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Balancing Speed and Security
Assessing the Legislative Proposal on Instant Payments in
Euro for AML/CFT Measures

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Summary

In October 2022, the European Commission announced a legislative proposal to make instant payments in euro available to all citizens with a bank account in the EU and EEA countries. When adopting new payment technologies, it can be challenging to balance security and convenience. Consideration must be given to whether compromised security is an unavoidable effect of instant payments or if both objectives may be achieved concurrently. The thesis aims to show how the proposal addresses the security concerns associated with Anti-Money Laundering and Countering the Financing of Terrorism risks and other mistakes while ensuring the speed and uptake of instant payments.

The thesis concludes that by introducing the proposed legislation, the EU facilitates an environment that enables the uptake and speed of instant payments. However, the swiftness of instant payments might increase risks such as pre-payment frauds and mistakes. Likewise, the proposal will bring significant transformations for payment service providers, including much preparation to ensure compliance with added requirements. It is crucial to address these challenges in a way that does not create an excessive regulatory burden on payment service providers.

The author believes that the proposal's approach finds an appropriate balance between security and the speed and uptake of instant payments. However, the thesis findings demonstrate that although the proposal takes a step toward promoting instant payments and enhancing security, numerous issues have been brought up at various levels, from ongoing conversations and different stakeholders' feedback. Allowing sufficient time for the market to develop and implement reasonable efforts that preserve the speed and uptake is crucial.

Abbreviations

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
EBA	European Banking Authority
EEA	European Economic Area
EU	European Union
IBAN	International Bank Account Number
ICS	International Card Schemes
IP	Instant Payment
PIS	Payment Initiation Services
POI	Point of Interaction
PSD2	Revised Payment Services Directive
PSP	Payment Service Provider
PSU	Payment Service User
SCA	Strong Customer Authentication
SCT	SEPA Credit Transfer
SCT Inst.	SEPA Instant Credit Transfer
SEPA	Single Euro Payments Area
SME	Small and Medium-sized Enterprises
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
TIPS	TARGET Instant Payment Settlement

1 Introduction

1.1 Background

Payment processes are substantially transforming due to advancements in innovation and digitalisation.¹ In October 2022, the European Commission introduced a legislative proposal to make instant payments (here after “IPs” in euro accessible to all citizens and businesses holding bank accounts in the EU and EEA countries.² The legislative proposal strives to guarantee that IPs in euro are affordable, secure and processed without restriction throughout the EU.³

There has been a need for an EU-wide IPs scheme, which was emphasised in the 2020 Retail Payments Strategy.⁴ The Commission has expressed that this proposal is crucial to unleashing the full-scale network effects by linking all payment service providers (here after “PSPs”) to IPs technology. This initiative is envisioned to tackle high costs and friction and decrease the possibility of fraud or errors.⁵ The proposal amends and modernises the 2012 Regulation on the Single Euro Payments Area (SEPA).⁶ The objective of the proposal is to facilitate pan-European market initiatives founded on IPs. This initiative aims to guarantee that everyone with a payment account in the EU can securely initiate and receive IPs in euro, both domestically and across EU

¹ Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Retail Payments Strategy for the EU’ COM2020/592 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0592>> accessed 1 March 2023.

² Commission, ‘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 (Text with EEA Relevance)’ COM (2022) 546 final <https://ec.europa.eu/finance/docs/law/221026-proposal-instant-payments_en.pdf> accessed 14 March 2023.

³ Commission, ‘Legislative Proposal on Instant Payments’ (European Commission - Publications, 26 October 2022) <https://finance.ec.europa.eu/publications/legislative-proposal-instant-payments_en> accessed 28 February 2023.

⁴ Commission, ‘About this Initiative’ (European Commission - Published initiatives) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments_en> accessed 13 May 2023.

⁵ Commission, ‘Questions and Answers on the Commission’s proposal to promote euro instant payments:’ (European Commission - Press corner, 26 October 2022) <https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_6273> accessed 3 April 2023.

