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From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	Presidency Discussion Note: Discussion on other unrelated issues

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Polska Prezydencja w Radzie UE
Polish presidency of the Council of the EU
Présidence polonaise du Conseil de l'UE

Payment services package proposals (PSD3/PSR)
Brussels, 15 May 2025

Presidency Discussion Note
Discussion on other unrelated issues

Other unrelated issues in PSD3 and PSR

The Presidency decided to collect and include in this discussion notes a number of issues that have been indicated by Member States as crucial. In the view of the Presidency, it is important that the following issues are also discussed at the meeting of the Council Working Party.

Article 2(6) PSD3/Article 3(8) PSR – definition of 'execution of a payment transaction'

One Member State drew the Presidency's attention to the issue of the definition of 'execution of a payment transaction'. It is argued that since there was no definition of this term in PSD2, the introduction of this definition in the provisions of the PSD3/PSR is not justified. Moreover, it is considered that the introduced definition is too narrow, as it introduces a fixed time protocol for a payment transaction, which would start "once the initiation of a payment transaction is completed" and ends "once the funds placed, withdrawn or transferred are available to the payee". According to this Member State, such a definition would exclude from the definition payment protocols where the payment service provider initially pays out (advances) the funds to the payee and only later recovers from the payer the amount of money with which it has advanced. If such transactions were not included in the definition, this would open up possibilities for circumventing the applicability of the PSR and PSD3, since the execution of a payment transaction is a payment service that qualifies undertakings to fall under the scope of the PSR and PSD3. Such circumvention would have potentially detrimental AML/CFT implications. Therefore, in the light of this view, it is proposed to delete a definition of the "execution of a payment transaction" and to continue with the supervisory approach established under PSD2.

Please see the drafting suggestions (in green):

Article 2(6) PSD3

~~(6) 'execution of a payment transaction' means the process starting once the initiation of a payment transaction is completed and ending once the funds placed, withdrawn, or transferred are available to the payee;~~

Article 3(8) PSR

~~(8) 'execution of a payment transaction' means the process starting once the initiation of a payment transaction is completed and ending once the funds placed, withdrawn, or transferred are available to the payee;~~

Question for the Member States:

1. *Do you object the proposed deletion?*

Article 10 PSD3 – 12-month limit for payments institution on their credit ancillary activities

One Member State indicated that the current wording of PSD2 and the Commission's proposal for PSD3 create an unequal situation for payment institutions that are financially sound and solvent and see their ability to grant ancillary credit on a cross-border basis restricted by a 12-month limit. The Member State argues that an adequate level-playing-field between payment institutions is essential to foster the best conditions for consumers. The payments package conformed by a Directive (PSD3) and a Regulation (PSR) pursue the objectives of competition, innovation, financial inclusion, security, consumer protection, and level playing field.

The Member State's proposal is to enable NCAs to allow payment institutions to grant credit on a cross-border basis for periods beyond 12 months when specific requirements are met in terms of proportionality and a risk-based approach.

This Member State indicated that PSD2 creates an unlevel playing field between payment institutions that grant ancillary credit under their passporting rights and those that only grant ancillary credit locally. The Commission proposal maintains the status quo: cross-border ancillary credit activities are subject to a 12-month limit. In contrast, domestic entities are not subject to this limitation. This also undermines the internal market.

The latest proposal of PSD3 extends the 12-month limit to domestic granting of ancillary credit. This amendment was based on the written comments of the MS on the consolidated table. The Member State indicates, however, that this change may have the unintended consequence of restricting business models that have not posed any risks when granting credit beyond this limit.

In the view of the above, it is therefore proposed to introduce the possibility of granting ancillary credit beyond the 12 months limitation both for domestic and cross-border activities while still ensuring the financial soundness of payment institutions, under the supervision of competent authorities. There are 2 options which would achieve this objective.

Option 1

If the precondition of the ancillary nature of the credit is met, there is no reason for limiting ancillary credit beyond 12 months, neither at national, nor at cross border level. The EU consumer protection legislation constitutes a wide and strong framework that guarantees providing ancillary credit for cross border transactions beyond 12 limits without undermining consumer protection.

It is therefore proposed to remove the 12-month limit for cross-border activity by deleting Article 10(4)(b).

Option 2

It is proposed to introduce a national option to allow this extension.

National competent authorities could assess whether specific requirements are met by a payment institution, considering its nature and the size, scale, complexity and overall business

volume of the credit granting activities. And, thus, to ensure that said credit granting activity does not pose substantial risks to the financial soundness of the relevant payment institution. Also, the national competent authority can assess whether carrying out such activities impairs the institution's ability to comply with prudential and capital requirements that are conditions to its authorization under this Directive.

