European Payment Institutions Federation aisbl

EPIF Position Paper on the PSD3 and PSR

On 28 June 2023, the European Commission adopted its new Payment Services Package, encompassing a revised Payment Services Directive (PSD3) and a new Payment Services Regulation (PSR). **EPIF very much welcomes these proposals, in particular the ambitious approach taken by the European Commission to move towards a Single Rulebook**. This is an important step to further deepen the EU's Single Market for payments and reduce divergences in national implementation that EPIF members have always supported.

This new Package brings many significant improvements to the current framework, among others levelling the playing field between the bank and non-bank payment sectors through allowing for **safeguarding** with central banks and reinforcing **de-risking** provisions. It also enhances the rules for **fraud prevention data sharing**. EPIF particularly welcomes the progress made in the European Commission's proposal on **Strong Customer Authentication (SCA).** Furthermore, the proposal makes important advancements on **Open Banking.**

We set out here EPIF's assessment on the European Parliament and Council's Presidency texts on the PSD3/PSR.

Revised Payment Services Directive:

1. Safeguarding (Recital 31a, Article 9)

<table>
<tr><td colspan="2">The issue:

Payment institutions (PIs) are required to safeguard customer assets. In the interest of competition, security and choice PIs should be able to safeguard client assets directly with the central bank. Furthermore, the safeguarding requirements should be proportionate to the services provided by payment institutions and feasible to meet by non-bank payment service providers, including those operating on a smaller scale.</td></tr>
<tr><td>European Parliament text that Central banks need to provide reasoned justification for a rejection.

Council added a new provision (given that central banks are reluctant to provide safeguarding accounts) that when a PI has direct access, funds held in central bank settlement accounts would be considered as safeguarded (Recital 31a, Article 9)</td><td>EPIF position:

EPIF would welcome the adoption of the Council position to treat funds held in settlement accounts as safeguarded. The new proposal in Article 9(1)(a) of PSD3 is of particular importance for non-bank PSPs, as it requires that funds received from users must "be safeguarded soon as possible".

EPIF also welcomes European Parliament's addition that a justification should be provided in case of rejection of a safeguarding account.</td></tr>
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2. E-Money (Recital 45)

The issue:	
Following the merger of the PSD and EMD the text needs to continue to recognize the uniqueness of e-money and its distribution network.	
Council position: Removes any obligations for distributors and clarifies e-money as a service. Importantly, distributors are not deemed to be agents. **European Parliament position:** Proposed clarifications on agents with regards to Marketplaces in Recital 45 of the PSD3.	**EPIF position:** EPIF supports legal certainty. Ideally still would like to see the EBA Q&A question resolved in the PSD. Supports European Parliament in increasing thresholds for low value, low risk e-money products. **EPIF position:** EPIF welcomes the EP's proposed clarifications on agents and would also call for a deletion of the proposed specifications in the Council text.

3. E-Money Thresholds (Article 3)

The issue:	
E-money products are often low value, low risk and should therefore be exempted from some AML and due diligence requirements.	
Council position: Supports increasing thresholds for low value, low risk e-money products.	**EPIF position:** Would drive acceptance for safe e-money products in the context of online payments.

4. Re-authorization (Recital 17)

The issue:	
With the new PSR and PSD 3 the PSD 2 and EMD are repealed. This requires PIs and EMIs to seek re-authorization.	
European Parliament position: Allows for a smooth transition.	**EPIF position:** EPIF generally supports a smooth transition with no new obligations.

5. PSD/MiCA overlap (Recital 16, Article 13)

The issue:
MiCA deems E-Money Tokens to be a payment instrument. It also recognizes that CASPs can offer payment services.

Council position:	**EPIF position:**
Establishes a full regime and transitional arrangements, including for the specificities of the DLT environment. Combined with a review clause.	Ideally would like to see even greater transition arrangements.

6. Credit Passporting (Article 30)

The issue:	
This allows PIs to offer credit as an ancillary service to the payment service.	
Council leaves the provisions from PSD2 unchanged.	**EPIF position:** While EPIF supports removing the time limitations on the ancillary granting of credit, the Parliament's amendments would create legal uncertainty and fragmentation between Member States. EPIF therefore supports keeping the original language from PSD2.

7. Review clause on digital wallets (Article 43)

The issue:	
Electronic pass-through wallets are Technical Service Providers. The Review Clause looks at how this market will evolve, also in the light of EUID.	
European Parliament position: As part of the overall Review Clause	**EPIF position:** Council text already requires a targeted review after 18 months

Payment Services Regulation:

1. De-risking (Article 32)

The issue:	
Frames the possibility for banks to terminate the commercial accounts of PIs, including for safeguarding. Bank accounts are a basic aspect for the functioning of PIs and also potentially determine whether they can offer instant payments and in the future digital euro payments.	
European Parliament position: Sets clearer rules under which banks can reject a PI or terminate an account.	**EPIF position:** EPIF would like to see this extended to the ongoing commercial relationship, such as fees.

