Article 32;			
(b) the secure data access rules by either account servicing payment service provider or by account information service providers and payment initiation service providers laid down in of Title III, Chapter 3, without prejudice to Article 45;	(b) without prejudice to Article 45, the ~~secure data access~~ rules ~~by either account servicing payment service provider or by~~ on account information services ~~providers~~ and payment initiation services ~~providers~~ laid down in ~~of~~ Title III, Chapter 3, particularly in relation to Article 38 ~~without prejudice to Article 45~~;		FI (MS drafting suggestions and comments): FI: For legal certainty, we support explicitly specifying the Articles, the breach of which would be subject to administrative sanctions and other administrative measures, in the provision. Not all the provisions (e.g. Article 48) are directed at the PSPs. Such provisions should not be subject to administrative measures or sanctions, and thus, should not be included in this provision.
(c) the obligation to organise or perform fraud prevention mechanisms including strong customer authentication as set out in Articles 85, 86 and 87;	c) the obligation to organise or perform fraud prevention mechanisms including strong customer authentication as set out in Articles 83, 85, 86 and 87;		
(d) the duty to comply with the requirements for transparency on fees by ATM operators or other cash			DE (MS drafting suggestions and comments): **Change request**

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distributors, in accordance with Article 20(c) point (ii);			**(important point)** We do not consider an administrative fine of at least 10 % of the annual turnover in case of a legal person or of at least EUR 5 000 000 in the case of a natural person appropriate in relation to the information duty on fees by ATM operators or other cash distributors. Hence, we propose to delete (d).
(e) failure of payment service providers to respect the period for compensation of payment service users as set out in Article 56(2), Article 57(2) and Article 59(2).			DE (MS drafting suggestions and comments): **Remark** In Art. 97 (1) e PSR a sanction for the failure of the PSP to respect the period mentioned in Art. 63 (2) PSR appears to be missing.
2. In the cases referred to in paragraph 1, the applicable administrative sanctions and administrative measures shall include the following:			

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(a) administrative fines;			FI (MS drafting suggestions and comments): FI: The provision currently lists administrative fines first, although other administrative measures (i.e. more lenient measures) are primary to them and should be pursued before them. To reflect this general principle, we suggest listing these measures in order of strictness, starting from the most lenient option.
(i) in the case of a legal person, a maximum administrative fine of at least 10% of its total annual turnover as defined under paragraph 3;			
(ii) in the case of a natural person, a maximum administrative fine of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date			

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of entry into force of this Regulation;			
(iii) a maximum administrative fine of at least twice the amount of the profits gained from the breach, where that profit can be determined.		(iii) a maximum administrative fine of at least twice the amount of the profits gained from the breach or losses avoided because of the infringement**,** where that those profits or losses can be determined, even if such fine exceeds the maximum amounts set out in this paragraph, point (i), as regards legal persons, or in point (ii) as regards natural persons**.** ***[PRES comment:*** *Based on the drafting suggested by one of the Member States in order to specify that the amount of the fine in such case may exceed the maximum amount set out in point (i) and (ii).]*	ES (MS drafting suggestions and comments): We agree with the changes proposed. NL (MS drafting suggestions and comments): Is the addidtion of ”lossed avoided becasue of the infringment” really necessary? Losses avoided is one of the ways of gaining profit so it already falls under the scope. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): (iii) a maximum administrative fine of at least twice the amount of the profits gained from the breach or losses avoided because of the infringement**,** where that those profits or losses can be determined, even if such fine

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			exceeds the maximum amounts set out in this paragraph, point (i), as regards legal persons, or in point (ii) as regards natural persons**.** ***[PRES comment:*** *Based on the drafting suggested by one of the Member States in order to specify that the amount of the fine in such case may exceed the maximum amount set out in point (i) and (ii).]* IE (MS drafting suggestions and comments): The suggested amendments are preferable as they are clearer.
(b) a public statement indicating the legal or natural person responsible for the breach and the nature of the breach;			DE (MS drafting suggestions and comments): **Change request** We request deletion of Article 97 (2) (b) PSR: naming and shaming is not proportionate.
(c) an order requiring the legal or natural person responsible for the breach to			

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cease the unlawful conduct and to desist from repeating it;			
(d) a temporary ban preventing a member of the management body of the legal person, or any other natural person who is held responsible for the breach, from exercising managing functions.			
3. The total annual turnover referred to in paragraph 2, point (a)(i) of this Article and in Article 98(1) of this Regulation shall be equal to the net turnover as defined in Article 2, point (5), of Directive 2013/34/EU according to the annual financial statements available for the latest balance sheet date, for which the members of the administrative, management and supervisory bodies of the legal person have responsibility.			

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Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Article 22 of Directive 2013/34/EU, the relevant total annual turnover shall be the net turnover or the revenue to be determined in accordance with the relevant accounting standards, according to the consolidated financial statements of the ultimate parent undertaking available for the latest balance sheet date, for which the members of the administrative, management and supervisory body of the ultimate undertaking have responsibility.			
4. Member States may empower competent authorities, in accordance			FI (MS drafting suggestions and comments):

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with national law, to impose other types of sanctions and other type of sanctioning powers in addition to those referred to in paragraph 2 of this Article and Article 98 on periodic penalty payments.			FI: To better reflect the definition of "*periodic penalty payments*" under Article 3(59) and their role as administrative measures (as distinct from administrative sanctions), we would suggest differentiating periodic penalty payments from sanctions in the provision by explicitly mentioning that they are measures and not sanctions, e.g., as follows: "Member States may empower competent authorities, in accordance with national law, to impose other types of **administrative measures** and sanctions and other type of sanctioning powers in addition to those referred to in paragraph 2 of this Article and Article 98 on periodic penalty payments." PT (MS drafting suggestions and comments): As stated in recital (133) (as well as in recital (126) of the proposal and in Recitals 27 and 30 and Article 3(1)(67) of CRD VI), periodic penalty payments are aimed at compelling

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			natural or legal persons to comply with an order from the competent authority or to terminate the ongoing breach, and therefore do not have a sanctioning nature. With this setting in mind, as the scope of Article 97(4) of the proposal appears to be limited to sanctioning measures, we thus propose to delete the final part of the rule of the proposal. **Drafting suggestion:** 4. Member States may empower competent authorities, in accordance with national law, to impose other types of sanctions and other type of sanctioning powers in addition to those referred to in paragraph 2 of this Article **and Article 98 on periodic penalty payments**. IE (MS drafting suggestions and comments): "Member States may empower competent authorities, in accordance with national law, to impose other types of sanctions and other type of