⁶ Commission, ‘Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro’ (European Commission - Press corner, 26 October 2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6272> accessed 15 March 2023.

borders. These objectives align with the broader goals of SEPA, which is to build a united euro retail payment system for Europe.⁷

IPs are credit transfers where funds are transferred from the payer's account to the payee's account in seconds, regardless of the time of day or year. IPs differ from other types of credit transfers, commonly processed by PSPs exclusively during business hours, where the funds arrive in the payee's account only by the end of the next business day.⁸ Despite IPs being a relatively new phenomenon, some Member States already utilise IPs. Nevertheless, in 2021, only around one-in-ten euro credit transfers in euro were conducted through IPs, indicating limited adoption. The utilisation of IPs is even lower where there is a cross-border element, resulting in underwhelming volumes.⁹

As payments are becoming faster and more frictionless, concerns concerning security increase simultaneously. When promoting initiatives to expand IPs in euro, it is vital to include comprehensive discussions pertaining to safety measures, specifically addressing areas such as fraud prevention and mistake mitigation. The adoption of new payment technologies such as IPs poses challenges in striking a balance between security and convenience. This is apparent in other EU legislations, such as Directive 2015/2366 on payment services (PSD2), which, among other things, aims to enhance the security of payments.¹⁰ PSPs must ensure they have suitable and real-time instruments to prevent fraud, money laundering and terrorist financing in compliance with present legislation. Following the most recent European Anti-Money Laundering Directive, financial institutions must have an independent and adequate compliance process to guarantee compliance with regulators and internal policies and procedures. PSPs working within the EU are bound by PSD2, which binds them to maintain a practical financial crime risk management function to mitigate risks such as AML and CFT.¹¹

The proposal aims to ensure that IPs are affordable and secure throughout the EU. As Commissioner McGuinness stated in her European Payments Institutions Federation Conference speech: "*We want to make the benefits of innovation available to European consumers and businesses, while guarding*

⁷ Ruth Wandhöfer, *EU Payments Integration The Tale of SEPA, PSD and Other Milestones Along the Road* (Palgrave MacMillan, Palgrave MacMillan 2010). 143.

⁸ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

⁹ Commission, "About this Initiative" (n 4).

¹⁰ Svea Ekonomi, 'Payment in the Nordics Navigating Friction, Security, and Ease within Payments – a Deep Dive into Nordic Consumer Behaviour'

<https://www.svea.com/globalassets/sweden/foretag/betallosningar/payments-in-the-nordics-2/payments-in-the-nordics-2_.pdf> accessed 15 March 2023.

¹¹ COM (2022) 546 final (n 2).

against the risks".¹² The proposal seeks to accomplish this by including several requirements to enhance consumer protection. Nonetheless, considerations materialise as to whether these measures are adequate to combat fraud and mistakes and if they will affect PSPs compliance ability with regulatory requirements. Accordingly, evaluating legal impediments when enforcing a legislative intervention binding PSPs to IP technology in euro is essential.

1.2 Aim and research question

Convenience is important for consumers – but it should not come at the expense of security. The proposal introduces new articles and requirements, and two explicitly that supplement AML/CFT risks and mistake mitigation (Article 5(c) and Article(d)). The thesis examines to what extent the proposal addresses safety considerations regarding AML/CFT and mistakes while ensuring compliance with the relevant requirements in these domains. The thesis aims to determine whether compromised security is an unavoidable consequence of promoting the uptake of IPs or if both goals can be accomplished simultaneously.

The following question will be the leading research question:

- *How does the legislative proposal on instant payments in euro promote safety regarding AML/CFT and mistakes while still preserving the speed and uptake of IPs?*

The author aims to answer the following sub-questions to better understand the leading research question: Why is there a need for a legislative proposal on IPs in euro? What are PSPs requirement for AML/CFT checks when performing IPs? What are the risks of fraud and mistakes when performing IPs? Finally, do the new requirements of Article 5(c) and Article 5(d) create excessive regulatory burden for PSPs?