2. SCA (Article 85)

The issue:	
The existing rules require all payment and payment mandates to follow SCA. Exemptions exist in some instances. The key element is two-factor authentication.	
European Parliament position:	**EPIF position:**
Mandates the EBA to develop a targeted approach to SCA for corporate users. Recognizes the use of behavior biometrics and strengthens the provisions around the TRA exemption. Also, explicit references to a risk-based approach.	Ideally EPIF would like to maintain the European Parliament text on corporate SCA and see even more exemptions and a risk-based approach. EPIF welcomes that SCA elements do not need to belong to two different categories as long as their independence is fully preserved (Art. 85 (12)) and that behavioural biometrics are recognised as an SCA factor.

3. Harmonization and Technology-neutral approach to SCA and TRA exemptions (Article 85)

The issue: The current SCA framework and Transaction Risk Analysis (TRA) exemptions show a bias towards card payments, potentially limiting innovation and adoption in other payment methods.	
Council position:	**EPIF position:**
The Council text's Article 85(a) advocates for technology neutrality in the use of TRA exemptions, ensuring equal treatment across for cards and credit transfers.	EPIF supports technology neutrality and recommends enhancing exemption adoption through defined PSP performance metrics and harmonized implementation across the EU, across card and non-card payment methods, keeping up with the usage of these options across the industry.

4. TSP liability for SCA (Articles 58 and 87)

The issue:	
The TSP can be involved in the delivery of SCA. They should only carry liability where they in effect carry out SCA as an outsourced service.	
European Parliament position:	**EPIF position:**
EP and Council find similar solutions. The EP also links it to the service agreement	Can live with either version but marginally prefers the EP.

5. Activation of new devices and apps and changing of limits (Article 51.5)

The issue:	
Council introduced a requirement for SCA and time delay of 4-12 hours when new devices or apps are activated or payment limits are changed.	
European Parliament position:	**EPIF position:**
The Council position leads to unnecessary additional once-off SCAs and a degraded user experience.	EPIF prefers giving users the option to opt for delays or not. Any degradation to the user experience beyond the SCA requirements should not be mandatory and should not negatively affect the liability of PSPs.

6. Currency conversion cost disclosures (Recital 50, Articles 13 and 20)

The issue:	
Requires PSPs to disclose foreign exchange rate mark-ups as fees based on a recognized benchmark.	
Council position:	**EPIF position:**
The Council correctly updates the reference rate framework by referencing IOSCO Principles for Financial Benchmarks rather than the EU Benchmark Regulation (European Parliament's position). The EU Benchmark Regulation has since been revised and is no longer applicable in this context.	EPIF supports full fee transparency in a way that customers can easily understand and compare different providers.

7. Surcharging (Article 28)

The issue:	
Allows merchants to levy extra fees in some Member States for cards not covered by the Interchange Regulation.	
European Parliament position:	**EPIF position:**
Supports a full ban on surcharging.	EPIF opposes any form of discrimination between different modes of payment. National discretion contradicts the idea of a Regulation.

8. AISPs and dashboards (Article 41)

The issue:	
This governs how customers can control their data and consent to PISPs and AISPs.	
European Parliament and Council position: Both texts are helpful.	**EPIF position:** Needs to ultimately ensure a full alignment with FIDA.

9. Open banking (Recital 20)

The issue:	
The changes aim at increasing the quality and reliability of APIs.	
European Parliament & aspects of Council position: Strengthens the rights of AISPs and PISPs.	**EPIF position:** Any improvement of the Open Banking framework has the support of EPIF. Council includes some helpful additional wording on around the continuation of services and access to technical specifications. EPIF fully supports the proposed de minimis rights for smaller Account PSPs.
Council position: The Council's position in Recital 20 introduces a case-by-case assessment for credit cards, risking renewed regulatory divergence. This would create uncertainty for pan-European providers and undermine coherence with FIDA.	**EPIF position:** The Commission's proposal and the European Parliament's text address this by introducing a harmonised, product-agnostic definition based on ECJ ruling C-191/17. EPIF therefore recommends reverting to the Parliament's recital wording to ensure consistency and a unified single market.

10. IBANs (Article 36)

The issue:	
EPIF believes that PIs should have access to other identifiers to ensure a level playing field with banks.	
European Parliament position: Allows for other identifiers.	**EPIF position:** Avoid lock in into bank payment accounts.

11. Virtual IBANs (Recitals 144a, Article 108 (1a))

The issue:	
Council wants a review clause on virtual IBANs.	
European Parliament position:	**EPIF position:**

IBANs and virtual IBANs should be treated identically.	Already covered in the EU's AML legislation. Avoid duplication.

12. Fraud (Articles 59,60)

The issue:	
The aim is to prevent fraud before it happens. For example, through cooperation between different parts of the ecosystem, including PSPs and Electronic Communication Service Providers (ECSPs), and providing incentives for all actors to fight fraud effectively.	
Council position & aspects of the European Parliament The co-legislators have separately proposed provisions that improve fraud prevention. This includes more data sharing between the ecosystem, a platform on combatting fraud and even obligations on PSPs, platforms and telcos to mitigate fraud. Has agreed a detailed package that avoids a crude allocation of liability and recognizes the legal systems of the parties involved, as well as their differing capacities based on the service offered and placement in the value chain. Preserves the right to revisit the matter with an encompassing review clause. Recognizes role of PSUs and ECSPs. Recognizes Multi-Stakeholder Group, cooperation and information sharing, and puts forth a DSA Code of Conduct on fraud, recognizing the applicability of DSA and its mechanisms to address fraud.	**EPIF position:** EPIF supports extending fraud data sharing to non-PSPs as well as creating a platform on combatting fraud. EPIF also recommends that the PSR should mandate the European Banking Authority (EBA), together with the Body of European Regulators for Electronic Communications (BEREC) and the Digital services Oversight Board under the DSA, to determine sector-specific preventative and mitigating measures that each ecosystem should put in place