In view of this Member State, the inclusion of this new provision would ensure a level playing field for payment institutions across the EU, while also ensuring that national competent authorities' supervisory functions as regards prudential supervision of payment institutions remains fully effective and expanded. Non solvent payment institutions are prevented from over-exposure to credit risk and will need the authorization of their home supervisor.

These provisions give discretionary room for national competent authorities of the home Member State to decide how best to exercise their effective duties of prudential supervision. It is something for which precedents exist in PSD (e.g. in Recital 39 and Article 13, as regards the ability of national competent authorities to require the set-up of a separate entity) and other pieces of regulation such as CRD, CRR, MiFID. Also, home supervisors would be able to analyse the portion of a portfolio that is related to ancillary credit, to consider this element as part of the risk framework of a payment institution. This approach has also been successful under MIFID, where home national competent authorities have the mandate and the discretion to analyse the threshold of what could be admissible for investment companies to carry out as ancillary activities, even on a cross-border basis.

Consumer protection is guaranteed as the decision of the competent authority is without prejudice to compliance with the Consumer Credit Directive.

The Presidency would like to know the position of the Member States on this particular issue.

Please see the drafting suggestions for option 2 (in green):

(35) Payment institutions should be allowed to grant credit, where such activity is closely linked to or facilitates the provision of payment services, provided that ~~but this activity should be subjected to~~ some strict conditions are observed to ensure that solvency and credit risks are handled prudently. It is therefore appropriate for this Directive to regulate the granting of credit by payment institutions in the form of credit lines and the issuance of credit cards, insofar as those services facilitate payment services and if credit is granted for a period not exceeding 12 months, including on a revolving basis.

In accordance with the principle of proportionality, national competent authorities of the home Member State should be given discretion to allow payment institutions under their prudential supervision to grant credit in relation to its cross-border activities for a period beyond 12 months. Such a decision by the competent authority should take account of the potential negative impact to the financial soundness of the payment institution in view of the size, scale and complexity of the credit-related activities and should ensure that the performance of said activities does not impair either the payment institution's ability to comply with prudential requirements or the ability of the competent authority to monitor the payment institution's compliance with this Directive.

That possibility should however be without prejudice to Directive 2008/48/EC of the European Parliament and of the Council or other relevant Union law or national measures regarding conditions for granting credit to consumers. Given their principally lending nature, 'Buy Now Pay Later' services should not constitute a payment service. Those services are covered by the new Directive on consumer credits replacing Directive 2008/48/EC.

Article 10(4) PSD3

4. Payment institutions may grant credit relating to the payment services referred to in Annex I, points 2 to 4, only where all of the following conditions have been met:

(a) the credit is ancillary to, and granted exclusively in connection with, the execution of a payment transaction

(b) notwithstanding national rules, if any, on providing credit by issuers of credit cards, the credit granted in connection with a payment and executed in accordance with Article 13(6) and Article 30 is to be repaid within a short period, which shall in no case exceed 12 months;

National competent authorities of the home Member State may allow a payment institution to grant credit in relation to its cross-border activities for a period beyond 12 months when the performance of the credit-related activities does not impair either the payment institution's ability to comply with prudential requirements or the ability of the competent authority to monitor the payment institution's compliance with this Directive and the Payments Services Regulation.

(c) the credit granted does not come from the funds received or held for executing a payment transaction or from the funds which have been received from payment services users in exchange of electronic money and held in accordance with Article 9, paragraph 1;

(d) the own funds of the payment institution are at all times and to the satisfaction of the supervisory authorities appropriate in view of the overall amount of credit granted.

Question for the Member States:

2. *Do you agree with any of the proposed options:*
   Option 1 – the proposal to remove the 12 months limit for all transactions, domestic and cross border; or
   Option 2 – the proposal to remove the 12 months limit for domestic transactions, and as for cross border ones, regulate a national option whereby NCAs may allow payment Institutions to offer ancillary credit over 12 months?

Simplification – Article 39 PSD3

The non-paper of the German delegation presented at the Council Working Party meeting on 21 February referred, among others, to the reporting obligation set out under Article 39 PSD3. In the light of the simplification approach it was proposed to delete this obligation.

It was argued that the notification obligation and the maintenance of corresponding registers have not shown any added value from a supervisory perspective or for consumers and market

participants. Instead, the submission of corresponding notifications by market participants and their recording and follow-up by our competent authority (maintenance of the register) has in the past led to an administrative burden, while generating only an insignificant gain in knowledge for supervisory purposes.

However, it is clear from the written comments to the CWP meeting on 21 February that Member States are divided on the proposal to delete Article 39 PSD3, as most of the Member States do not support the deletion of Article 39 PSD3.

As a result of this discussion, it is therefore proposed to amend the wording of Article 39 PSD3 in order to leave it to the discretion of a Member State to decide whether to require service providers falling in the scope of Article 39 PSD3 to notify to the competent authorities. The proposal would allow Member States, whose NCAs do not need the information from the notification of Article 39 PSD3, to simplify their supervisory practice. At the same time, Member States, whose NCAs rely on such information, would still be able to use Article 39 PSD3 as a data-generating process.