¹² Commission, 'Keynote speech by Commissioner McGuinness at European Payment Institutions Federation (EPIF) Conference' (European Commission - Press corner) (15 November 2022)
<https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_6939> accessed 14 April 2023.

1.3 Methodology and literature review

For methodology, the thesis will use the legal dogmatic method, which signifies applying legal principles and regulations from legal text to a problem to comprehend the issue and resolve it. The positivist beliefs of the formal dogmatic approach have had a significant impact on the complicated improvement and development of law following its fundamental rules regarding “*sources, system, structure, ways of interpretation, unification and systematisation, forms of law-making and law enforcement*”.¹³ This approach can be characterised as a method of a research that aims to provide a structured exposition of the principles, rules and concepts that govern a specific domain. It entails a comprehensive analysis of the relationship between these principles, rules and concepts with the objective of resolving uncertainties and gaps present in the current legal framework.¹⁴ The author employs this methodology by looking at the textual content of the relevant legal instruments, containing both existing legislations and the proposed initiative, and assessing their underlying context and overarching objectives within the broader framework of the EU. The author will examine the proposal, placing particular emphasis on the supplementary provisions about fraud prevention and error mitigation to resolve uncertainties and find the gaps in the framework. Moreover, the author will not only look at the law’s text and sources, but will also review them considering background and objectives aligned with broader EU objectives. The author will analyse the research topic by undertaking an evaluative assessment of the AML/CFT legal framework and the legislation governing the payments market while considering the overarching objectives. By this, the author can review to what extent the proposed legislation adds suitable requirements to the problem at hand.

The thesis’s findings are established from various sources to address the research question. These sources contain primary and secondary sources of EU law, such as treaties, regulations, communications and reports issued by various EU institutions. In addition, the author will utilise legal articles, books and publications from diverse sources. Given the novelty of IPs and the

¹³ Alexander Yu. Petrov and Alexey V Zyryanov, ‘Formal-Dogmatic Approach in Legal Science in Present Conditions’ [2018] *Journal of Siberian Federal University*. P. 968. <<https://pdfs.semanticscholar.org/4dea/9fd2615f88730728eed6cb05bc0e9fed65fc.pdf>> accessed 26 April 2023.

¹⁴ Jan M Smits, ‘What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research’ [2015] *SSRN Electronic Journal* 5 <<http://www.ssrn.com/abstract=2644088>> accessed 14 May 2023.

proposal, the author will likewise examine feedback from various EU stakeholders to improve the research analysis's depth and range.

1.4 Limitations

This thesis focuses on the EU's prevailing legal regulations and initiatives on the payment market and AML/CFT. As a legal study, its scope will not contain economic concerns or political dimensions. Accordingly, other elements will be excluded from examination, such as alternative policy options or previously discarded choices, broader societal implications and additional aspects beyond the thesis's scope. Similarly, due to the comprehensive nature of AML/CFT frauds and framework, the thesis will emphasise the appropriate fraud-related issues of IPs for its analysis. Primarily, the purpose is to evaluate the sufficiency of the proposal's requirements measures concerning using IPs in euros in combating fraud and errors.

1.5 Disposition

This thesis consists of 7 chapters, including the introductory chapter, where the initial considerations of the thesis are presented. Chapter 2 begins with a descriptive investigation of the need for a legislative proposal to address the research question. A general introduction to IPs and a political and legal context for legislative initiatives will be provided. The author then defines the problem definition and reviews why an EU intervention is needed. Furthermore, the legislative proposal and contributions are presented. Following that, chapter 3 examines the risks for fraud and mistakes for IPs and will review the existing AML/CFT compliance requirements that PSPs must adhere to. The thesis will then explore in chapters 4 and 5 how the proposal aims to combat these problems involving added requirements. The proposed framework must be workable for PSPs, and the proposal will bring substantial adaptations, including extensive preparation to guarantee compliance with added requirements. Accordingly, this chapter will carefully assess the proposed demands and their potential implications for PSPs. Since this initiative is proposed legislation, chapter 6 includes a brief overview of the next steps forward and the overall stakeholders' view of the introduction of the proposal. Finally, in chapter 7, the research will be concluded with a definitive analysis, where the author shares the conclusions and seeks to answer the research question.