13. Authorisation (Articles 49, 55)

The issue:	
Defines when a transaction is considered authorised, with consequences for liability of PSPs.	
Council position: Introduces the concept of consent to a payment transaction.	**EPIF position:** EPIF supports the clearer definition introduced by Council of when a transaction can be considered authorised and in keeping with a largely objective approach. However, it should be state explicitly in the text that the concept of gross negligence must also apply to unauthorised (directly in Art. 49a(1a) PSR) transactions

	since their scope is likely to increase significantly under the new "consent" definition to reflect the concept of the average, rational consumer (payment services user) in the liability provisions.

14. Gross negligence (Recital 82, Article 60)

The issue:	
Determines when a user is considered to have acted so negligently that liability can no longer be assumed by the PSP.	
European Parliament position:	**EPIF position:**
Requests that the EBA draw up technical guidelines regarding the concept of gross negligence.	EPIF supports the harmonisation of the concept of gross negligence to give clear rules under which circumstances this can be established. Reduces divergence between Member States. It should also be clarified that the concept applies regardless of whether a transaction is considered authorised or unauthorised.

15. Impersonation fraud (Article 59, 108)

The issue:	
Introduces new reimbursement possibilities for customers defrauded by impersonation.	
Council position:	**EPIF position:**
Limits the concept of impersonation fraud to the impersonation of the user's PSP.	EPIF supports keeping the concept of impersonation fraud limited to the user's PSP and not extending it to include the impersonation of any authority. This rightly prevents PSPs' being liable for the impersonation of entities they have no connection with.

16. MIT (Article 62)

The issue:	
Need to clarify the refund right to avoid a refund after electronic content has been consumed by the customer.	
European Parliament position:	**EPIF position:**
Removes the refund right. Recognizes MIT are not direct debits.	EPIF supports the Parliament's position limiting unconditional refund rights to direct debits, as it is a balanced approach. Extending unconditional refund rights to MITs opens them up to fraud schemes and abuse through broad chargeback rights. Implementing this could open new fraud risks, as fraudsters might exploit chargebacks to avoid payment, and customers may bypass merchants when disrupting purchases. This would especially harm smaller businesses,

	increasing operational and financial pressures due to more chargebacks.

17. Transparency of card payments (Article 31a, 108(3))

The issue:	
This was introduced by Council to increase the disclosure of fees by international card schemes towards merchants.	
European Parliament and Council position: The EP does not have these provisions. Council also extends the provisions to national card schemes, acquirers and processing. Also includes a review clause and ongoing monitoring	**EPIF position:** EPIF supports the original intention of the provision but opposes the extension to acquirers and processing as these duplicate existing provisions in the IFR. The disclosure rule should also only apply to dominant four-party card schemes and not three-party card schemes, since three-party schemes do not charge scheme fees to merchants.

The Payment Services Directive (PSD3)

EPIF has in particular five high-level comments on the proposed revised Directive:

1. Merger of the PSD and EMD

The new PSD3 is a big paradigm shift in the payments space, **merging the PSD2 and the existing EMD2.** Our membership includes both payments and e-money institutions. We understand the synergies between the two Directives. Nonetheless it is important to remember that the nature and function of e-money products have their own distinct characteristics. Against this background, we urge the European Commission, European Parliament and Council **not to overhaul the definition of e-money and its specificities**.

Our members have three very concrete concerns rising from this merger.

Firstly, the draft Directive proposes a re-authorization process for payment and e-money institutions with the repeal of the PSD2 and the EMD2. It is essential to ensure that the **re-authorization process remains as smooth as possible** for both payment service providers (PSPs) and supervisors. We welcome the 24-month transitional period envisioned in the legislation but call for a simplified re-authorization process for pre-existing regulated institutions ("grandfathering"). This is to avoid overburdening these institutions with additional bureaucracy at a time where they also need to adjust to the new legislative requirements. Grandfathered institutions should only be required to satisfy new authorisation requirements introduced by PSD3 and not have to resubmit information provided as part of authorisation under PSD2.

The proposed PSD3 already **partially foresees such a "simplified" re-authorization process** by giving Member States the discretion to automatically grant PSD3 licenses to PSD2/EMD2 licensed entities. We would call for this provision to be a European rule rather than a discretionary power to Member States. This would avoid giving an unfair advantage to certain licensed entities solely based on their licensing Member State.

Secondly, payment and e-money institutions will, under the PSD3, be subject to the same licensing and authorization regime but it is crucial to keep in mind the differences between the types of services and arrangements. Notably, the draft PSD3 imposes the same requirements for both **agents and distributors**. This does not reflect the current e-money business model. Agents and e-money distributors have very different functions and activities which must also be reflected in EU legislation. The new PSD3 *de facto* eliminates the distinction between the two by providing for the same registration requirements. Distributors are essentially independent contractors who own the goods. It would be disproportionate to require regulated institutions to submit the same information requirements as for agents which act as intermediaries for a product or service.

