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## WORKING DOCUMENT

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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés

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Subject:	Presidency Discussion Note on issues related to other regulations - Interplay with FIDA, Virtual IBAN, ECB reference rates, IBAN check
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**LIMITE**

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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, 28 January 2025*

**Presidency Discussion Note**  
**Discussion on issues related to other regulations**  
**(Interplay with FIDA, Virtual IBAN, ECB reference rates, IBAN check)**

## Interplay with FIDA

Based on the discussions on the CWPs of 15 November and 6 December and on subsequent Member States' comments on the alignment and coordination between the Payment Services Regulation (PSR) and the Financial Information Data Access (FIDA) framework, the Presidency intends to provide drafting suggestions in this Discussion Note and seek to conclude the discussion regarding this issue.

### Clarification on registration in the recitals

The majority of Member States did not agree with the suggestion made in a PSD3 recital to clarify that "registration" is a lighter form of authorisation and, that since it requires a reaction from the national competent authority, it is not a simple notification procedure. According to these Member States, there is no such a need to introduce a proposed clarification. In the light of the discussion, the Presidency has not made any changes to the recitals in this regard.

### Professional indemnity insurance and comparable guarantee

During the CWP on 6 December 2024, many Member States agreed with the HU Presidency's suggestion for the EBA mandate to include a reference to professional indemnity insurance offering a comparable guarantee for AISPs.

Therefore, the Presidency suggests the following wording.

#### **Article 3 PSD3**

[...]

4. Member States shall require undertakings that apply for authorisation to provide payment services as referred to in Annex I, point (6) as a condition of their authorisation, to hold a professional indemnity insurance, covering the territories in which they offer services, or some other comparable guarantee against liability to ensure that:

- ~~(a) they can cover their liabilities as specified in Articles 56, 57, 59, 76, and 78 of Regulation XXX [PSR];~~
- ~~(b) they cover the value of any excess, threshold or deductible from the insurance cover or comparable guarantee;~~
- ~~(c) they monitor the coverage of the insurance or comparable guarantee on an ongoing basis.~~

~~Any excess, deductible or threshold set by the professional indemnity insurance or comparable guarantee referred to in the first subparagraph shall be allowed only if they do not prejudice repayments resulting from requests for refunds of payment service users and account servicing payment service providers.~~

5. The EBA shall develop draft regulatory technical standards specifying:

- ~~(a) the information to be provided to the competent authorities in the application for the authorisation of payment institutions, including the requirements laid down in paragraph 3, points (a), (b), (c), (e), (f) and (g) to (k), (r) and (s), and in the application for registration as an independent ATM deployer, under this Directive;~~
- ~~(b) a common assessment methodology for granting authorisation as a payment institution, or registration as an ~~account information service provider or~~ independent ATM deployer, under this Directive;~~
- ~~(c) what is a comparable guarantee, as referred in paragraph 4, ~~first subparagraph~~, which should be interchangeable with a professional indemnity insurance;~~

*(d) the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee as referred in paragraph 4, the conditions under which an excess, deductible or threshold set by the professional indemnity insurance or comparable guarantee is allowed and the conditions under which additional initial capital or own funds may be deducted from the minimum monetary amount of the professional indemnity insurance or other comparable guarantee.*

***For the purposes of point (c), a payment institution's own funds or initial capital shall not be excluded from what a comparable guarantee is.***

*For the purposes of point d), where a payment institution holds additional initial capital or own funds beyond the level required pursuant to this Directive, the respective funds may be deducted from the minimum monetary amount of the professional indemnity insurance or comparable guarantee as referred in paragraph 4, subject to the conditions to be set in the regulatory technical standards referred to above.*

#### **Article 36(4)**

*Member States shall require persons as referred to in paragraph 1, as a condition of their registration, to hold a professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee to ensure that:*

~~*(a) they can cover their liability vis-à-vis the account servicing payment service provider or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information service.;*~~

~~*(b) they can cover the value of any excess, threshold or deductible from the insurance or comparable guarantee;*~~