2 Legislative proposal on instant payments in euro

The author must provide an overview of the legislative proposal on IPs in euro to answer the research question. First, a general introduction to IPs and their political- and legal context is provided. Next, the problem definition will be examined. Furthermore, the author discusses why the EU should act in this matter and what the objectives are. Finally, the legislative proposal, new definitions and new requirements are introduced. This will help to supplement and broaden the discussion regarding the research question and clarify why there is a need for a legislative proposal on IPs in euro.

2.1 Introduction

2.1.1 What are instant payments?

The introduction of IPs allows people to transfer money at any time of day within 10 seconds.¹⁵ IPs refer to a form of credit transfer processed in real time, 24 hours a day, 365 days a year, where the funds are made available immediately from the payer's account to the payee.¹⁶ IPs differ from regular credit transfers, which PSPs process only during business hours and the funds are credited to the payee by the end of the following business day.¹⁷ The process may take even longer during certain times of the year, such as weekends or public holidays.¹⁸

IPs are available in around 60 countries globally, with continuous expansion in others.¹⁹ The architecture for IPs in euro and other currencies has already been established in the EU. This consists of various payment systems that provide instant settlement, as well as the SEPA instant credit transfer scheme (SCT Inst. Scheme), that was launched in 2017 by the European Payments

¹⁵ Commission, 'Legislative Proposal on Instant Payments' (n 3).

¹⁶ European Central Bank, 'What Are Instant Payments?'
<https://www.ecb.europa.eu/paym/integration/retail/instant_payments/html/index.en.html>
accessed 28 February 2023.

¹⁷ COM (2022) 546 final (n 2). 1.

¹⁸ Commission, 'Instant Payments' (European Commission - Newsroom, 28 June 2019)
<<https://ec.europa.eu/newsroom/fisma/items/654172/en>> accessed 28 February 2023.

¹⁹ Commission, 'Commission Staff Working Document Impact Assessment Report
Accompanying the Document Proposal for a Regulation of the European Parliament and of
the Council Amending Regulations (EU) No 260/2012 and (EU) No 2021/1230 as Regards
Instant Credit Transfers in Euro' SWD (2022) 546 final. 1.
<https://ec.europa.eu/finance/docs/law/221026-impact-assessment_en.pdf> accessed 1
March 2023.

Council (EPC).²⁰ The SCT Inst. Scheme is an instant credit transfer scheme supervised by the European Payments Council with its rules and standards drafted in the SCT Inst Rulebook.²¹ PSPs within the EU employ this to different extents. The only system for euro IPs is the SCT Inst. Scheme. In contrast, IPs in other currencies rely on the EPC scheme with a licencing agreement.

Utilising national currency, IPs can be convenient for domestic transactions within a single Member State. Nevertheless, they cannot be used for cross-border IPs between any two Member States, regardless of whether they are within the euro area or not. The availability and usage of IPs in euro still need to be consistent. Some countries within the euro area have seen widespread adoption of euro IPs, particularly between private persons. However, in other countries in the euro area, only select PSPs can utilise euro IPs. Additionally, there are some countries in the euro area and non-euro area Member States where euro IPs are essentially unavailable. The ease of making cross-border IPs within the EU as easy as domestic IPs is crucial to the internal market.²²

The expansion of PSPs providing euro IPs has been inadequate since the end of 2018, resulting in only 11% of all euro credit transfers using IPs at the end of 2021. Overall, the SCT Inst. Scheme has been unsuccessful in finding widespread adoption across EU Member States. While IPs can provide significant advantages to individuals and companies in the EU, their growth has been hampered by the EU's slow introduction of euro IPs.²³ By enabling cross-border IPs across the EU, citizens, businesses and banks would benefit, and the euro would strengthen its international position.²⁴

2.1.2 Political context

IPs constitute a significant technological leap in the field of payments by allowing for the rapid release of funds that would otherwise be trapped inside the financial system. With the benefit of IPs, end users in the EU, such as customers and companies, can access the money right away for spending or investing. Additionally, IPs allow banks and fintech firms to develop

²⁰ COM (2022) 546 final (n 2). 1.