Thirdly, the practicalities of merging the two licensing regimes and regulatory frameworks **should not lead to new additional requirements** for e-money institutions.

2. New safeguarding possibilities

The PSD3 introduces the possibility for payment institutions to count settlement funds safeguarded at national Central Banks as safeguarded **funds**. This is a great improvement for the functioning of the non-bank sector, especially for those players who will not have access to payment systems that process credit transfers or direct debits. Safeguarding funds with the central bank has been a longstanding call from EPIF members, who believe this is an important step to counter unwarranted de-risking as well.

Moreover, we must express our disappointment with the ECB's directive[1] to apply a blanket restriction on the possibility for non-bank PSPs to open accounts directly with central banks, which contradicts the PSD's intent for case-by-case evaluations (at their discretion) based on the risk profile of the business model of the non-bank PSP, the level and sophistication of the risk mitigation techniques deployed by the non-bank PSP and the proposed use of the bank account. Ultimately, the guidance undermines the Instant Payments Regulation's objective to facilitate instant transfers and, more concerningly, perpetuates non-bank PSPs' dependence on commercial banks.

Taking this into account, we welcome the Council's adopted position that would allow funds held in central bank settlement accounts to be considered as safeguarded as a compromise solution. This will ensure that non-bank PSPs that have direct access to payment systems are not at a competitive disadvantage due to needing to inject more capital to maintain liquidity for seamless payment processing or insuring customers' funds in settlement accounts.

We call on the European co-legislators to adopt the Council approach to payment institutions safeguarding funds at central banks when finalizing PSD revisions.

Taking this into account, we welcome the Council's adopted position that would allow funds held in central bank settlement accounts to be considered as safeguarded as a compromise solution. This will ensure that non-bank PSPs that have direct access to payment systems are not at a competitive disadvantage due to needing to inject more capital to maintain liquidity for seamless payment processing or insuring customers' funds in settlement accounts.

Additionally, the Council version added wording that needs correction, suggesting PSPs might safeguard less funds than owed due to net settlements by international card schemes. This is inaccurate because refunds and chargebacks are deducted to compensate for cancelled transactions, which allows ASPSPs/Issuers to refund payers. Without these deductions, compensation cannot occur. Thus, this modification would create operational and financial issues for PSPs as they would need to safeguard more funds than owed. EPIF recommends amending this to ensure the correct amount of funds is safeguarded.

Furthermore, EPIF would like to fully support the Council's proposal in Art. 9(1)(a) of the PSD3 that funds PSPs *"have received from payment service users or through another payment service provider for the execution of payment transactions shall be safeguarded as soon as possible, by not being commingled at any time with the funds of any natural or legal person other than the payment service users on whose behalf the funds are held.*

EPIF highlights that immediately "splitting out" a provider's remuneration embedded in the credited amount for executing a payment transaction is practically difficult and uncommon in commercial practice, with typical intervals being weeks or months. EPIF emphasizes that this does not pose any risk to user funds, as it results in a higher account balance rather than a lower one, which could cause disruptions. Such requirements should apply only to funds unrelated to payment services. Providers' remuneration is directly tied to payment services. This is important for implementing supervisory

[1] ECB's policy

expectations on safeguarding and non-commingling with own funds. The practical issue of "splitting out" commissions linked to payment transactions must be considered, especially if funds are credited to the PSP's account late in the day, as ensuring non-commingling by the end of the day can be challenging. EPIF suggests that the EBA should develop regulatory technical standards (RTS) on safeguarding and other practical issues, as outlined in Article 9(7) PSD3. However, these matters are already assessed by competent authorities as part of the authorisation process and ongoing supervision, making additional RTS unnecessary and potentially duplicative.

3. Central Contact Points

As expressed in the EPIF Recommendations for the PSD2 Review, the discretion given to national Member States in the implementation of CCPs is creating divergences across the European Union. They also impose unnecessary administrative and compliance burdens for companies operating across the Single Market. EPIF urges the European Commission, European Parliament and Council to remove the requirements to establish CPPs drawing on the Treaty freedom of establishment and in line with the EU's objective to reduce the existing regulatory burden. At a minimum each Member State should only be permitted to establish a single CCP in their jurisdiction. This will enable enabling compliance with AML and PSD3/PSR requirements via a single CCP.

4. Credit Passporting

In the context of passporting, under the current framework PSPs have r**estraints for the issuance of credit cards** on a pan-European basis due to the 12-month credit term limitation established in article 18(4) (b) of PSD2, which is not addressed in this revision.

This restriction only applies to PSPs and not to banks, which creates arbitrary discrimination and a competitive disadvantage, contrary to the fundamental principles that underpin the single market.

Given the limited interest in addressing this matter within both the Council and the European Parliament, we recommend returning to the original Commission proposal. The changes introduced by the Parliament would only increase legal uncertainty without solving the core issue.

5. The interaction with MiCA

The new proposal clarifies that PSPs can issue and provide e-money tokens as defined under the **MiCA Regulation**. This is a welcomed clarification which puts payment institutions under the PSD on the same footing as e-money institutions.