~~*(c) they monitor the coverage of the insurance or comparable guarantee on an ongoing basis.*~~

*Any excess, deductible or threshold set by the professional indemnity insurance or comparable guarantee referred to in the first subparagraph shall be allowed only if they do not prejudice repayments resulting from requests for refunds of payment service users and account servicing payment service providers.*

#### **Article 36(4a)**

*The EBA shall develop draft regulatory technical standards specifying:*

~~*(a) the information to be provided to the competent authorities in the application for registration as an account information service provider under this Directive;*~~

~~*(b) a common assessment methodology for granting registration as an account information service provider under this Directive;*~~

~~*(c) what is a comparable guarantee, as referred to in paragraph 4, which should be interchangeable with a professional indemnity insurance;*~~

~~*(d) the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee as referred to in paragraph 4, the conditions under which an excess, deductible or threshold set by the professional indemnity insurance or comparable guarantee is allowed and the conditions under which additional initial capital or own funds may be deducted from the minimum monetary amount of the professional indemnity insurance or other comparable guarantee.*~~

~~*For the purposes of point d), any initial capital or own funds held by an account information service provider may be deducted from the minimum monetary amount of the professional indemnity insurance or comparable guarantee, subject to the conditions to be set in the regulatory technical standards referred to above.*~~

The Commission proposal lacked an EBA mandate for the registration conditions of AISPs in Article 36 PSD3. Therefore, the new paragraph 4a in Article 36 is considered to solve this problem and to introduce such a mandate, based on Article 3(4) mutatis mutandis, and also including the treatment of insurance deductibles and the use of initial capital to offset a comparable guarantee.

*Q1. Do Member States agree with the proposed drafting suggestions to Article 3 and Article 36 PSD3? If not, please provide an alternative.*

## Permission dashboard – alignment of Article 43 PSR with the FIDA Regulation

Many Member States agreed with the Presidency's suggestion to align, to the extent possible, the text of Article 43 PSR with Article 8 FIDA in relation to permission dashboards. A few Member States indicated that there should be one single dashboard for the purposes of both regulations – PSR and FIDA.

Taking into account the opinions of Member States that the existing differences between the requirements for dashboards in Article 43 PSR and Article 8 FIDA may generate both costs for PSPs (which would be subject to both regimes), and also confusion for customers, the Presidency proposes the following wording to align these provisions.

<b>Article 43 PSR</b>
<b>Data access management by payment service users</b>
1. The account servicing payment service provider shall provide the payment service user with a dashboard, integrated into its user interface, to monitor and manage the permissions the payment service user has given for the purpose of account information services or payment initiation services covering multiple or recurrent payments.
2. The dashboard shall:
(a) provide the payment service user with an overview of each ongoing permission given for the purposes of account information services or payment initiation services <b>at any time</b> , including:
(i) the name of the account information service provider or payment initiation service provider to which access has been granted;
(ii) the customer account to which access has been granted;
(iii) the purpose of the permission;
(iv) the period of validity of the permission, <b>including the date on which the payment service user has given their permission, and the dates on which a payment account was accessed</b> ;
(v) the categories of data being shared.
(b) allow the payment service user to withdraw data access for a given account information service or payment initiation service provider <b>at any time</b> ;
(c) <b>within 48 hours from withdrawal of a permission</b> , allow the payment service user to re-establish any data access withdrawn <del>up to 48 hours after withdrawal of this data access</del> ;
(d) include a record of data access permissions that have been withdrawn or <b>that</b> have expired, for a duration of two years;
<i>(e) be consistent with the Regulation (EU) [...] of the European Parliament and of the Council [FIDA] dashboards and allow payment service users to manage data permissions pursuant to this Regulation and [FIDA] through a single dashboard upon the request of the payment service user.</i>
<i>2a. Where, pursuant to paragraph 2, point (b), a payment service user decides to withdraw data access, the payment initiation service provider or account information service provider concerned shall:</i>
<i>(a) cease using the data;</i>
<i>(b) withdraw the data; and</i>