²¹ European Payments Council, '2022 Payment Threats and Fraud Trends Report' (2022) <<https://www.europeanpaymentscouncil.eu/sites/default/files/kb/file/2022-12/EPC183-22%20v1.0%202022%20Payments%20Threats%20and%20Fraud%20Trends%20Report.pdf>> accessed 15 March 2023.

²² SWD (2022) 546 final (n 19). 2.

²³ *ibid.*

²⁴ Commission, 'Instant Payments' (n 18).

advanced payment solutions at the point of interaction (PoI), enhancing various options for carrying out financial transactions.²⁵

The role of payments in the European economy has become increasingly strategic, with the efficient and safe processing of transactions being crucial to the operation of many businesses. The Commission demonstrated its support for a fully integrated IP system in the EU in its communication from 5 December 2018 titled “*Towards a stronger international role of the euro*”.²⁶ With this, the Commission attempted to improve the autonomy of current payment solutions while reducing the risks and vulnerabilities in retail payment systems. On 24 September 2020, the Commission set out a communication on the Retail Payment Strategy for the EU, which affirmed the Commission’s intent to promote the full uptake of IP throughout the EU and outlined several possible initiatives to accomplish this goal. In this communication, the Commission expressed that, if considered necessary, it may propose legislation requiring PSPs to provide IPs in euro by the end of 2021. Furthermore, in its communication of 20 January 2021, “*The European economic and financial system: fostering openness, strength and resilience*”, the Commission reaffirmed the value of its retail payments strategy and digital innovation in finance in improving the single market for financial services and consequently strengthening the EU’s open strategic autonomy. The Council highlighted the promotion of widespread use of IPs as the goal of the retail payment strategy in its conclusion of 22 March 2021.²⁷ In the Council’s conclusions of 5 April 2022, the Council pointed out the European Commission’s intention to introduce a legislative initiative on IPs. The Council highlighted the need to create a framework to ensure the European payment area’s independence, effectiveness and autonomy as it reaffirmed the goal of fostering the expansion of a competitive, market-based payment system within Europe.²⁸ Consequently, the Commission welcomed an IP initiative in its 2022 work agenda.²⁹

²⁵ COM (2022) 546 final (n 2). 1.

²⁶ Commission, ‘Communication from the Commission to the European Parliament, the European Council (Euro Summit), the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions Towards a Stronger International Role of the Euro 2018’ COM/2018/796 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0796>> accessed 3 March 2023.

²⁷ Council of the European Union, ‘Council conclusion on the Commission Communication on a ‘Retail Payments Strategy for the European Union’ (22 March 2021) 5 <<https://data.consilium.europa.eu/doc/document/ST-7225-2021-INIT/en/pdf>> accessed 15 March 2023.

²⁸ COM (2022) 546 final (n 2). 2.

²⁹ Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions the European Economic and Financial System: Fostering Openness, Strength and Resilience’ COM/2021/32 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0032>> accessed 4 March 2023.