It also opens opportunities for the non-bank payment sector to explore the use of stable coins for payment purposes. EPIF believes there might be a number of specific use cases where this option could be welcomed by customers. This should not be seen as in competition to the digital euro. Use cases could include integrated solutions with certain online applications, such as gaming. Stable coins could also facilitate cross-border transactions involving multiple currencies.

The Payment Services Regulation (PSR)

We would like to reiterate that EPIF has been a strong supporter of the introduction of a directly applicable Regulation to minimise divergent national views and implementation of the legal regime. We believe the new framework will allow for a smooth functioning of the EU Single Market in payments and bring legal certainty to the sector, allowing payment service providers to offer their services more seamlessly across the EU.

Fraud prevention

Fraud poses a systemic threat to the digital economy and requires a coordinated, cross-sectoral response. **EPIF supports the Council's proposal to establish a cross-sectoral task force** involving DG FISMA, DG CONNECT, DG HOME, and DG JUST, alongside stakeholders from financial services, telecoms, online platforms, civil society, and law enforcement. EU co-legislators should endorse this structure and ensure it is empowered to develop a comprehensive anti-fraud and scam strategy. **The PSR should mandate the EBA, BEREC, and the Digital Services Oversight Board to define sector-specific anti-fraud measures,** supported by a cross-industry task force. These measures should be tailored to each actor's role in the fraud chain and include practical tools such as cool-off periods, kill-switches, real-time alerts, and content takedown mechanisms.

To further strengthen the EU's fraud response, co-legislators should support enhanced voluntary data sharing under GDPR, as outlined in Article 83 of the PSR, and promote consumer education campaigns across sectors. These efforts will help detect evolving fraud techniques and empower consumers to protect themselves. **The PSR should also clarify reimbursement responsibilities when sector-specific measures fail,** ensuring accountability across the ecosystem, in line with the responsibilities of the respective actors under their applicable EU regulatory framework. EPIF urges lawmakers to maintain momentum on these proposals and ensure that the final text of PSD3 and PSR delivers a robust, collaborative, and future-proof anti-fraud framework.

Additionally, we support efforts to encourage greater information sharing in accordance with data protection requirements and to launch consumer education campaigns, which are proven to reduce fraud risk. The Council's initiative to clarify sectoral responsibilities for implementing and funding preventative tools, as well as to define reimbursement procedures when these measures fail, is a positive development. We encourage further cross-sectoral cooperation and practical guidance to ensure that anti-fraud strategies remain adaptable and effective in a rapidly evolving threat landscape.

Liability for unauthorised transactions

The evolving regulatory landscape broadens the definition of unauthorised transactions, now encompassing any payment that lacks explicit consent from the Payment Services User (PSU), even in cases where Strong Customer Authentication (SCA) has been used. This expansion reflects the growing sophistication and variety of fraud in today's digital economy.

Notably, the treatment of impersonation fraud under Article 59 of the PSR is limited: it applies only when the PSU is deceived through communications received via the usual channels of their Payment Service Provider (PSP). However, this narrow scope excludes a wide array of increasingly prevalent fraud types – such as fake online shops, lottery scams, investment frauds, deceptive job offers, and fraudulent subscription models – that exploit new methods and digital platforms to target consumers. Those fall under article 56 do not include gross negligence.

To ensure a robust and fair payments ecosystem, it is imperative to reformulate Article 56. Gross negligence should be explicitly recognized as a legitimate basis for denying reimbursement under this article, in particular when PSPs have proactively implemented and communicated clear fraud prevention measures and provided unequivocal alerts to PSUs regarding suspicious activity. This would not only incentivize PSPs to continually invest in advanced anti-fraud mechanisms but also encourage PSUs to remain vigilant and informed, promoting shared accountability in preventing fraud.

Such an approach is already supported by provisions within the legislative proposals, which require PSUs to promptly report suspected criminal activity to their PSPs. By reinforcing this obligation and strengthening fraud prevention frameworks, PSPs can both enhance consumer awareness and proactively safeguard against fraudulent transactions. This dual strategy would empower both providers and users, close existing loopholes, reduce fraud risks, and ultimately build a safer and more resilient payments environment across the EU.

Gross Negligence

Gross negligence is usually established under the parameters of national laws. Hence, it could be beneficial to clarify the parameters for specific gross negligence cases and verify if there will be specific criteria to assess the level of carelessness in relation to payments processing. In general, the scenarios related to gross negligence in unauthorised transactions should be further clarified in the interest of legal certainty.

To further address the issue, we suggest the following:

1. **Guidance on Gross Negligence:** We recommend that further clarity is provided by offering guidance on possible cases of gross negligence, either through dedicated recitals within the legislative text or via a non-binding opinion issued by the EBA. This would help to ensure a more consistent and harmonised approach across Member States.

2. **Link Between Fraud Prevention and User Behaviour:** The relationship between PSPs' fraud prevention mechanisms and the actions of the Payment Service User (PSU) should be clearly established. In particular, direct reference should be made to how the PSU's disregard for, or opt-out from, such protective measures and alerts provided by PSPs may be taken into account when assessing gross negligence. This would incentivise both the implementation of robust fraud prevention by PSPs and responsible engagement by PSUs.

By focusing on these aspects, the regulatory framework can more effectively address the risks associated with gross negligence, ensure greater legal clarity, and provide a fairer balance of responsibilities between payment service providers and users.