<p><i>(c) without undue delay, erase all data received as a result of the data access permission granted by the payment service user.</i></p>
<p>3. The account servicing payment service provider shall ensure that the dashboard is easy to find in its user interface and that information displayed on the dashboard is clear, <b>neutral</b>, accurate and easily understandable for the payment service user <i>and does not contain any deterring or discouraging language that might dissuade the payment service user from making use of the services of a payment initiation service provider or account information service provider.</i></p>
<p>4. The <del>account servicing payment service provider and the</del> account information service or payment initiation service provider to which permission has been granted shall <i>provide the information in paragraph 2 point (a) to the account servicing payment service provider in real time as soon as possible and within 24 hours from the permission being granted. The account servicing payment service provider shall only provide the information in paragraph 2 point (a) to the extent it was provided to it by the account information service or payment initiation service provider to which permission has been granted. cooperate to make information available to the payment service user via the dashboard in real time. For the purposes of paragraph 2 points (a), (b), (c) and (e):</i></p>
<p><i>(a) The account servicing payment service provider shall inform the account information service or payment initiation service provider in real time of changes made to a permission concerning that provider made by a payment service user via the dashboard;</i></p>
<p><i>(b) An account information service or payment initiation service provider shall inform the account servicing payment service provider in real time of a new permission granted by a payment service user regarding a payment account provided by that account servicing payment service provider, including:</i></p>
<p><i>(i) the purpose of the permission granted by the payment service user;</i></p>
<p><i>(ii) the period of validity of the permission;</i></p>
<p><i>(iii) the categories of data concerned.</i></p>
<p>5. The account servicing payment service provider and the account information service or payment initiation service provider to which permission has been granted shall cooperate to make information available to the payment service user via the dashboard in real time <i>as soon as possible and within 24 hours from the receipt thereof by the account servicing payment service provider pursuant to paragraph 4. For the purposes of paragraph 2 points (a), (b), (c) and (d) of this Article:</i></p>
<p><i>(a) The account servicing payment service provider shall <del>inform</del> notify the account information service or payment initiation service provider without undue delay as soon as possible and within 24 hours at the latest of any changes made by the payment service user via the dashboard to a permission, including the withdrawal of a permission, concerning that provider made by a payment service user via the dashboard;</i></p>
<p><i>(b) An account information service or payment initiation service provider shall inform the account servicing payment service provider without undue delay as soon as possible and within 24 hours at the latest of a new permission granted by a payment service user regarding a payment account provided by that account servicing payment service provider, including all the information listed in paragraph 2 point (a) points (i) to (v)</i></p>
<p><del>6. The account servicing payment service provider shall bear no liability for the actions envisaged in paragraph 2 points (b) and (c) undertaken by the payment service user.</del></p>

Q2. Do Member States agree with the proposed drafting suggestions to Article 43 PSR? If not, please provide an alternative.

Q3. Are Member States of the view that the phrase “upon the request of the payment service user” In Article 43(2)(e) should be deleted?

## Virtual IBAN

Given the divergent views of Member States on the issue of virtual IBANs, the Presidency does not see a clear majority in any particular direction to go forward. Therefore, the Presidency proposes a compromise solution on this sensitive issue. Based on the BE PRES proposal to add Art. 32a in PSR, the Presidency proposes to keep a part of the BE PRES proposal, i.e. para. 1 of Art. 32a stating that vIBAN is to be considered as an IBAN and that the ISO standards have been brought into the EU acquis through the SEPA Regulation. However, para. 2 of this Article (relating to the obligation that the country code of the virtual IBAN shall always match the country code of the payment account to which it causes payments to be redirected) is to be removed.

Taking into account voices of the Member States, in the view of Presidency, the introduction of the matching requirement is disproportionate and cannot be introduced without a proper and thorough analysis and assessment. As presented and discussed during previous CWP, many legitimate businesses have based their business activities on the possibility not to redirect to the payment account with necessarily identical country code. The Presidency also notes the views of some Member States related to the IBAN discrimination issue.