Within the EU, a framework for IPs has already been established, consisting of numerous payment systems that deliver an instant settlement, and the SEPA instant credit transfer scheme (SCT Inst. Scheme), established by the EPC in November 2017. IPs can provide consumers and companies in the EU with several benefits. However, slow implementation and low uptake have hampered their widespread application.³⁰ The uneven availability and pricing of IPs across different Member States have impeded the rollout of IPs in the single market. Legislative action is thus necessary to encourage the expansion of IPs in the euro and unlock their potential advantages.³¹

IPs come with several legislative, operational and reputational risks, which have made their adoption within the EU more difficult. These risks, to name a few, consist of concerns about the capacity of providers to adhere to legal obligations in the face of increased volumes of IPs, the management of liquidity and the requirement to satisfy customer expectations for smooth delivery. Such risks can discourage European service providers from making the system modifications required to allow for IPs, such as real-time fraud monitoring or sanctions screening. Additionally, despite the emergence of innovative IP solutions in several Member States, most do not support cross-border payments since there is no clear interoperability framework or standardisation at the EU level. Although the market is looking for specific solutions, these efforts have proved inadequate. The Commission has made significant progress toward dispersing the advantages of innovation by introducing the legislative proposal.³²

2.1.3 Legal context

The background for the proposal lies in the background of the EU itself, which is in accordance with the concept of a single financial market for all the Member States. The Commission strives to establish a payment service market that is efficient and integrated throughout the EU.³³ Various laws in the EU govern cashless or electronic payments. These include Directive 2015/2366 on payment services (PSD2), which imposes several duties on PSPs, and Regulation (EU) 2021/1230 on cross-border payments in the EU that restricts the fees levied on cross-border euro payments. Regulation EU

³⁰ *ibid.*

³¹ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

³² Commission, 'Keynote speech by Commissioner McGuinness at European Payment Institutions Federation (EPIF) Conference' (n 12).

³³ Commission, 'Payment Services' <https://finance.ec.europa.eu/consumer-finance-and-payments/payment-services/payment-services_en> accessed 14 May 2023.

No. 260/2012 (the SEPA regulation) is another effective legislation in this regard.³⁴

The idea behind SEPA is to allow customers to make payments within the whole euro area as efficiently and safely as they would nationally.³⁵ The SEPA regulation focuses on two payment services (credit transfers and direct debits) conducted in euros. This regulation established a deadline by which all PSPs in the EU were required to offer regular credit transfers and direct debits in euro, following the same set of harmonised rules. Even PSPs in non-euro area Member States must comply with these rules if they offer credit transfers or direct debits in euro. The SEPA regulation emphasised that it is crucial to create “*an integrated market for electronic payments in euro, with no distinction between national and cross-border payments*” to support the proper functioning of the internal market.³⁶ The SEPA scheme for euro credit transfers was first introduced in 2008, with a version of IPs introduced in 2017.³⁷ However, the 2012 SEPA regulation did not require PSPs to start providing euro IPs, since they did not exist until 2017.³⁸ Since the establishment of SEPA, the European payments ecosystem has changed significantly. To make IPs in euro universally available, there is a need to update the SEPA initiative, which is the project of internal market integration for euro retail payments.

An extensive package of legislation has been introduced to encourage innovative, convenient, and securer payment methods in the EU.³⁹ Presently, two EU legal acts in the field of payments apply to IPs. These are the PSD2 and the regulation on cross-border payments.⁴⁰ The PSD2 covers eight types of payment services, including credit transfers and direct debits, across all EU currencies. It outlines, among other things, the rules concerning the

³⁴ Etienne Dessy and others, ‘EU Plans to Push Banks to Provide Instant Payment Services’ (Linklaters, 5 January 2023)

<<https://www.linklaters.com/en/insights/blogs/fintechlinks/2023/eu-plans-to-push-banks-to-provide-instant-payment-services>> accessed 20 March 2023.

³⁵ European Central Bank, ‘Towards a Single Euro Payments Area Objectives and Deadlines Fourth Progress Report’ (2006) 8.

<<https://www.ecb.europa.eu/pub/pdf/other/singleeuropaymentsarea200602en.pdf>> accessed 9 May 2023.

³⁶ 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 Text with EEA relevance 2012 [2016] OJ L 94. Art 1.

³⁷ *ibid.* 3.

³⁸ SWD (2022) 546 final (n 19). 25.

³⁹ Monika Hartmann and others, ‘Are Instant Payments Becoming the New Normal? A Comparative Study’ (August 2019) <<https://papers.ssrn.com/abstract=3441654>> accessed 27 February 2023.