Scheme fee transparency

We welcome efforts to enhance transparency in payments and support the introduction of disclosure requirements for scheme fees under Article 31a(1)(i) PSR. Improving the information provided by card schemes to acquirers and ultimately to merchants is a positive step. However, we oppose the Council's extension of these obligations to acquirers and processors. These areas are already covered by the Interchange Fee Regulation (IFR), and duplicating rules would create unnecessary complexity without added benefit.

Transparency rules should also be limited to dominant four-party card schemes. Three-party schemes do not charge scheme fees to merchants and should therefore remain outside the scope.

The acquiring market is already highly competitive, with merchants enjoying a wide choice of providers and clear visibility of the fees they pay. Additional disclosure of acquirers' margins would interfere with commercially sensitive information that is central to competition and innovation, without delivering meaningful benefits to merchants.

Strong Customer Authentication

EPIF welcomes the progress made in the PSD3 draft on SCA and supports a shift toward a **genuinely risk-based and outcome-oriented approach**. This should go beyond fraud rates to also consider transaction abandonment, user experience, and the use of transaction risk analysis (TRA). Setting clear performance targets – such as on fraud reduction and customer experience – will help align incentives across the payments ecosystem as well as behaviour transactions.

We support the **EBA's new mandate** to update the RTS in line with technological developments and to adopt a **business-model neutral** approach. The inclusion of **environmental and behavioural characteristics** (Recital 101) is a positive step, enabling PSPs to evolve their authentication methods as fraud patterns change. In that sense we also welcome the European Parliament's decision to allow behavioural biometrics as a factor for SCA and urge co-legislators to adopt this position in trilogues.

Likewise, we welcome the clarification provided by the European Parliament under Article 85(12) of the PSR that the **SCA elements do not need to belong to different categories *if* their independence is fully preserved**; this will help resolve some challenging use-cases, enable further innovation and increase legal certainty for PSPs across the European Union. The draft Regulation also emphasises the accessibility of SCA by ensuring the deployment of SCA is no longer dependent on a single authentication method (e.g., smart phone), thereby incentivising the development of diverse means to cater for different situations. We believe this will lead to an improvement in user experience as long as it is accompanied by a commensurate enablement of data-driven approaches to SCA, such as device recognition of behavioural biometrics. In this sense, we call on co-legislators to maintain and encourage innovation on SCA.

We also stress the need for a **technology-neutral approach** to SCA and TRA exemptions, ensuring that **credit transfers and account-based payments** are treated equally, as outlined in Article 85(a) of the Council text. This aligns with the ECB's opinion and would correct the current card-centric bias.

To encourage broader adoption of exemptions, we recommend:

- Setting **clear targets and timelines** for PSPs (e.g. on authorisation and abandonment rates),
- Promoting **consistent implementation** across Member States and payment actors.

This would reduce uncertainty, improve planning, and allow the industry to focus on fraud prevention while enhancing the experience for legitimate users.

We support the European Parliament's inclusion of Article 89(2)(ea), requiring the EBA to **weigh both fraud prevention and user experience for low-value payments** in its Regulatory Technical Standards. This provision enables a more risk and outcome-oriented framework for Strong Customer Authentication and fraud prevention. Rather than enforcing rigid compliance measures, it allows payment providers to meet security objectives while optimizing customer experience, fostering innovation in authentication methods without compromising consumer protection.

For **corporate users managing payments**, where the fraud risk is lower and implementation burden higher, we call on the EBA to differentiate between corporate and consumer payers in the updated RTS ensuring a **proportionate application of SCA**. Corporate fraud should be managed at the organisational level, e.g., through corporate security solutions, such as single sign-on, and the RTS should reflect this.

Finally, we support removing the **cumulative thresholds for contactless payments**, allowing PSPs to tailor SCA requirements to individual users. This would enable a more **customer-centric approach**, with users setting their own limits in line with Recital 116.

Liability of technical service providers and of operators of payment schemes for failure to support the application of SCA

EPIF supports the proposed deletion of Article 87 of the PSR. We agree that Article 58 addresses issues related to liability for technical service providers and payment scheme operators regarding strong customer authentication (SCA), rendering Article 87 redundant. We also note that the outsourcing and audit aspects of Article 87 are duplicative of DORA and the EBA guidelines on outsourcing. Furthermore, given the proposed deletion of Article 87, **we believe Recital 119 should also be removed to maintain consistency and avoid potential confusion**. We believe this approach simplifies the regulation and provides greater clarity for all stakeholders. Specifically, it would make sure that third parties (including small Fintechs providing services to PSPs) will not be exposed to unlimited liability to PSPs, large merchants, and consumers in Europe, which would result in changes to business models, increased costs which will invariably be passed on to consumers or rendering certain services commercially unviable.

Moreover, the complexity of payment systems implies that not all participant parties have contractual relationships between each other. The possible liability of the TSP and operators of payment schemes is based on the existence of a contractual relationship, or the existence of a specific clauses in a contract, to address a possible liability scenario of the TSP derived from deficiencies in the SCA, attributable to such parties. This extra layer of complexity imposed by the Regulation does not address any market problem or failure, whilst adding complexity and potentially increasing costs to the consumers.