Having considered the above, a potential way forward could be to keep in PSR the clarification proposed by the BE PRES in Art. 32a(1), but, in order to avoid unplanned elimination of the business models, to delete the matching requirement from Art. 32a(2) and the corresponding references in Recital 36c, and instead to introduce a review clause for the Commission on vIBANs in Article 108 PSR as a new paragraph (1a). The review clause would require the Commission to prepare and submit a report on the impact of the related to vIBANs provisions of AMLR and AMLD 6. The report should include the assessment of both risks and benefits of vIBANs. Based on the outcome of this assessment, the Commission may introduce further regulatory measures relating to vIBANs.

The Presidency proposes the following drafting.

*(36a) Virtual IBANs have been defined in the Regulation (EU) No. XXX [AML Regulation]. In order to enhance legal certainty surrounding the provision of virtual IBANs and to ensure that payment service providers using virtual IBANs to carry out credit transfers and direct debit transactions are in compliance with the SEPA Regulation, it is clarified that a virtual IBAN is to be considered as an IBAN as defined in the SEPA Regulation.*

*It should be noted that the ISO rules on definition and structure of the IBAN have been brought into the EU acquis through the SEPA Regulation and are to be considered mandatory. Virtual IBANs should therefore, just as IBANs do, comply with the ISO rules on definition and structure of the IBAN as set out in the ISO IBAN standards. ~~Furthermore, there should be a match between the country code of the virtual IBAN and the country where the master account (the account to which the virtual IBAN causes payments to be redirected) is held. This is due to the fact that the ISO Standards provide that the country code of an IBAN must reflect the country of the issuer of that IBAN and said issuer is necessarily the financial institution, either a locally registered financial institution or a locally established branch thereof, maintaining the account.~~*

*(144a) In view of the increasing relevance of virtual IBANs, the Commission should review the impact of the newly adopted provisions contained in Regulation (EU) 2024/1624 and Directive (EU) 2024/1640 in relation to virtual IBANs. The review should take place a sufficient time after the entry into force of the above-mentioned legislations. The Commission's report based on this review should, in particular, assess the risks and challenges posed by virtual IBANs on the one hand, and their benefits on the other one. On the grounds of this assessment, the Commission should conclude in its report, whether it is*

*necessary to introduce any further measures regulating virtual IBANs at EU level and, if appropriate, submit a legislative proposal together with the report.*

#### **Art. 32a**

##### **Virtual IBANs**

*1. A virtual IBAN as defined in Article 2(20c) of Regulation (EU) No. XXX [AML Regulation] is to be considered as an IBAN as defined in Article 2(15) of Regulation (EU) No 260/2012 [SEPA].*

*~~2. The country code of the virtual IBAN as defined in Article 2(20c) of Regulation (EU) No. XXX [AML Regulation] shall always match the country code of the payment account to which it causes payments to be redirected.~~*

#### **Art. 108(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) 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.*

*Q4. Do Member States agree with the proposed compromise solution and provided drafting suggestions in relation to the virtual IBANs? If not, please provide an alternative compromise solution.*

## **Use of ECB reference rates in PSR**

Taking into account the previous discussions, the opinion of 30 April 2024 (CON/2024/13)<sup>1</sup> of the European Central Bank, the discussion during the CWP of 15 November 2024 and the written comments of Member States provided after this Working Party, the Presidency notes that the views of Member States diverge as to whether the foreign exchange reference rate should apply to the estimated charges for currency conversion in relation to credit transfers and money remittance transactions stipulated in Recital 50, Article 13(1)(f), and Article 20(c)(v) PSR.

Based on the written comments provided by Member States on this issue after the CWP of 15 November 2024 and on further considerations, the Presidency was inclined to propose three options.

