



1 November 2023

**Position Paper of the Association of Foreign Banks in Germany (VAB) on the
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on payment services in the internal market and amending
Regulation (EU) No 1093/2010**

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The Association of Foreign Banks in Germany (VAB) represents the interests of more than 200 foreign banks, capital management companies and financial services institutions from over 30 countries that maintain subsidiaries or branches in Germany and provide banking and financial services through them. The decisive factor for membership in the association is foreign majority ownership. Almost all foreign financial institutions operating in Germany are members of the VAB.

In the case of the credit institutions organised in the VAB, those that are also CRR credit institutions are recognized as payment service providers in the meaning of the draft regulation on payment services in the internal market (PSR draft). Besides this, credit institutions operating in the form of a branch can also provide payment services, as we will show subsequently.

As the most important effect of the presented draft regulation (PSR draft), the contents of European payment services supervisory law, which is foremost relevant for credit institutions in their role as payment service providers, will become a uniform single rulebook, beyond the (full) harmonisation of PSD1/PSD2; we expressly welcome this further step towards a true common market for payments.¹

These are our comments to the contents of the above-mentioned proposal and the amendments we would like to propose.

Bank branches providing payment services (Article 2(1)(a) PSR draft)

At first, we would like to address a general point that is to be transferred in principle from PSD2 to PSR without adjustment: the definition of credit

¹ And as the Payment Services Directive (PSD3) shall govern the regulatory requirements for payment institutions, our comments focus on the PSR draft.

institutions as payment service providers according to Art. 2(1)(a) PSR draft. According to our reading, payment service providers have so far been defined in Article 1(1)(a) PSD II as credit institutions within the meaning of Article 4(1) No. 1 of Regulation (EU) No. 575/2013 (CRR) as well as branches within the meaning of Article 4 (1) No. 17 CRR, provided that these branches are located within a Member State and their head offices are located **outside** the Union in accordance with Article 47 of Directive 2013/36/EU (CRD IV) and national law.

Like the text of the current Directive, the text of the draft PSR is, in our view, misleading when it comes to branches whose head offices are located **within** the Union. These branches exist when a CRR credit institution has several branches in EU/EEA Member States other than the home Member State; in this case, this CRR credit institution can provide payment services in the host Member State via branch according to Annex I No. 4 of the CRD (i. e. so-called “passporting”). In our opinion, however, it does not follow from the mention in Art. 2(1)(a) of the draft PSR that every branch of a CRR credit institution established in other EU/EEA Member States is defined as an (independent) payment service provider within the meaning of the PSD. This view is also not adopted today with reference to the PSD2 implementation by the member states and should at best be clarified in the text of the regulation.²

Estimation of transaction time span (Article 13(1)(c) PSR draft)

In the provisions on transparency of conditions and information requirements for payment services, a new obligation is to be introduced in relation to transfers of funds from the EU to a non-EU country: payment service providers will have to inform the payment service user (PSU) of the **estimated** time until the funds are received by the payment service provider (PSP) of the payee outside the EU (Article 13(1)(c) PSR draft). How legally compliant estimations are to be carried out in this context should at best be determined in advance by delegated acts (cf. Art. 105 PSR draft) or by implementing acts (both: so-called level 2), or alternatively by guidelines of the European Banking Authority (so-called level 3), which could, if necessary, serve the interpretation of the provisions in Title II on transparency of conditions and information requirements for payment services as a whole.

Placement of a direct debit (Article 36(4)(a) PSR draft)

With regards to dedicated data access interfaces, ASPSPs shall ensure that the dedicated interface allows payment initiation service providers, at a minimum, to place and revoke a standing payment order, but also to place

² Furthermore, the definition of Article 2(1)(a) PSR draft is also misleading as it states that the head office of a credit institution as defined in Article 4(1), point (1) of the CRR could also be outside the (European) Union (or EEA). By definition, such a credit institution would not qualify as a CRR credit institution.

and revoke or a direct debit. In general, it should be clarified how this requirement shall be implemented by the ASPSP of the payer.

Exemption of interface requirement (Article 39 PSR draft)

The PSR draft provides for an exemption rule with regards to the interface requirement: At the request of an account-servicing payment service provider (ASPSP), the competent authority may exempt the requesting ASPSP from the obligation to set up a dedicated interface and allow it to offer as an interface for secure data exchange either one of the interfaces that the ASPSP uses for authentication and communication with its payment service users (which, as we understand it, should correspond to the so-called customer interface) or, **in justified cases, not to offer an interface for secure data exchange at all** (Article 39(1) PSR draft). The VAB advocated in the past for such an exemption for banks whose interface is never or at least very rarely used. In this context, we ask for an examination of whether the deadline specified in Art. 39(2) PSR draft, within which the EBA is to establish corresponding RTS with criteria for the exemption, could perhaps be shortened to six months after the start of application of the PSR.

Liability in cases of so-called "impersonation fraud" (Article 59 PSR draft)

It is planned that credit institutions should be liable if an account holder is induced by a fraudster posing as an employee of the credit institution concerned ("impersonation fraud"). This provision is to be rejected and should be deleted as there is no justification for a wholesome liability of the credit institution. For example, impersonation fraud patterns can even be found in the form of impersonation of public operators, such as police authorities. In this consideration, it appears unbalanced that PSPs shall be held accountable for damages sustained by customers, but not other impersonated companies or public bodies.

Unnecessary reporting of risks (Article 81(1) sent. 4 PSR draft)

In continuation of the provision on Art. 95(2) PSD2, payment service providers shall provide to the competent authority designated under PSD3 on an annual basis, or at shorter intervals as determined by the competent authority, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks. As payment service providers will – in future – also be regulated by Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (**DORA**), the requirement in Art. 81(1) sent. 4 PSR draft should be deleted as competent authorities (acc. to DORA) will receive more detailed information on risks and mitigation measures due to DORA. This would also be in line with the decision to reduce the administrative burden and

potentially duplicative reporting obligations for payment service providers in view of the requirement for the incident reporting pursuant to PSD2; with DORA, this should cease to apply to PSPs.