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			sanctioning powers in addition to those referred to in paragraph 2 of this Article and Article 98 on periodic penalty payments." In its original form the article could be read to mean that PPPs are a form of sanction or sanctioning power. We would see it as crucial that PPPs are separated from admin sanctions and 'sanctioning powers'. There are examples elsewhere in the PSR Commission proposal which clearly distinguish PPPs from both admin sanctions and admin measures – see. Art.102(1)(a) and (b) which deal with and categorise PPPs separately.
Article 98			
Periodic penalty payments			
1. Competent authorities shall be entitled to impose periodic penalty payments on legal or natural persons for failure to comply with any decision, order, interim			PT (MS drafting suggestions and comments): The scope of PPPs is not aligned with the wording set out in Article 3(1)(67) of the CRD VI and in Article 21(1) §1

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measure, request, obligation or other measure adopted in accordance with this Regulation.			of the latest version of FIDA. Therefore, in our view, the current wording of the PSR could contribute to a problematic fragmentation in the application of PPPs under EU law, without any underlying reason, and could generate legal risks and uncertainty as regards the application of these measures. For example, credit institutions would be subject to structurally different PPPs under the CRD VI and the PSR. In our view, this is not acceptable, as the goal of the measure is the same in both regimes.Furthermore, the scope of Article 98 (1) is not aligned with the definition of PPP's inserted in Article 3 of the Proposal. In this vein, for the sake of consistency and legal certainty, we propose to insert the following amendment. **<u>Drafting suggestion:</u>** 1. Competent authorities shall be entitled to impose periodic penalty payments on legal or natural persons for **ongoing breaches of this Regulation or breaches of any decisions issued by a competent**

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			authority ~~**failure to comply with any decision, order, interim measure, request, obligation or other measure adopted**~~ in accordance with this Regulation". IT (MS drafting suggestions and comments): **IT**. We underline that the text is misaligned with the CRD VI. We have raised this issue before, but we still do not understand the purpose or intent to restrict the application of PPPs only in case of failure "to comply with any decision, order, interim measure, request, obligation or other measure adopted in accordance with this Regulation" and not even "to end ongoing breaches of this Regulation or the national provisions transposing the Directive (EU) XXX (PSD3)". In this respect, we notice that the scope of PPP (Commission proposal) is not aligned with recital n. (133) of

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			this Regulation. We suggest the following amendment: "1. Competent authorities shall be entitled to impose periodic penalty payments on legal or natural persons ***in the event of a breach of this Regulation or national provisions transposing the Directive (EU) XXX (PSD3) or in case of*** ~~for~~ failure to comply with any decision, order, interim measure, request, obligation or other measure adopted by a competent authority in accordance with this Regulation." IE (MS drafting suggestions and comments): Our primary concern is to distinguish between 'sanctions' and other tools, such as PPPs. Our read of the PSR proposal is that PPPs under PSR are intended to compel compliance. This position reflects other EU legislation that features NCA PPP powers– e.g. CRD6 and AMLD6.

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			The text of both CRD6 and AMLD6 appears to indicate that PPPs are not classified as administrative sanctions, but rather are considered to be an enforcement tool. This also appears to be the interpretation of the ECB regarding CRD6 and of the European Commission as communicated through the EBA ad-hoc sub-group on customer due diligence and sanctions regarding AMLD6. We would therefore suggest aligning the wording of Article 98(1) and the definition. The definition is clear in stating that PPPs can be imposed in respect of *both* breach of substantive obligations *and* breach of a decision/measure previously imposed by NCA. By contrast, the word 'obligation' in Art.98(1) is inserted in the middle of other wording, before and after, that is more obviously connected to non-compliance with an NCA decision or measure.

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Periodic penalty payment referred to in the first subparagraph shall be effective and proportionate and shall consist of a daily amount to be paid until compliance is restored. They shall be imposed for a period not exceeding 6 months from the date indicated in the decision imposing the periodic penalty payments.			PT (MS drafting suggestions and comments): For the sake of consistency with the wording foreseen in Article 65(1) of CRD VI and with article 21(1) §2 of the latest version of FIDA, the following amendment should be considered. **Drafting suggestion:** Periodic penalty payment referred to in the first subparagraph shall be effective~~, and~~ proportionate **and dissuasive** and shall consist of a daily amount to be paid until compliance is restored. They shall be imposed for a period not exceeding 6 months from the date indicated in the decision imposing the periodic penalty payments.
Competent authorities shall be entitled to impose maximum periodic penalty payments of at least:			

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(a) 3% of the average daily turnover in the case of a legal person;			
(b) EUR 30.000 in the case of a natural person.			
The average daily turnover shall be the total annual turnover referred to in Article 97(3), divided by 365.			PT (MS drafting suggestions and comments): Given that credit institutions are also authorised to be payment service providers and may thus be subject to the application of PPPs for breaches of this Regulation, the calculation of the total annual turnover of credit institutions should be aligned with the rules laid down in CRD VI for the application of PPPs. Therefore, we propose to clarify that in such cases the total annual turnover referred to in Article 97(3) shall be aligned with the rules laid down in Articles 66(3) and 67(3) CRD VI for the application of PPPs. In this vein, the following amendment should be considered. **Drafting suggestion:** The average daily turnover shall be the total annual turnover referred to in

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			Article 97(3), divided by 365. **If the periodic penalty payment is imposed to credit institutions, the average daily turnover shall be the total annual turnover referred to in Articles 66(3) and 67(3), divided by 365.**
2. Member States may provide for higher amounts of pecuniary penalty payments than those laid down in paragraph 1.			IE (MS drafting suggestions and comments): We suggest that a Member State discretion in this article following CRD6, whereby the Member State could choose to empower its NCA to impose PPPs on a weekly or monthly basis, as additional alternatives to the daily basis. The CRD6 text includes a safeguard that the overall amount of a PPP imposed on a weekly or monthly basis could not exceed what would be the maximum an NCA could impose on a daily basis for the same relevant period, which should also be included.