Option 1. below is a simple reference to the foreign exchange reference rate, which complies with the Benchmark Regulation (BMR)<sup>2</sup>, but the Presidency notes Member States' concerns regarding obstacles to such an approach. First of all, this would not ensure comparability, since it would be possible to use multiple reference rates for setting the mark-up, which could actually contribute to the payer's confusion. Moreover, the Benchmark Regulation regulates a framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union. The reference rates do not fall within the scope of the BMR, as they are not used in either financial instruments or financial contracts. The reference to the BMR could therefore be incorrect from a legal perspective. Last but not least, we are in the process

<sup>1</sup> Opinion of the European Central Bank of 30 April 2024 on a proposed regulation and directive on payment and electronic money services (CON/2024/13)

<sup>2</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, pp. 1-65)

of amending the BMR (with the trilogues already concluded), so that in future, its scope will cover only benchmarks that are used for a minimum volume of EUR 50 billion of contracts/financial instruments – so it would be an additional obstacle to overcome if the rate had to be compliant with the Benchmark Regulation.

To address the abovementioned doubts, the Presidency would like to propose another option as a possible solution for this issue, taking into account the concerns the ECB expressed about using the ECB rate as a reference for setting the mark-up and also with the aim of achieving the main objective of the mark-up requirement, namely comparability for the payer.

This may be achieved by the use of so-called 'aggregated live mid-market benchmark rates', which would not only ensure comparability, but would also generate additional advantages for the payer - live mid-market rates are produced on a continuous basis, making interference and manipulation much more difficult. Some providers already use such spot rates for calculating their currency conversion charges.

Comparability for the payer could be achieved by further limiting the number of 'aggregated live mid-market benchmark rate' providers by including in the PSR clearly defined criteria for them to be eligible. Two options are currently considered (see Option 2a and Option 2b below).

#### **Option 1.**

*(50) To achieve comparability, the estimated currency conversion charges for credit transfers and remittances carried out within the Union and from the Union to a third country should be expressed in the same way, namely as a percentage mark-up over ~~the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB): a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011 of the European Parliament and of the Council. if the relevant percentage mark-up is not publicly available at the ECB for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank should be used. For the sake of clarity the estimated currency conversion charges should also be expressed in a monetary amount in the currency of the payer's account. When reference is made to 'charges' in this Regulation, it should also cover, where applicable, 'currency conversion' charges.~~*

#### **Article 13(1)(f) PSR**

*(f) where applicable, the estimated charges for currency conversion in relation to credit transfers and money remittance transactions, expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011 the latest available applicable foreign exchange reference rates issued by the relevant central bank ECB or, where not available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank;*

#### **Article 20(c)(v) PSR**

*(v) where applicable, the estimated charges for currency conversion services in relation to a credit transfer expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011 the latest available applicable foreign exchange reference rates issued by the relevant central bank ECB or where not available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank;*

In order to ensure consistency in EU legislation, Regulation 2021/1230<sup>3</sup> requires adequate corresponding amendments. Therefore, the Presidency proposes the following amendments.

<sup>3</sup> Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (OJ L 274, 30.7.2021, pp. 20-31)

**Regulation 2021/1230****Article 4**

1. With regard to the information requirements on currency conversion charges and the applicable exchange rate, as set out in Article 1345(1), Article 2052, point (c3), and Article 59(2) of **Regulation XXX [PSR] Directive (EU) 2015/2366**, payment service providers and parties providing currency conversion services at an automated teller machine (ATM) or at the point of sale, as referred to in Article 59(2) of that **Regulation Directive**, shall express the total currency conversion charges **as a monetary amount in the currency of the payer's account and as a percentage mark-up over a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011 the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB)**. That mark-up shall be disclosed to the payer prior to initiation of the payment transaction.

**Article 5**

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 (2428) of Article 43 of **Regulation XXX [PSR] Directive (EU) 2015/2366**, 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 4513(1) and Article 5220(c) of that **Regulation**, point (3), of that **Directive**, 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 a foreign exchange benchmark rate that complies with Regulation (EU) 2016/1011.**

**Option 2a: Compliance with IOSCO's Principles for Financial Benchmarks**

To avoid providers needing to prove compliance with the Benchmark Regulation, the PSR could rely on international standards and introduce the obligation for 'live, aggregated mid-market benchmark rate' providers to comply with the Principles for Financial Benchmarks of the International Organisation of Securities Commissions (IOSCO). These principles were designed to create an overarching framework of principles for benchmarks used in financial markets and to promote the reliability, accountability, quality and governance of benchmarks. The Benchmark Regulation is based on those IOSCO principles. Providers can also seek an audited compliance statement by a third party that would certify their compliance with the IOSCO principles. Many international benchmark administrators design their benchmarks to be aligned with these standards and voluntarily adhere to these international standards, inter alia by publishing statements of compliance.

