



Council of the European Union  
General Secretariat

**Brussels, 14 February 2025**

---

---

**Interinstitutional files:**  
**2023/0209 (COD)**  
**2023/0210 (COD)**

---

---

**WK 2068/2025 INIT**

**LIMITE**

**EF**  
**ECOFIN**  
**CODEC**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

**WORKING DOCUMENT**

---

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	DE Non Paper: Proposals for Simplification in PSR / PSD3 regarding reporting and notification obligations

---

## **Proposals for Simplification in PSR / PSD 3 regarding reporting and notification obligations**

In general, reporting and notification obligations can provide important information to support supervision by NCAs. At the same time, however, reporting and notification obligations can raise significant burdens for both PSPs and NCAs.

In order to determine the adequacy of a reporting or notification obligation, it is important to evaluate the balance between the added supervisory value and the burdens associated with the obligation. In this spirit, and in close cooperation with our NCA, we have been reassessing the reporting and notification obligations of PSR / PSD 3.

As a result, we have identified a number of reporting and notification obligations for which the associated burdens exceed the added supervisory value. Hence, we propose to delete those obligations from PSR / PSD 3.

A deletion of such obligations would contribute to a proportional supervisory framework in the area of payments and align with the EU's simplification agenda. Further, reducing the burden associated with imbalanced reporting and notification obligations would allow competent authorities and payment service providers to better focus on the essential supervisory requirements and tasks.

Concretely, we propose the following changes to PSR / PSD 3:

### **Article 32 para. 7 PSR**

We share the assessment from Denmark in the last round of written comments, that the supervisory added value of the reporting obligation of Article 32 para. 7 seems negligible. At the same time, the obligation would require all ASPSPs (more than 1,300 in Germany) to collect and transmit detailed statistical data, associated with significant costs for ASPSPs and competent authorities.

Hence, we agree with the proposal from Denmark to delete Article 32 para. 7 PSR.

In order to guarantee a good level of information for competent authorities, however, we support the Danish proposal to oblige ASPSPs to forward to competent authorities their motivation for refusing to open or the decision to close an account to the applicant or account holder, which they need to draft anyway on the basis of Article 32 para. 4 PSR. Hence, we support to add the following sentence at the end of Article 32 para. 4 PSR:

*“When a credit institution notifies a payment institution or to its agents or distributors or to the applicant for a license as a payment institution, of any decision to refuse to open or to close a payment account, the credit institution shall forward the mail with its duly motivated decision to the national competent authority.”*

### **Article 48 para. 6 PSR**

The reporting obligation in Article 48 para. 6 is materially far-reaching and would automatically apply to all ASPSPs (more than 1,300 in Germany) and – upon the request of the NCA - to AISPs and PISPs as well. Since the reporting scheme of Article 48 para. 6 PSR is foreseen as totally unconnected to existing reporting schemes, PSPs, EBA and NCAs will have to establish new reporting templates and new IT systems to implement this obligation. Hence, the overall bureaucratic burden associated with such reporting obligation will be significant.

At the same time, the supervisory benefit of the reporting obligation seems negligible. In particular, there is no evidence for an information deficit regarding potential obstacles in the area of open banking that would justify such reporting obligation from a supervisory viewpoint. In particular, there will be a steady flow of information between market participants and NCAs, because PISPs and AISPs have the best information about problems with access and dedicated interfaces and strong incentives to report them. The provisions of PSR incentivise such communication, e.g. Article 48 para. 1 PSR explicitly mandates the NCA to act against potential problems with dedicated interfaces “on the basis of information transmitted by payment initiation services and account information services providers”.

Hence, the reporting obligation of Article 48 para. 6 PSR is in our assessment rather a tool to generate data for future policy-making. We do acknowledge the merit of gathering information to improve evidence-based policy making. However, it is in our viewpoint neither necessary nor proportional to gather data by a far-reaching reporting obligation nested in PSR that would raise regular compliance costs for all ASPSPs, AISPs, PISPs of any size and any maturity to a significant extent.

Hence, we propose deleting Article 48 para. 6 (and 7) PSR.

#### **Article 81 para. 1 subparagraph 3 PSR**

The provisions of Article 81 para. 1 subparagraph 3 PSR carry over the provisions of 95 para. 2 PSD 2. However, in the experience of our NCA, the foreseen "comprehensive assessment of the operational and security risks relating to the payment services [...] and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks" has only low value for supervisory purposes. In particular, the answers from PSPs diverge in terms of structure and content given the limited structure imposed for this assessment and hence, are difficult to analyse from a supervisory viewpoint. At the same time, the compliance costs for PSPs are high, given the broad scope of risks and measures to be considered in the assessment.