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			Flexibility in periodicity would be helpful for NCAs to operationalise PPPs as a practical tool. Also, regulated entities may welcome weekly or monthly periodicities.
Article 99			
Elements to be considered when determining administrative sanctions and other administrative measures			
1. Competent authorities, when determining the type and level of administrative sanctions or other administrative measures, shall take into account all relevant elements and circumstances to apply proportionate sanctions, including:			DE (MS drafting suggestions and comments): **Change Request** **(important point)** The provisions on relevant criteria when imposing sanctions in Art. 99 PSR should not be directly applicable law in the Member States, but rather addressed to the Member States to implement when transposing the provisions on sanctions in Articles 96

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			et seq. ("Member States shall provide that ..., where applicable"). Hence, we propose the following drafting (changes in green): "Member States shall lay down rules, in accordance with national law, to ensure that competent authorities, when determining the type and level of administrative sanctions or other administrative measures, shall take into account all relevant elements and circumstances to apply proportionate sanctions, including:" PT (MS drafting suggestions and comments): Since administrative measures are not sanctions, Article 99(1) of the proposal should be adapted accordingly. Therefore, we propose to align the abovementioned Article with Article 70(1) of CRD VI **Drafting suggestion:**

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			1. Competent authorities, when determining the type and level of administrative sanctions or other administrative measures, shall take into account all relevant elements and circumstances ~~**to apply proportionate sanctions**~~, including. IT (MS drafting suggestions and comments): **IT.** We deem that, when determining the type and level of sanctions or other measures, Competent Autorities shall achieve a balance between proportionality and effectiveness. We suggest the following amendment: "1. Competent authorities, when determining the type and level of administrative sanctions or other administrative measures, shall take into account all relevant elements and circumstances ~~to apply proportionate sanctions, including~~ ***in order to ensure that such sanctions or measures are effective and***

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			proportionate. Those circumstances shall include, where appropriate:"
(a) the seriousness and the duration of the infringement;			
(b) the degree of responsibility of the natural or legal person responsible for the infringement;			
(c) the financial strength of the natural or legal person responsible for the breach, as indicated, among others, by the total annual turnover of the legal person, or the annual income of the natural person responsible for the infringement;			
(d) the magnitude of profits gained or losses avoided by the natural or legal person responsible for the infringement, insofar as they can be determined;			
(e) the losses for third parties resulted from the			DE

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infringement, insofar as they can be determined;			(MS drafting suggestions and comments): **Drafting suggestion** **“** the losses for third parties resulted from the infringement, insofar as they can be determined and insofar as they are reproachable for the person responsible for the infringement;**”**
(f) the disadvantage resulting to the legal or natural person responsible for the breach from the duplication of criminal and administrative proceedings and sanctions for the same conduct;			IT (MS drafting suggestions and comments): **IT.** We deem that the provision set out in art. 99 (1) (f) is too vague (what “disadvantages” are meant?) and not fully in line with the most recent decisions of European Courts. We would suggest to replace the text with the one currently foreseen in CRD6 (art. 70 (1) (i). The following amendment would overcome the need to get information regarding criminal investigation (see comment above under art. 91 (4)(a).

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			"(f) the ~~disadvantage resulting to the legal or natural person responsible for the breach from the duplication of criminal and administrative proceedings and sanctions for the same conduct~~ ***criminal penalties previously imposed for the same breach on the natural or legal person responsible for that breach;"***
(g) the impact of the infringement in the interests of consumers and other payment services users;			DE (MS drafting suggestions and comments): **Drafting suggestion** **"** the impact of the infringement in the interests of consumers and other payment services users, insofar as this impact is reproachable for the person responsible for the infringement;**"**
(h) any actual or potential systemic negative consequences of the infringement;			
(i) the complicity or participation of more than one			

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natural or legal person in the infringement;			
(j) previous infringements committed by the natural or legal person responsible for the breach;			DE (MS drafting suggestions and comments): **Drafting suggestion** Previous infringements can initially only be taken into account if they have also led to a sanction. That's why "penalties for previous comparable infringements" must be used here. In addition, previous penalties only increase the accusation against the person if it is a comparable infringement. Only here does it become clear that the person was not impressed by the previous penalty. Finally, it must be taken into account that previous penalties recorded in a register must be deleted at some point. Entries in a register that have already been deleted or are due for deletion (or fictitious entries if there was a register for this) due to comparable

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			infringements may not be considered as an aggravating circumstance. The Member States should therefore have more leeway here. Hence, we propose the following drafting (changes in green): "penalties for previous comparable infringements committed by the natural or legal person responsible for the breach where appropriate;"
(k) the level of cooperation of the natural or legal person responsible for the infringement with the competent authority;			DE (MS drafting suggestions and comments): **Drafting suggestion** Especially with regard to letter (l), the content of (k) is questionable or doubtful. What form of cooperation is to be covered here? It must not be to the detriment of the accused if he does not cooperate in the investigation of the offence with which he is charged. Hence, we propose the following drafting (changes in green):

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			"in favour of the natural or legal person responsible for the infringement the level of cooperation ~~of the natural or legal person responsible for the infringement~~ with the competent authority;"
(l) any remedial action or measure undertaken by the legal or natural person responsible for the infringement to prevent its repetition.			
2. Competent authorities that use settlement agreements or expedited enforcement procedures in accordance with Article 96(4) shall adapt the relevant administrative sanctions and administrative measures laid down in Articles 96, 97, and 98 to the case concerned to ensure the proportionality thereof.			IE (MS drafting suggestions and comments): Article 99(2) reads "*administrative sanctions and administrative measures are* laid down in Articles 96, 97, and 98" which could suggest that PPPs are a form of admin sanction and admin measure. Per our comments elsewhere in this document, we would suggest the below drafting based on other EU frameworks that include PPPs e.g. CRD6: *"Article 96(4) shall adapt the relevant administrative*

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			sanctions ~~and~~, administrative measures and periodic penalty payments laid down in Articles 96, 97, and 98 to the case concerned to ensure the proportionality thereof." As noted above, the are examples in the PSR Commission proposal which clearly distinguish PPPs from both admin sanctions and admin measures – e.g. article 102(1)(a) and (b) which categorise PPPs separately.
Article 100			
Right of appeal			
1. The decisions taken by the competent authorities pursuant to this Regulation shall be contestable before the courts.			IE (MS drafting suggestions and comments): We would suggest that 'contestable before the courts' should be substituted with 'subject to appeal'. In the interests of efficiency and expediency it makes sense that the disputes could go before specialist financial services appeals