**Option 2b: Introducing a Level 2 measure (RTS), where ESMA determines the criteria for 'live, aggregated mid-market benchmark rate' providers**

The PSR could, in the Level 1 text, introduce the requirement for PSPs to use a 'live, aggregated mid-market benchmark rate' from a significant, neutral and reputable provider, with the concrete criteria for the benchmark rate provider to be set out in Level 2, e.g., through ESMA Regulatory Technical Standards (RTS).

The ESMA RTS would then specify the conditions which the mid-market benchmark providers need to fulfil. While these would take inspiration from and align with the Benchmark Regulation and the IOSCO Principles for Financial Benchmarks, there would not be any certification mechanism.

*(50) To achieve comparability, the estimated currency conversion charges for credit transfers and remittances carried out within the Union and from the Union to a third country should be expressed in*

the same way, namely as a monetary amount in the currency of the payer's account and as a percentage mark-up over an aggregated live mid-market benchmark rate that accurately reflects the market. To ensure that the benchmark rate used is reliable and accurately reflects the market, it should be provided by [Option 2a] a trusted administrator who meets applicable governance and control requirements, such as the IOSCO Principles for Financial Benchmarks. /[Option 2b] a significant, neutral and reputable provider fulfilling the relevant requirements specified in the ESMA Regulatory Technical Standards. ~~the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB) If the relevant percentage mark up is not publicly available at the ECB for non euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank should be used. For the sake of clarity the estimated currency conversion charges should also be expressed in a monetary amount in the currency of the payer's account.~~ When reference is made to 'charges' in this Regulation, it should also cover, where applicable, 'currency conversion' charges.

Article 3(56)(new): 'aggregated live mid-market benchmark rate' means a rate that represents the mid-point between the buy and sell prices of a currency pair in the foreign exchange market, and that is calculated by combining data from multiple sources to provide an accurate and real-time reflection of the market conditions.

#### Article 5

(4)(new): For the purposes of Articles 13(1)(f) and 20(c)(v) of this Regulation, the aggregated live mid-market benchmark rate used shall accurately reflect the market, with a maximum delay of 10 minutes or, for currencies where this is not possible, reflect the last traded price from a reputable trading venue. It shall be provided by [Option 2a] a trusted administrator who complies with the IOSCO Principles for Financial Benchmarks/ [Option 2b] a significant, neutral and reputable provider fulfilling the relevant requirements specified in the ESMA Regulatory Technical Standards.

#### [for Option 2b only]

(5)(new): ESMA shall develop draft regulatory technical standards as referred to in paragraph 4 to further specify the requirements for the benchmark providers to be eligible to provide an aggregated live mid-market benchmark rate.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

#### Article 13(1)(f) PSR

(f) where applicable, the estimated charges for currency conversion in relation to credit transfers and money remittance transactions, expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over an aggregated live mid-market benchmark rate as referred to in Article 5(4)(new) ~~applicable foreign exchange reference rates issued by the relevant central bank ECB or, where not available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank;~~

#### Article 20(c)(v) PSR

(v) where applicable, the estimated charges for currency conversion services in relation to a credit transfer expressed as a monetary amount in the currency of the payer's account and as a percentage mark-up over an aggregated live mid-market benchmark rate as referred to in Article 5(4)(new) ~~le applicable foreign exchange reference rates issued by the relevant central bank ECB or where not available for non-euro currencies, the latest available applicable foreign exchange reference rate issued by the relevant central bank;~~

In order to ensure consistency in EU legislation, Regulation 2021/1230<sup>4</sup> requires adequate corresponding amendments. Therefore, the Presidency proposes the following amendments.