Please see the following changes to Article 39 PSD3 (in green):

Article 39 PSD3

1. Member States shall prohibit natural or legal persons that are neither payment service providers nor explicitly excluded from the scope of this Directive from providing payment services.

~~2~~1. Member States ~~shall~~ may require service providers that carry out either of the activities referred to in Article 2(12), points (j), (i) and (ii), of Regulation XXX [PSR] or carrying out both activities, for which the total value of payment transactions executed over the preceding 12 months exceeds EUR 1 million, to inform the competent authorities about the services offered, specifying under which exclusion as referred to Article 2(12), points (j), (i) and (ii), of Regulation XXX [PSR] the activity is considered to be carried out.

Insofar Member States require service providers to notify pursuant to subparagraph 1, on the basis of that notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in Article 2(~~1~~2), point (j), (i) and (ii) of Regulation XXX [PSR] where the activity does not qualify as a limited network, and inform the service provider thereof.

~~3~~2. Member States ~~shall~~ may require service providers that carry out an activity as referred to in Article 2(~~1~~2), point ~~(j)~~ (k) of Regulation XXX [PSR] to send a notification to competent authorities and provide competent authorities an annual audit opinion, testifying that the activity complies with the limits set out Article 2(~~1~~2), point ~~(j)~~ (k), of Regulation XXX [PSR].

~~4~~3. Insofar Member States require service providers to notify pursuant to paragraph 1, Member States shall ensure that competent authorities shall inform the EBA of the services notified pursuant to paragraph ~~1~~2, stating under which exclusion the activity is carried out.

54.Insofar Member States require service providers to notify pursuant to paragraphs 1 and 2, the description of the activity notified under paragraphs 12 and 23 shall be made publicly available in the registers referred to in Articles 17 and 18.

Question for the Member States:

3. *Do you object the proposed compromise?*

Article 59a PSR – Electronic Communications Services Providers

One of the Member States indicated that, beyond the definition of electronic communications services providers, strongly advocates for targeted and preventive obligations on ECSPs referred to in Article 2(4)(b). The Member State argues that otherwise the Council's mandate would be less ambitious than the one adopted by the European Parliament and this particular issue is a key priority.

Given the above it is proposed to have direct and targeted obligations for ECSPs focusing on preventing (i) spoofing, (ii) SIM-swapping and (iii) smishing (fraudulent SMS) in the PSR, in addition to the previously proposed Article 59a PSR on cross-sectoral cooperation for the purpose of fraud prevention and detection.

Please see the proposed drafting (in green):

Article 59a(3)

3 Electronic communications services providers as defined under Article 2, point 4 of the Directive 2018/1972/EU shall ensure that all necessary technical measures, including specifically the security of the communication between payment service providers and payment service users are in place to prevent fraud within their sphere of competence. In the case of providers of electronic communications services, such technical measures shall at a minimum include:

(a) Confirming the authenticity of all calls and messages routed through telecommunication networks and preventing the use of a particular telephone number that is contrary to the conditions of attribution, authorization or allocation of that telephone number;

(b) Preventing the use of electronic mailing for fraudulent purposes;

(c) Storing proof of all IT and identity verification measures, in particular in the event of SIM SWAP, to justify their due diligence in line with national legislations.

Question for the Member States:

4. *Do you agree with the proposed amendments?*

Article 83b PSR – direct debits

One Member State expressed some doubts as to how Article 83(1a) PSR would apply in practice, even with the burden of proof on the PSP.

The Member State argues that, given the higher level of fraud observed on SEPA direct debits (SDDs), the PSR text should include requirements to secure these direct debits. According to this Member State, in the case of direct debits, payment service providers should maintain internal procedures to ensure the consistency between the payee's name and the payee's identifier required for direct debits. It is indicated that this would be a good complement to the verification of payee (VoP) for credit transfers. Such procedures should be included into the transaction monitoring mechanisms requirements described in the new Article 83b PSR.

Please see the suggested drafting (in green):

Article 83b – European directory of SEPA Creditor Identifiers

1. In view of increasing the securing of direct debit and associated fraud schemes, payment service providers shall conclude an information sharing arrangement, including the use of dedicated IT platforms and shared directories, allowing them to exchange the payee's identifier required for direct debits (Credit identifier) with the associated payee's name.

2. When different payment service providers have sufficient evidence that a payee's identifier (or Creditor Identifier) is associated with fraudulent direct debits, the information sharing arrangement can establish a monitoring mechanism of those payee's identifier and propose the "black-listing" of that identifier.

Question for the Member States:

5. *Do you object the proposed Article?*