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			mechanisms (such as the Irish Financial Services Appeals Tribunal (IFSAT)) rather than requiring that they go before the Court.
2. Paragraph 1 shall apply also in respect of failure to act.			DE (MS drafting suggestions and comments): **Change Request** **(important point)** If paragraph 2 shall regard cases in which a competent authority has not yet acted (e.g. responded to a complaint), the provision would be too far reaching and prone to generate legal unclarities. In particular, PSR / PSD 3 have attributed fixed time frames to respond for competent authorities in case short-term responses of the competent authorities were deemed necessary (e.g. Art. 14 PSD3). In order to reflect this judgement, the right to appeal of para. 2 should be limited to those circumstances in which PSR / PSD3

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			has set a fixed time frame to respond. Hence, we propose the following drafting (changes in green): "2. Paragraph 1 shall apply also in respect of failure to act within a fixed period set in this Regulation or [PSD 3]."
Article 101			
Publication of administrative sanctions and administrative measures			
1. Competent authorities shall publish on their website all decisions imposing an administrative sanction or administrative measure on legal and natural persons, for breaches of this Regulation, and where applicable, all settlement agreements. The publication shall include a short description of the	1. Competent authorities shall publish on their website all decisions imposing an administrative sanction or administrative measure on legal and natural persons, for breaches of this Regulation, and where applicable all settlement agreements. The publication shall include a short description of the breach, the administrative		FI (MS drafting suggestions and comments): FI: Firstly, we note that the second sentence of Article 101(1), first subparagraph, would not seem to allow for the NCAs to publish the whole decision as it reads: "*The publication shall include a short description of the breach, the administrative sanction or other*

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breach, the administrative sanction or other administrative measure imposed, or, where applicable, a statement about the settlement agreement. The identity of the natural person subject to the decision imposing an administrative sanction or administrative measure shall not be published.	sanction or other administrative measure imposed, or, where applicable, a statement about the settlement agreement. The identity of the natural person subject to the decision imposing an administrative sanction or administrative measure, or subject to the statement about the settlement agreement, shall not be published.		*administrative measure imposed, or, where applicable, a statement about the settlement agreement.*" We would suggest including a possibility for the NCAs to publish the whole decision. Secondly, we note that Article 101(1) is in conflict with recital 136 as the recital seems to suggest that the NCAs have discretion as to whether they shall publish the decision ("[…] *In taking a decision whether to publish an administrative sanction or administrative measure, competent authorities should take into account* […]") whereas the wording in this provision is clear ("*Competent authorities shall publish* […]"). The recital should be aligned with the provision. IT (MS drafting suggestions and comments): **IT.** As outlined in our previous round of comments, we do not support the misalignment of art. 101 of PSR

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			(draft) with other regulatory texts in force in banking and financial sector (i.e. CRD; MAR, MiCAR, DORA), which provide that publication shall be made for every penalty, including those imposed on natural persons. In that vein, we would suggest to align the provision to the mentioned rules currently in force. As we consider the individual deterrence behind publication (naming of the person concerned) equally important to achieving general deterrence, the non-anonymous publication should be regarded as the principle, without requiring a dedicated motivation. The publication of penalties imposed on natural (or legal) persons could be anonymised only on the basis of specific and expressed grounds, the existence of which - in the specific case - should be proved by the sanctioned person. Moreover, we deem that the exceptions should be subject to strict interpretation. Therefore, we propose the following amendment:

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			"1. Competent authorities shall publish on their website all decisions imposing an administrative sanction or administrative measure on legal and natural persons, for breaches of this Regulation, and where applicable all settlement agreements. The publication shall include a short description of the breach, the administrative sanction or other administrative measure imposed, or, where applicable, a statement about the settlement agreement. ~~The identity of the natural person subject to the decision imposing an administrative sanction or administrative measure, or subject to the statement about the settlement agreement, shall not be published.~~" IE (MS drafting suggestions and comments): The text here appears to clash with Article 97(2)(b), which states "a

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			public statement indicating the legal or natural person responsible for the breach and the nature of the breach". Article 103(2) PSD2 also sets a general default position in favour of disclosure of administrative penalties, and is general practise and has a deterrent effect. It could also be argued that the added underlined wording in the right-hand column is unclear – it is difficult to say whether it implies non-disclosure of the identity to **anyone** mentioned in a public statement about a settlement agreement, or is it just referring to the person who is a party to the settlement agreement and on whom a sanction/admin measure is imposed? If the Presidency continue with including the non-disclosure of identity rule, and want to retain the underlined text we would suggest the following drafting:

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			"[…] *...or subject to the statement about the settlement agreement* ***to which they are a party,*** *"*
Competent authorities shall publish the decision and the statement referred to in the first subparagraph immediately after the legal or natural person subject to the decision has been notified of that decision or the settlement agreement has been signed.			IT (MS drafting suggestions and comments): **IT.** we suggest to modify the sentence as follows: "Competent authorities shall publish the decision and the statement referred to in the first subparagraph ~~immediately~~ ***without undue delay*** after the legal or natural person subject to the decision has been notified of that decision or the settlement agreement has been signed."
2. By derogation from paragraph 1, where the publication of the identity or other personal data of natural persons is deemed necessary by the national competent authority to protect the stability of the financial			DE (MS drafting suggestions and comments): **Important Remark** Under German constitutional law, the publication of decisions imposing sanctions is subject to strict

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markets or to ensure the effective enforcement of this Regulation, including in the case of public statements referred to in Article 97(2)(b) or temporary bans referred to in Article 97(2)(d), the national competent authority may publish also the identity of the persons or personal data provided that it justifies such a decision and that the publication is limited to the personal data that is strictly necessary to protect the stability of the financial markets or to ensure the effective enforcement of this Regulation.			proportionality standards, especially if personal data within the meaning of Article 4 (1) Regulation (EU) No. 2016/679 are affected. It should therefore be generally considered whether a provision not containing the publication of personal data is already sufficient (see Article 12 (2) Regulation (EU) No. 648/2013 for an example). Apart from this, given the potential sensiblity of the personal data in the context of the imposition of administrative sanctions or measures (and probably of criminal investigations) and that the information of an appeal and thereafter of the decision of a court or other authority cannot undo the consequences of the original publication: Are effective judicial remedies, including provisional remedies, foreseen against the publication itself? A reference to such remedies could be made in the recitals (136 or in a new recital on Art. 100). To establish an adaquat and effective