Further, since the introduction of PSD 2 other leading legal frameworks on the management of operational risk and ICT security have entered into force – in particular the DORA regulation. Against this background, in the past we have questioned the necessity to keep Article 81 PSR as a whole, given that the provisions tend to duplicate provisions of the DORA regulation. However, we would not oppose to keep Article 81 PSR for the sake of clarification alone, but we need to guarantee that – as stated in Article 81 para. 1 subparagraph 2 PSR – the provisions of Art. 81 PSR are without prejudice to DORA as the leading framework here. In this regard, however, we would not find it proportionate to add an additional reporting requirement in the PSR, as reporting requirements are generally part of DORA as well.

In total, in view of the already low supervisory benefit, the high compliance costs and the primacy of DORA in this area of regulation, we would propose deleting Article 81 para. 1 subparagraph 3 PSR.

#### **Article 83a para. 4 PSR**

A mere notification to the NCA about the participation in an information sharing agreement does not provide supervisory benefit. Rather, a notification obligation in this regard might lead to the false impression that NCAs under the PSR are competent to make an overall assessment of specific information sharing agreements with regard to data protection law and competition law. Hence, we are sceptical

about the adequacy of such notification obligation and would propose to delete Article 83a para. 4 PSR in order to avoid unnecessary burden and false impressions with regard to supervisory authority.

We are aware that Article 45 para. 3 of Regulation (EU) 2022/2554 (DORA) foresees a similar notification requirement with regard to information-sharing arrangements on cyber threat information and intelligence, but we think that we should first evaluate if this requirement passes the cost-benefit test in practice – now that DORA is applicable – before copying it to other fields.

Hence, we propose deleting Article 83a para. 4 PSR.

### **Article 39 PSD 3**

Article 39 PSD 3 corresponds to Article 37 paras. 2 and 3 PSD 2 and requires Member States to introduce certain notification obligations for companies whose activities are explicitly excluded from the scope of the Directive.

Recital 64 motivates the notification obligation of Article 39 PSD 3 as follows: „Service providers seeking to benefit from an exclusion from the scope of Directive (EU) 2015/2366 often did not consult their authorities on whether their activities are covered by, or excluded from, that Directive, but often relied on their own assessments. That has led to a divergent application of certain exclusions across Member States. It also appears that some exclusions may have been used by payment service providers to redesign business models so that the payment activities offered would fall outside the scope of that Directive. (...)“

In principle, we can agree with the description of the situation in recital 64. However, supervisory practice has shown that the notification obligations in Article 37 paras. 2 and 3 PSD 2 are not effective in mitigating the problems described in the recital. Rather, the notification obligations have been fulfilled only by compliant and well-informed service providers, who are aware of their regulatory obligations and for whom an exclusion from the scope regularly applies. In the past, service providers who had doubts as to whether an exclusion applied regularly contacted the NCA to clarify this issue regardless of the notification obligation.

Most likely, those service providers would continue to contact the NCA even without a notification duty. Hence, for those service providers additional notifications are obsolete; they do not correspond to the purpose of the duty to notify.

On the other hand, service providers who have specifically redesigned their business models so that the payment activities offered would fall outside the scope of PSD 3, or who do not apply for a license due to a lack of knowledge, are typically not complying with the notification obligations under Article 37 paras. 2 and 3 PSD 2 corresponding to Article 39 PSD 3. In order to investigate and intervene on these service providers, however, the NCA should not rely on provisions regarding the breach of a notification duty, but needs to be well-equipped with powers based on a prohibition norm comparable to Article 37 para. 1 PSD 2. Such provision, however, is not part of the current drafting of PSD 3.

Hence, we propose deleting Article 39 PSD 3 in its current form. Instead, we ask to reintroduce well-suited powers for the NCA to act against non-licensed activities. Such powers are already indicated in recitals 37, 49 and 58 of the proposed PSD 3, however, a more robust incorporation in the text is necessary from our viewpoint.

From our viewpoint adding a clear legal basis for NCAs to act against unlicensed activities would be clearly preferable to the current notification-based approach of Article 39 PSD 3 given that it increases the assertiveness of supervision against non-licensed undertakings and at the same time reduces the bureaucratic burden for compliant and well-informed PSPs. Finally, by the deletion of Article 39 PSD 3 the obligation for NCAs to offer a public register of exempted undertakings would cease to apply as well. In Germany, there have been almost no requests for such register so far (register w.r.t. Article 37 para. 5 PSD 2). This indicates that consumers and market participants have little to no interest in information on whether the activity of a particular provider is covered by an exclusion.