### **Regulation 2021/1230**

#### **Article 4**

1. With regard to the information requirements on currency conversion charges and the applicable exchange rate, as set out in Article 1345(1), Article 2052(c3), and Article 59 (2) of Regulation XXX [PSR] Directive (EU) 2015/2366, payment service providers and parties providing currency conversion services at an automated teller machine (ATM) or at the point of sale, as referred to in Article 59(2) of that Regulation-Directive, shall express the total currency conversion charges as a monetary amount in the currency of the payer's account and as a percentage mark-up over an aggregated live mid-market benchmark rate as referred to in Article 5(4)(new) of Regulation XXX [PSR] ~~the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB)~~. That mark-up shall be disclosed to the payer prior to the initiation of the payment transaction.

#### **Article 5**

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 (2428) of Article 43 of Regulation XXX [PSR] Directive (EU) 2015/2366, 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 4513(1) and Article 5220(c) of that Regulation, ~~point (3), of that Directive,~~ 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 an aggregated live mid-market benchmark rate as referred to in Article 5(4)(new) of Regulation XXX [PSR].

Q5. Which option presented above in relation to the use of ECB reference rates in PSR and CBPR as a way forward would you support? If you support the newly proposed approach (Option 2a/2b), please indicate which in your view is more appropriate to define criteria for eligible 'aggregated live mid-market benchmark rates' providers.

## **IBAN check**

Taking into account that the provisions on the IBAN check (verification of the payee) in PSR differs from those adopted in the IPR (Instant Payments Regulation)<sup>5</sup>, the Presidency sees the necessity to align PSR provisions in this area.

Providing a historical context it is worth noting that the initial Commission's proposal on the IBAN check seems to be more in line with the initial Commission's proposal on IPR<sup>6</sup>. However, the final adopted version of IPR, including relevant newly introduced Article 5c to the SEPA Regulation<sup>7</sup>

<sup>4</sup> Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (OJ L 274, 30.7.2021, pp. 20-31)

<sup>5</sup> Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro (OJ L, 2024/886, 19.3.2024)

<sup>6</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro – COM(2022) 546 final (2022/0341 (COD))

<sup>7</sup> Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22–37)

underwent significant changes during its negotiations creating various approaches to this issue. The service ensuring verification that was initially intended to be regulated only in relation to instant credit transfers (Inst CTs) in euro, has been extended also to regular credit transfers in this currency as a result of further negotiations of the file.

Nonetheless PSR refers to credit transfers denominated not only in euro. Therefore the Presidency perceives the need to align the provisions on the IBAN check in order to ensure a similar approach for currencies other than euro. In the view of the Presidency, such an approach is desired for the purpose of ensuring consistency of EU legislation and similar rules for the entities of the EU single internal market – not to create another potentially burdensome and costly regime.

In order to provide the alignment, the Presidency proposes the following amendments.

#### **Article 50**

##### **~~Discrepancies between the name and unique identifier of a payee in case of credit transfers~~ ~~Verification of the payee in the case of credit transfers~~**

~~Payment service providers when offering credit transfers denominated in the currency of a Member State whose currency is not the euro shall comply with provisions of Article 5c (1)-(7) and Article 5b(2) of Regulation (EU) 260/2012.~~

~~1. In case of credit transfers, the payment service provider of the payee shall, free of charge, at the request of the payment service provider of the payer, verify whether or not the unique identifier and the name of the payee as provided by the payer match, and shall communicate the outcome of this verification to the payment service provider of the payer. Where the unique identifier and the name of the payee do not match, the payment service provider of the payer shall notify the payer of any such discrepancy detected and shall inform the payer of the degree of that discrepancy.~~

~~2. The payment service providers shall provide the service referred to in paragraph 1 immediately after the payer provided to its payment service provider the unique identifier and the name of the payee, and before the payer is offered the possibility to authorise the credit transfer.~~