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			threshold for the publication, the criteria "to ensure the effective enforcement of this Regulation" could be more specific (e.g. define the circumstances when this criteria is met or define a final enumeration of measures, that could justify a publication of personal data to be effectively executed). IT (MS drafting suggestions and comments): IT. In line with the previous comments, we suggest the following amendment: "2. ~~By derogation from paragraph 1, where the publication of the identity or other personal data of natural persons is deemed necessary by the national competent authority to protect the stability of the financial markets or to ensure the effective enforcement of this Regulation, including in the case of public statements referred to in Article~~

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			~~97(2)(b) or temporary bans referred to in Article 97(2)(d), the national competent authority may publish also the identity of the persons or personal data provided that it justifies such a decision and that the publication is limited to the personal data that is strictly necessary to protect the stability of the financial markets or to ensure the effective enforcement of this Regulation.~~ ***Competent authorities shall publish the administrative sanction or administrative measure on an anonymous basis, in a manner in accordance with national law, in any of the following circumstances:*** ***(a) where the administrative sanction or administrative measure is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;*** ***(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;***

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			(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved. ***Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 may be postponed for such a period of time."***
3. Where the decision imposing an administrative sanction or other administrative measure is subject to appeal before the relevant judicial or other authority, competent authorities shall also publish on their official website without delay, information on the appeal and any subsequent information on the outcome of			IT (MS drafting suggestions and comments): **IT.** **"**3. Where the decision imposing an administrative sanction or other administrative measure is subject to appeal before the relevant judicial or other authority, competent authorities shall also publish on their official website, without ***undue*** delay, information on the appeal and any

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such an appeal, insofar as it concerns legal persons. Where the appealed decision concerns a natural person and the derogation under paragraph 2 is not applied, competent authorities shall publish information on the appeal only in an anonymised version.			subsequent information on the outcome of such an appeal~~, insofar as it concerns legal persons. Where the appealed decision concerns a natural person and the derogation under paragraph 2 is not applied, competent authorities shall publish information on the appeal only in an anonymised version."~~
4. Competent authorities shall ensure that any publication made in accordance with this Article remains on their official website for a period of up to 5 years. Personal data contained in the publication shall be kept on the official website of the competent authority only if an annual review shows the continued need to publish that data to protect the stability of the financial markets or to ensure the effective enforcement of this			IT (MS drafting suggestions and comments): **IT.** The provision is not aligned with other regulatory texts in force in banking and financial sector (i.e. CRD; MAR, MiCAR), in which the publication is set out "for a period of at least 5 years". In general, we deem that any deviation from the standard framework on this matter could be justified - if strictly necessary – on the basis of valid and shared reasons. In operational terms, the management of concrete cases could also be very

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Regulation, and in any event for no longer than 5 years.			problematic in presence of heterogeneous frameworks. Therefore, we suggest the following amendment: "4. Competent authorities shall ensure that any publication made in accordance with this Article remains on their official website for a period of ~~up to~~ ***at least*** 5 years. Personal data contained in the publication shall be kept on the official website of the competent authority only ***for the period necessary, in accordance with the applicable data protection rules***. ~~if an annual review shows the continued need to publish that data to protect the stability of the financial markets or to ensure the effective enforcement of this Regulation, and in any event for no longer than 5 years~~."
Article 102			
Monitoring of proceedings, sanctions and measures			

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1. Competent authorities shall report to the EBA, in an anonymised way and aggregated format on a regular basis:	1. Without prejudice to reporting obligations laid down in other Union legal acts, competent authorities shall report to the EBA, in an anonymised way and aggregated format on a regular basis:	1. ~~Without prejudice to reporting obligations laid down in other Union legal acts,~~ ~~c~~Competent authorities shall report to the EBA, summarised information on each decision ~~in an anonymised way and aggregated format~~ on a regular basis: *[**PRES comment**: The rationale behind this insertion is not clear. The second amendment would give a legal basis for sharing information on the issues at stake in cases that would otherwise be lost in aggregated data. NCAs should be able to converge towards consistent enforcement when they know the circumstances leading to sanctions. Anonymisation should be skipped when information are related to cases where potential cross-border element exists.]*	DE (MS drafting suggestions and comments): **Remark** We ask for further explanation as to why the sharing of personal data is deemed necessary in the context of this provision. What purposes is this data transmission supposed to serve? Further, with respect to the German federal system, it is necessary to limit the obligation to report data in Article 102(1) PSR to data that is available at a central level. Hence, we propose the following drafting (changes in green, based on the wording of Article 18(2) of the PIF-Directive): "~~Without prejudice to reporting obligations laid down in other Union legal acts,~~ ~~c~~Competent authorities

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			shall report to the EBA, summarised information on each decision in an anonymised way and aggregated format on a regular basis, if they are available at a central level in the Member State concerned:" AT (MS drafting suggestions and comments): In our understanding, this provision was supposed to serve (statistical) information purposes only, so an anonymized reporting to EBA seems to be sufficient here. We therefore object to the latest changes by PCY. ES (MS drafting suggestions and comments): We agree with the changes proposed. LV (MS drafting suggestions and comments): We support. LU

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			(MS drafting suggestions and comments): 1. ~~Without prejudice to reporting obligations laid down in other Union legal acts.~~ ~~c~~Competent authorities shall report to the EBA, summarised information on each decision ~~in an anonymised way and aggregated format~~ on a regular basis: *[**PRES comment**: The rationale behind this insertion is not clear.* *The second amendment would give a legal basis for sharing information on the issues at stake in cases that would otherwise be lost in aggregated data. NCAs should be able to converge towards consistent enforcement when they know the circumstances leading to sanctions. Anonymisation should be skipped when information are related to cases where potential cross-border element exists.]* LU (): LU: we do not support the new wording proposed by the Presidency;