Treatment of MIT

EPIF calls on the co-legislators to adopt the European Parliament's proposal to maintain the current framework for MITs and limit the existing refund right to SEPA Direct Debits (DDs). While both direct debits (DDs) and Merchant Initiated Payments (MITs) are initiated by the payee, they differ significantly. DDs are mostly used for essential services like utilities, while MITs are common for e-commerce and digital content, making them more vulnerable to refund fraud by payers. In addition, an extension of the unconditional refund rights would likely lead to an overall increase in the levels of fraud already seen with SEPA Direct Debits where fraudsters are exploiting the unconditional refund right to claim refunds for payments that could not be debited given insufficient funds in their accounts. MITs already offer strong consumer protections, allowing refunds with a right for the merchant to dispute the refund in the case of fraud and refunds if a transaction amount is unexpectedly high. Implementing this could open new fraud risks, as fraudsters might exploit chargebacks to avoid payment, and customers may bypass merchants when disputing purchases. This would especially harm smaller businesses, increasing operational and financial pressures due to more chargebacks.

De-risking: Access to accounts maintained with credit institutions

As noted in the EBA Opinion on de-risking, from 5 January 2022[2], *"de-risking, especially if it is unwarranted, has a detrimental impact on the achievement of the EU's objective, in particular in relation to fighting financial crime effectively, promoting financial inclusion and competition in the single market."* Against this backdrop, EPIF also fully supports the EBA's assessment and were happy to see a

[2] https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2022/Opinion%20on%20de-risking%20%28EBA-Op-2022-01%29/1025705/EBA%20Opinion%20and%20annexed%20report%20on%20de-risking.pdf

reinforcement of the **rules against unwarranted de-risking** (Article 32 of the PSR). The specification of the circumstances under which credit institutions can refuse to open/close accounts is a crucial improvement in the current framework, as well as clear communication requirements for the motivations of a refused/closed account. The Regulation should also specify a time limit for exit periods (e.g. a minimum of 6 months) that banks would need to give to payment institutions in case of de-risking.

Importantly, EPIF also welcomes that agents are also in scope of the de-risking provisions.

FX Currency conversion / foreign exchange rate mark-up transparency rules and disclosures

EPIF supports transparency in fees, including for currency conversion mark-ups, referred to in Articles 13 and 20 of the PSR for the benefit of consumers. We believe it is important to display these mark-ups to the consumers upfront and to determine the appropriate method for displaying the margin in a clear and understandable manner.

The Commission proposal is to disclose currency conversion mark-ups against an ECB or relevant central bank rate. EPIF is aligned with the European Parliament, Council and the ECB that a 'market' benchmark rate such as an aggregated, live mid-market rate, would be more appropriate to show currency conversion charges for customers.

As the EU's Benchmark Regulation has been recently amended, EPIF is aligned with the Council's proposal to ensure that the reference exchange rate should be provided by a trusted benchmark administrator that meets the applicable governance and control requirements, such as the IOSCO principles for Financial Benchmarks, upon which the Benchmark Regulation is based. This would maintain the objectives put forward both in the ECB opinion as well as the European Parliament's proposal. The accuracy and integrity of aggregated, live mid-market rate benchmarks would be ensured by the regime for benchmark administrators, including requirements on the market size they should reflect, as well as transparency in methodology. However, an exemption to the IOSCO standards can be made where other benchmarks are required under local rules.

As emphasized in the ECB opinion, the ECB rates are not published for this purpose and could incentivize market participants to trade at the ECB reference rates, while independent benchmark rates are intended for transaction purposes. The limited availability of different currency pairs provided by central banks also means that providers would need to scrape data of all central banks around the world to provide a global cross-border payment service. The differences between private FX mid-market rate providers are often minimal, e.g., often only at the fourth or fifth decimal point. This means that for the purposes of showing a markup to the consumer, this difference is negligible, and comparability wouldn't be impacted.

Surcharging

Our members welcome the clarification provided in the proposed PSR that the surcharge prohibition extends to all credit transfers and direct debits, in all currencies of the EU. Moreover, while we appreciate the evaluation of the surcharging rules in the review clause under Article 108 of the PSR, we **call for a total ban of surcharging practices** and support the European Parliament's position on this matter. We believe that surcharging is detrimental to consumer choice, consumer protection and to the efficient functioning of the payments sector. A total ban would also enhance the level playing field between card and non-card payments, while lowering the fees for digital payments as a whole. EPIF supports the European Parliament's Article 28, which fully bans surcharges, and urges the Council and Commission to agree on its application.

IBAN check and verification services

EPIF welcomes the principle of having name verification services, especially for instant credit transfers as proposed in the Instant Payments Regulation, especially given the irrevocable nature of these transfers. However, we **fail to see the goal of enlarging the scope IBAN name check and verification services to all credit transfers in any EU currency as proposed in the PSR**.

It is widely accepted by the industry and by the Member States that have implemented such services, that these are not bullet-proof services. They can often provide a failed sense of security to consumers. Extending these services to all types of credit transfers and for any EU currency will require a financial effort that we believe to be disproportionate compared to the results such services can deliver. To effectively fight fraud, legislators must instead focus on equipping PSPs with outcome-oriented regulations that allow them to deploy the best tools to successfully stop fraudsters.