~~3. Payment service providers shall ensure that the detection and notification of a discrepancy as referred to in paragraph 1 does not prevent payers from authorising the credit transfer concerned. If the payer, after being notified about a detected discrepancy, authorises the credit transfer and the transaction is executed in accordance with the unique identifier given by the payer, that transaction shall be deemed to have been executed correctly.~~

~~4. Payment service providers shall ensure that payment service users have the right to opt out from being offered the service referred to in paragraph 1 and shall inform their payment service users of the means to express such opt out right. Payment service providers shall ensure that payment service users that initially opted out from receiving the service referred to in paragraph 1, have the right to opt in to receive that service.~~

~~5. Payment service providers shall inform their payment service users that authorising a transaction despite a detected and notified discrepancy or that opting out from receiving the service referred to in paragraph 1 may lead to transferring the funds to a payment account not held by the payee indicated by the payer. Payment service providers shall provide that information at the same time as the notification of discrepancies or when the payment service user opts out from receiving the service referred to in paragraph 1.~~

~~6. The service referred to in paragraph 1 shall be provided with respect to payment orders placed through electronic payment initiation channels and through non-electronic payment orders involving a real time interaction between the payer and the payment service provider of the payer.~~

~~7. The matching service referred to in paragraph 1 shall not be required where the payer did not input himself the unique identifier and the name of the payee.~~

~~8. This Article shall not apply to instant credit transfers denominated in euro falling within the scope of Regulation XXX (IPR).~~

#### **Article 57**

#### **Payment service provider's liability for failure to offer the service of verification of the payee incorrect application of the matching verification service**

Where payment service providers fail to comply with their obligations under Article 50, they shall comply with provisions of Article 5c(8), subparagraphs (2)-(4), of Regulation (EU) 260/2012.

~~1. The payer shall not bear any financial losses for any authorised credit transfer where the payment service provider of the payer failed, in breach of Article 50(1), to notify the payer of a detected discrepancy between the unique identifier and the name of the payee provided by the payer.~~

~~2. Within 10 business days after noting or being notified of a credit transfer transaction executed in the circumstances referred to in paragraph 1, the payment service provider shall do either of the following:~~

~~(a) refund the payer the full amount of the authorised credit transfer;~~

~~(b) provide a justification for refusing the refund and indicate the bodies to which the payer may refer the matter in accordance with Articles 90, 91, 93, 94 and 95 if the payer does not accept the reasons provided.~~

~~3. Where the payment service provider of the payee is responsible for the breach of Article 50(1) committed by the payment service provider of the payer, the payment service provider of the payee shall refund the financial damage incurred by the payment service provider of the payer.~~

~~4. The burden shall be on the payment service provider of the payer or, in the case referred to in paragraph 3, of the payee to prove that there was no breach of Article 50(1).~~

~~5. Paragraphs 1 to 4 shall not apply if the payer has acted fraudulently or if the payer opted out from receiving the verification service in accordance with Article 50(4).~~

~~6. This Article shall not apply to instant credit transfers denominated in euro falling within the scope of by Regulation XXX (IPR).~~

Q6. Do Member States agree with the proposed drafting suggestions in relation to the verification of the payee? If not, please provide an alternative compromise solution.

Q7. Are Member States of the view that Art. 50 PSR should cover credit transfers in all currencies, and not only the currencies of MS whose currency is not the euro (e.g. USD, GBP)? To the extent that intra-EU credit transfers in such other currencies are governed by the PSR, from the fraud prevention point of view it might be sensible to extend the obligation of the verification of the payee service to them as well.

Q8. The approach of cross-referring to IPR ensures that the verification of the payee service will be provided, free of charge, in relation to credit transfers that are going to payees whose payment accounts are identified by IBAN. This is because IBAN is mandatory for intra-EU credit

*transfers in euro and that is how Article 5c of the IPR is drafted. Are Member States of the view that for intra-EU credit transfers in other currencies, the payment accounts are always identified by IBAN? If Member States wish for such transfers to be covered by this article, then the cross-reference to the IPR would need to be adjusted as necessary.*

PUBLIC