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			the NCAs should not be required to inform the EBA about each and every decision. The initial wording proposed by the COM should be kept. Such a requirement is not in line with the overall policy agenda of simplification and reducing reporting requirements. Drafting suggestion: **1. Competent authorities shall report to the EBA, in an anonymised way and aggregated format on a regular basis:**
(a) initiated, suspended or closed formal administrative proceedings leading to imposing administrative sanctions or administrative measures;	(a) initiated, suspended or closed formal administrative proceedings leading to imposing administrative sanctions or administrative measures <u>for breaches of this Regulation</u>;		
(b) periodic penalty payments imposed in accordance with Article 98 for ongoing breaches of this Regulation;			

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(c) where applicable, settlement agreements and expedited enforcement procedures, and the outcome thereof, regardless of their publication; in accordance with Article 96(4);			
(d) criminal proceedings resulting in a conviction and related sanctions reported by judicial authorities in accordance with Article 91(4), point (a);	(d) criminal proceedings resulting in a conviction and related sanctions reported by judicial authorities in accordance with Article 91(4), point (a); where Member States have, in accordance with Article 96(2), laid down criminal penalties for the infringements of the provisions referred to therein, all relevant criminal investigations undertaken and criminal penalties imposed;		IE (MS drafting suggestions and comments): This may not be entirely be in the competent authority's control e.g. if matters under PSR are criminalised it may be that law enforcement investigates and the competent authority would have little/no knowledge. It also appears extremely expansive to report an investigation that doesn't go any further to the more advanced stages of prosecution or conviction.
(e) any appeal against decisions to impose criminal or administrative sanctions or	(e) any appeal against decisions to impose criminal or administrative sanctions or administrative measures for		

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administrative measures and the outcome of such an appeal.	breaches of this Regulation and the outcome of such an appeal.		
2. When the competent authority discloses an administrative sanction or an administrative measure to the public, it shall simultaneously report them to the EBA.			
3. Within 2 years after the date of application of this Regulation, and subsequently every 2 years, the EBA shall submit a report to the Commission on the application of sanctions by competent authorities to ensure compliance with this Regulation.			
	4. The processing of personal data by the EBA for the purposes of this Regulation shall be carried out in accordance with Regulation (EU) 2018/1725.		
Article 103			

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Notification of implementing measures			
Member States shall notify the laws, regulations and administrative provisions adopted in accordance with this Chapter, including any relevant criminal law provisions, to the Commission by [OP please insert the date = the date of entry into force of this Regulation]. Member States shall notify the Commission without undue delay of any subsequent amendments thereto.			
CHAPTER 9			
Product intervention powers by the EBA			
Article 104			
EBA temporary intervention powers			

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1. In accordance with Article 9(5) of Regulation (EU) No 1093/2010, the EBA may, where the conditions in paragraphs 2 and 3 of this Article are fulfilled, temporarily prohibit or restrict in the Union, a certain type or a specific feature of a payment service or instrument or an electronic money service or instrument. A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the EBA.			
2. The EBA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:			
(a) the proposed action addresses a significant number of payment services users or electronic money services users or a threat to the orderly functioning of the			

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payment or electronic money markets, and the integrity of those markets or to the stability of the whole or part of these markets in the Union;			
(b) regulatory requirements under Union law that are applicable to the relevant payments service or electronic money service do not address the threat;			
(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.			
Where the conditions set out in the first subparagraph are fulfilled, the EBA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a payment service or electronic money service has been			

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offered or distributed to payment services users.			
3. When taking action under this Article, the EBA shall ensure all of the following:			
(a) the action does not have a detrimental effect on the efficiency of the payments market or electronic money services market or on payment services or electronic money service providers that is disproportionate to the benefits of the action;			
(b) the action does not create a risk of regulatory arbitrage, and			
(c) the action has been taken after consulting the relevant national competent authority.			
4. Before deciding to take any action under this Article, the EBA shall notify			

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competent authorities of the action it proposes.			
5. The EBA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect, while also ensuring that notices on such decisions on natural persons are published only in anonymised version. A prohibition or restriction shall only apply to action taken after the measures take effect.			
6. The EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every 3 months. If the prohibition or restriction is not renewed after that 3 month period it shall expire.			

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7. Action adopted by the EBA under this Article shall prevail over any previous action taken by a competent authority.			
8. The Commission shall adopt delegated acts in accordance with Article 106 to specify criteria and factors to be taken into account by the EBA in determining when there is a significant number of payment services users or electronic money services users or a threat to the orderly functioning of the payment or electronic money services markets, and the integrity of these markets or to the stability of the whole or part of these markets in the Union referred to in paragraph 2, point (a).			
Those criteria and factors shall include:			

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(a) the degree of complexity of a payment service or instrument or electronic money service or instrument and the relation to the type of users, including consumers, to whom they are offered;			
(b) the degree of riskiness, for consumers, of a payment service or instrument or electronic money service or instrument;			
(c) the possible use by fraudsters of the payment service or instrument or electronic money service or instrument;			
(d) the size or the level of uptake of the payment service or instrument or electronic money service or instrument;			
(e) the degree of innovation of a payment service or instrument or			

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electronic money service or instrument.			
TITLE IV			
DELEGATED ACTS			
Article 105			
Delegated acts			
The Commission is empowered to adopt delegated acts in accordance with Article 106 to amend this Regulation by updating the amounts referred to in Article 58(1).			IT (MS drafting suggestions and comments): **IT.** There seems to be a typo: Article 58 concerns the "*liability of technical service providers*. From our reading the reference should be to Article 60, i.e. the adoption of delegated acts by the Commission to update, to take account of inflation, the amounts up to which a payer may be obliged to bear the losses relating to any unauthorised payment transactions resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument. This was also the case with PSD2 (cf. Article 74, PSD2).