Moreover, it is essential to reflect in the Regulation that there can be other types of data elements, beyond IBANs, that can identify the payee, **such as a mobile proxy, an email address, a European unique identifier or an LEI, as well as other payment account identifiers.** This has accurately been recognised in the positions of the European Parliament and the Council on the Instant Payments Regulation ll and should also be reflected in the PSR.

EPIF fully aligns with the European Parliament and Commission's position that additional regulatory requirements for virtual IBANs (vIBANs) should not be introduced within the PSR at this time. The recently adopted Anti-Money Laundering (AML) Package has already introduced significant new requirements specifically addressing virtual IBANs and their transparency, which will only enter into full force in 2027. These measures represent a comprehensive response to regulatory concerns while maintaining the innovation and efficiency that vIBANs provide to businesses and consumers. Equally, the proposed review clause within the PSR seems too short to fully take into account the upcoming requirements. To avoid regulatory uncertainty or fragmentation, it should be first observed how the new rules are implemented before adding any new regulations.

Termination of the Framework Contract

We would also seek clarification of Article 23, relating to **termination of the framework contract**, in particular on the application of the proposals. Article 23 outlines that where payment services are offered jointly with technical services, such technical services should be subject to requirements on termination fees (i.e., no termination fees can be charged for cancellation of the contract by the PSU after 6 months).

It is unclear, pursuant to the commentary in Recital 49, as to whether such technical services would also be subject to the requirements on the termination notice period i.e., PSU can terminate a terminal hire contract with up to 1 months' notice. Equally, whilst it is clear that no termination fees can be applied after 6 months, it is unclear whether PSPs would still be able to bill PSUs for the remaining period of their terminal hire contract, should the PSU terminate it before the end of the contract term. For example, if a PSU has a 12-month contract for technical services with a PSP and cancels after 6 months, is the PSP permitted to charge the PSU for the remaining 6 months for which they were contracted? We would welcome clarity from the Commission on these points.

In addition, we seek clarity over the scope of the proposals. Article 4 states that Title 2 (under which Article 23 falls) should be applied to microenterprises in the same way as to consumers. Therefore, we would like confirmation as to whether Article 23 applies to all PSU's or specifically microenterprises. The issue of disclosing fees by acquirers has not been substantiated in any convincing manner. Moreover, no problems have so far been identified in the market in relation to competence or other concerns connected with such fees. The acquiring market is highly competitive.

We understand that the proposals aim to provide PSUs with greater mobility and choice, and thereby increase competition amongst PSPs in the market. However, we wish to understand if the Commission has carried out, or intends to carry out, an impact assessment (there is no reference to it in the Impact Assessment Report) and whether it has considered the potential unintended consequences.

Open Banking

The introduction of Open Banking in the EU, through the PSD2, brought greater connectivity to enhance competition and innovation in payment services, benefiting both consumers and businesses. PSPs have however faced challenges in the implementation and full realization of Open Banking as a result of the **fragmentation and quality of APIs** across the EU Single Market, which has led to a variety of user experiences.

Against this background, EPIF members fully welcome the provisions in the draft Regulation ensuring the alignment of dedicated interfaces with **international standards** of communication as well as **minimum requirements** for the interfaces. EPIF has long been calling for the setting of benchmarks for API performance in order to ensure quality and reliability of APIs for innovation to flourish. This will also be supported by the **listing of prohibited practices for data access**, as laid down in Article 44 of the PSR.

Under PSD2, inconsistent interpretations of the **definition of "payment accounts"** by national authorities have led to a fragmented Open Banking landscape. The Commission's proposal and the European Parliament's text address this by introducing a harmonised, product-agnostic definition based on ECJ ruling C-191/17. In contrast, the Council's position in Recital 20 introduces a case-by-case assessment for credit cards, risking renewed regulatory divergence. This would create uncertainty for pan-European providers and undermine coherence with FIDA. EPIF therefore recommends reverting to the Parliament's recital wording to ensure consistency and a unified single market.

On **compensation**, we note that the draft Regulation, under its Recitals 55 and 56, clarifies that access to APIs would still establish access without compensation. The same Recitals specify that compensation could be envisaged if there is an optional contractual relation for premium APIs between the relevant parties, including multilateral (e.g., Scheme) relationships. This is supported by our members. Nevertheless, we would call for these provisions to also be incorporated into an article in order to bring further legal clarity and certainty around the sensitive topic of compensation for API access.

In general, we continue to support the work of the European Payments Council on the SEPA Payments Account Access Scheme (SPAA Scheme) and the importance of introducing greater functionalities into Open Banking payments, such as recurring payments, to allow for a wide variety of use cases.

Moreover, the role of supervisory authorities is also enhanced under the PSR. EPIF members believe that the additional powers granted to these authorities, to ensure the quality and availability of APIs and necessary dashboards, will greatly contribute for the improvement and consistency of Open Banking services across the EU. We would however caution the European Parliament and Council to ensure that the additional powers granted to NCAs do not lead to **great divergences and an unlevel playing field** between Member States. To avoid these divergences, NCAs should not be given discretionary powers.

EPIF members also welcome the proposal on Financial Data Access (FiDA) and stressed that coherence between FiDA and the Open Banking framework under the PSR needs to be ensured.

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions ("PI") in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).