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Article 106			
Exercise of the delegation			
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.			
2. The power to adopt delegated acts referred to in Article 105 shall be conferred on the Commission for an undetermined period of time from the date of entry into force of this Regulation.			
3. The delegation of power referred to in Article 105 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the			

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publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.			
4. Before adopting a delegated act, the Commission shall consult experts designated by Member States in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.			
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.			
6. A delegated act adopted pursuant to Article 105 shall enter into force only if no objection has been			

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expressed either by the European Parliament or the Council within a period of 3 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 3 months at the initiative of the European Parliament or of the Council.			
TITLE V			
FINAL PROVISIONS			
Article 107			
More favourable refund rights and stricter fraud prevention measures			
1. Member States or payment service providers may grant payment service			IT (MS drafting suggestions and comments):

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users more favourable refund rights in relation to authorised credit transfers as referred to in Articles 57 and 59 and provide for stricter fraud prevention measures that go beyond those set out in Article 83(1) and Article 84.			IT. In our view, this article should be updated in light of the final outcomes of the discussion on unauthorized transactions/fraud/liability. In any case, the reference to "credit transfers" should be replaced with "payment transaction", as there is no reason for such a limitation.
2. Member States shall, by [OP please insert the date= the date of entry into force of this Regulation], notify to the Commission the provisions adopted pursuant to paragraph 1. They shall, without delay, notify any subsequent amendment to the Commission.			
Article 108			
Review clause			
1. The Commission shall, by 5 years after the date of application of this Regulation, submit to the			

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European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the application and impact of this Regulation, and in particular on:			
(a) the appropriateness and the impact on competition and the uptake of open banking of the rules on access to payment accounts data on the business of account information services and payment initiation services, and in particular of the rules on dedicated interfaces and their respective derogations as per Articles 38 and 39;			
(b) the impact of the rules on the absence of obligatory contractual arrangements and compensation for access by account information service and payment initiation service			

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providers to interfaces referred to in Article 34;			
(c) the appropriateness and the impact of the rules on charges including the rules on surcharging as per Article 28;			
(d) the appropriateness and impact of the rules on prevention and redress of fraud on both unauthorised and authorised transactions.			
Where appropriate, the Commission shall submit a legislative proposal together with its report.			
		1a. The Commission shall, at the latest 3 years after the date of entry into force of this Regulation, submit to the European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the impact of the provisions contained in Regulation (EU) 2024/1624 and Directive (EU)	DK (MS drafting suggestions and comments): We believe it should be specified in the review clause that part of the report should include an evalution of the consequences of potentially requiring for the country codes between vIBAN and master account to match. This assessment should be conducted irrespective of whether the

		2024/1640 in relation to virtual IBANs. This report will in particular assess whether, in light of the risks and challenges posed by virtual IBANs, but also in light of their benefits, it would be necessary to introduce further measures regulating virtual IBANs at EU level. Where appropriate, the Commission shall submit a legislative proposal together with its report. *[**PRES comment:** The proposal presented at the February CWP meeting.]*	Commission intends to include such requirement in a legislative proposal. AT (MS drafting suggestions and comments): We can support this solution. ES (MS drafting suggestions and comments): We agree with the changes proposed. NL (MS drafting suggestions and comments): Good compromise. LV (MS drafting suggestions and comments): We support. LU (MS drafting suggestions and comments): 1a. The Commission shall, at the latest 3 years after the date of entry into force of this Regulation, submit to the European Parliament, the

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			Council, the ECB and the European Economic and Social Committee, a report on the impact of the provisions contained in Regulation (EU) 2024/1624 and Directive (EU) 2024/1640 in relation to virtual IBANs. This report will in particular assess whether, in light of the risks and challenges posed by virtual IBANs, but also in light of their benefits, it would be necessary to introduce further measures regulating virtual IBANs at EU level. Where appropriate, the Commission shall submit a legislative proposal together with its report. ***[PRES comment:** The proposal presented at the February CWP meeting.]* LU (): LU: we welcome this review clause.
2. The Commission shall, by [OP please insert the date= 3 years after the date of entry into force of this			

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Regulation] submit to the European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the scope of this Regulation, with regard in particular to payment systems, payment schemes and technical service providers. Where appropriate, the Commission shall submit a legislative proposal together with that report.			
Article 109			
Amendments to Regulation (EU) No 1093/2010			
Regulation (EU) No 1093/2010 is amended as follows:			
1. In Article 1(2), the first sentence is replaced by the following:			
"The Authority shall act within the powers conferred			

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by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC ([1]), Directive 2009/110/EC, Regulation (EU) No 575/2013 ([2]), Directive 2013/36/EU ([3]), Directive 2014/49/EU ([4]), Directive 2014/92/EU ([5]), Directive (EU) […] (PSD3), Regulation (EU) […] (PSR) of the European Parliament and of the Council and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.”;			

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2. Article 4(2) is amended as follows:			
(a) point (i) is replaced by the following:			
'competent authorities or supervisory authorities within the scope of the sectoral acts referred to in Article 1(2), including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013;'			
(b) points (iii), (vi), (vii) and (viii) are deleted.			
Article 110			
Amendment to Regulation (EU) No 2017/2394			
In the Annex to Regulation (EU) 2017/2394, the following point is added:			
'29. Regulation (EU) xxxx of the European Parliament and of the Council of xxxx on			

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payment services in the internal market and amending Regulation (EU) No 1093/2010.'			
	Article 110a		
	Regulation (EU) No 2021/1230 is amended as follows:		
	In Article 5, the first paragraph is replaced by the following:		
	1. When a currency conversion service is offered by the payer's payment service provider in relation to a credit transfer, as defined in point 28 of Article 3 of Regulation (EU) of the European Parliament and of the Council[3], that is initiated online directly,	1. When a currency conversion service is offered by the payer's payment service provider in relation to a credit transfer, as defined in point 28 of Article 3 of Regulation (EU) of the European Parliament and of the Council[4], that is initiated online directly,	LU (MS drafting suggestions and comments): 1. When a currency conversion service is offered by the payer's payment service provider in relation to a credit transfer, as defined in point 28 of Article 3 of Regulation (EU) of

3 OP: Please insert in the text the number of the Regulation contained in document 2023/0210 (COD) (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 and Regulation (EU) No 2021/1230 - COM/2023/367 final) and insert the number, date, title and OJ reference of that Regulation in the footnote.

4 OP: Please insert in the text the number of the Regulation contained in document 2023/0210 (COD) (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 and Regulation (EU) No 2021/1230 - COM/2023/367 final) and insert the number, date, title and OJ reference of that Regulation in the footnote.

	using the website or the mobile banking application of the payment service provider, the payment service provider, with regard to Article 13(1) and Article 20, c, of that Regulation, shall inform the payer prior to the initiation of the payment transaction, in a clear, neutral and comprehensible manner, of the estimated charges for currency conversion services applicable to the credit transfer. The estimated charges for currency conversion in relation to credit transfers shall be expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over the latest available applicable foreign exchange reference rates issued by the relevant central	using the website or the mobile banking application of the payment service provider, the payment service provider, with regard to Article 13(1) and Article 20, c, of that Regulation, shall inform the payer prior to the initiation of the payment transaction, in a clear, neutral and comprehensible manner, of the estimated charges for currency conversion services applicable to the credit transfer. The estimated charges for currency conversion in relation to credit transfers shall be expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over the latest available applicable foreign exchange reference rates issued by the relevant central	the European Parliament and of the Council[5], that is initiated online directly, using the website or the mobile banking application of the payment service provider, the payment service provider, with regard to Article 13(1) and Article 20, c, of that Regulation, shall inform the payer prior to the initiation of the payment transaction, in a clear, neutral and comprehensible manner, of the estimated charges for currency conversion services applicable to the credit transfer. The estimated charges for currency conversion in relation to credit transfers shall be expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over the latest available applicable foreign exchange reference rates issued by the relevant central bank, ECB or where not

5 OP: Please insert in the text the number of the Regulation contained in document 2023/0210 (COD) (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 and Regulation (EU) No 2021/1230 - COM/2023/367 final) and insert the number, date, title and OJ reference of that Regulation in the footnote.

	bank ECB or where not available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank.	bank, ECB or where not available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank. ***[PRES comment**: Technical amendment – insertion of comma.]*	available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank. ***[PRES comment**: Technical amendment – insertion of comma.]*
	Article 110b		
	Amendment to Regulation (EU) No 2024/886		
	Article 5a is amended as follows:		
	The following paragraph 6a is inserted:		
	'6a. In order to prevent fraud and in accordance with Regulation (EU) xxxx of the European Parlament and of the Council of xxx on payment services in the internal market and amending Regulation (EU) No 1093/2010, the payment service provider may decide not to execute the		

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	instant credit transfer, upon careful assessment of the risk of fraud and damage.' In such case, the payer and, where applicable, the payment initiation service provider, shall be notified by the payment service provider of the payer within 10 seconds of the time of receipt of the payment order for an instant credit transfer by the payer's PSP and, in accordance with paragraph 5, the payment service provider of the payer shall immediately restore the payment account of the payer to the state in which it would have been had the transaction not been initiated.		
Article 111			
Correlation table			
Any reference to Directive (EU) 2015/2366 and to Directive 2009/110/EC shall be construed as a reference to	Any reference to Directive (EU) 2015/2366 and to Directive 2009/110/EC shall be construed as a reference to Directive (EU)		

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Directive (EU) (PSD3) or to this Regulation and shall be read in accordance with the correlation table in Annex III to this Regulation.	(PSD3) or to this Regulation and shall be read in accordance with the correlation table in the Annex ~~III~~ to this Regulation.		
Article 112			
Entry into force and application			
This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.			DE (MS drafting suggestions and comments): **Remark** As a period of 18 months seems to be rather short, we suggest to consider an extension to 24 months, which would be more appropriate. The entry into force period in the PSR should be consistent with the implementation date of PSD3, where we also suggest 24 months instead of 18 months.
It shall apply from [OP please insert the date= 18 months			FI (MS drafting suggestions and comments):

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after the date of entry into force of this Regulation].			FI: We strongly support adding at least 6 months to this period (i.e. 24 months in total). CZ (MS drafting suggestions and comments): CZ suggest the following change in order to ensure proper implementation: *It shall apply from [OP please insert the date= **~~18~~ 24** months after the date of entry into force of this Regulation]*. SI (MS drafting suggestions and comments): We propose to extend the deadline for application of the PSR to 24 months, due to complexity of the PSD3/PSR package and the length of the procedures for the adoption of national law. This is also in line with our proposal for extension of the deadline for transposition PSD3. LU ():

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			LU: drafting suggestion: "It shall apply from [OP please insert the date= ~~18~~ **24** months after the date of entry into force of this Regulation]." We are in favour of a longer implementation and transposition period.
However, Articles 50 and 57 shall apply from [OP please insert the date= 24 months after the date of entry into force of this Regulation].			LU (): LU: drafting suggestion: However, Articles 50 and 57 shall apply from [OP please insert the date= ~~24~~ **30** months after the date of entry into force of this Regulation]. We are in favour of a longer implementation and transposition period.
This Regulation shall be binding in its entirety and			

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directly applicable in all Member States.			
Done at Brussels,			
For the European Parliament For the Council			
The President The President			
ANNEXES	ANNEX~~ES~~		
ANNEX I **PAYMENT SERVICES** (as referred to in point 3 of Article 3) (1) Services enabling cash to be placed on and/or withdrawn from a payment account. (2) Execution of payment transactions, including transfers of funds from and to a payment account, including where the funds are covered by a credit line with the user´s payment service provider or with another payment service provider. (3) Issuing of payment instruments. (4) Acquiring of payment transactions.	**~~ANNEX I~~** **~~PAYMENT SERVICES~~** ~~(as referred to in point 3 and 52 of Article 3)~~ ~~(1) Services enabling cash to be placed on and/or withdrawn from a payment account.~~ ~~(2) Execution of payment transactions, including transfers of funds from and to a payment account, including where the funds are covered by a credit line with the user´s payment service provider or with another payment service provider.~~ ~~(3) Issuing of payment instruments.~~ ~~(4) Acquiring of payment transactions.~~		

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(5) Money remittance. (6) Payment initiation services. (7) Account information services.	~~(5) Money remittance.~~ ~~(6) Payment initiation services.~~ ~~(7) Account information services.~~ ~~(8) Electronic money service~~		
ANNEX II **ELECTRONIC MONEY SERVICES** **(as referred to in point 52 of Article 3)** Issuance of electronic money, maintenance of payment accounts storing electronic money units and transfer of electronic money units.	**~~ANNEX II~~** **~~ELECTRONIC MONEY SERVICES~~** **~~(as referred to in point 52 of Article 3)~~** ~~Issuance of electronic money, maintenance of payment accounts storing electronic money units and transfer of electronic money units.~~		
ANNEX III **CORRELATION TABLE**	**ANNEX ~~III~~** **CORRELATION TABLE**		