⁴⁰ COM (2022) 546 final (n 2). 2.

information that PSPs must provide consumers and the responsibilities and rights of both PSPs and users. There is an ongoing review of the implementation and effectiveness of PSD2, with the review's findings expected in the first half of 2023.⁴¹ The Regulation on cross-border payments in the European Union is another important regulation for payment, and it seeks to enhance the transparency concerning currency conversion charges in the EU. It replaces and updates Regulation 924/2009 on cross-border payments, which has undergone substantial amendments. The regulation guarantees that payments across borders in euros do not cost more than payments within the same country employing the national currency of a non-euro Member State.⁴² After the legislative proposal on IPs in euro comes into force, these acts will continue to apply to IPs.

2.1.4 Choice of instrument

Considering that the SEPA regulation establishes technical and business conditions for all credit transfers in euro and IPs in euro constitute a new type of credit transfer, it is suitable that the choice of instrument for the new proposal is to amend the SEPA regulation.⁴³ The SEPA regulation already contains general provisions for all euro credit transfers, therefore the new proposal adds specific provision for euro IPs with its amendments.

2.2 Problem definition

2.2.1 Insufficient uptake of IPs in euro

Solely 10.87% of euro IPs were predicted to be used by the end of the fourth quarter of 2021, four years since the SCT Inst. Scheme began operating. This implies that only around 10% of euro credit transfers in the EU are carried out as IPs. When examining the total value of transferred funds, the percentage is lower, at roughly 2%, or EUR 1.6 trillion in 2020. The present level of uptake is mainly because of domestic euro IPs transactions in Member States. The adoption rates for euro IPs vary widely among Member States, indicating a substantial untapped prospect to raise general adoption at the European level.⁴⁴

⁴¹ SWD (2022) 546 final (n 19). 25.

⁴² Weatherill A and Lovergrove S, 'Regulation on Cross-Border Payments Published in OJ | Regulation Tomorrow' (Regulation Tomorrow, 2 August 2021) <<https://www.regulationtomorrow.com/eu/regulation-on-cross-border-payments-published-in-oj/>> accessed 14 May 2023.

⁴³ COM (2022) 546 final (n 2). 4.

⁴⁴ SWD (2022) 546 final (n 19). 6.

2.2.2 Consequences of the problem

The limited usage of euro IPs has two consequences, examined in this section: i) the neglected potential for economic efficiency improvements and other advantages; and ii) the restricted alternatives for payment methods at the point of interaction, primarily for cross-border transactions.⁴⁵

PSUs cannot access funds that are in transit, commonly referred to as the “float”. Around 187 billion euros per day are assumed to be entrapped in the banking system through regular euro credit transfers or checks. If IPs were broadly embraced and utilised as the standard, the funds trapped in the float would become immediately accessible for economic usage, either for consumption or investment. As a result, the economy would profit from this. IPs may make transactions faster and more comfortable for EU citizens, aligning with modern society’s anticipations. With more effective and cheap payment options for businesses, customers may see reduced retail prices due to cost savings. Additionally, the rising use of IPs can result in unrealised advantages for PSPs and fintech companies in the EU, enhancing corporate and public sector cash flow management through enhanced chances for innovation and economies of scale.⁴⁶ There are clearly unreleased benefits at the macro level, for EU citizens and merchants, for corporate users related to liquidity management, for PSPs and fintech companies, as well as for public administrations and others.

IPs used for retail (PoI) payments are very low in the EU. This implies that most electronic payments performed at PoI in the EU, especially cross-border transactions, are managed by a narrow set of International Card Schemes (ICS) and BigTechs delivering mobile payment apps established on ICS, such as Apple Pay and Google Pay.⁴⁷ Due to the present situation of PoI payments in the EU, where a few ICS and BigTechs hold the market, some weaknesses impede the ecosystem’s innovation and the introduction of pan-European payment solutions. The possibility for PSPs and fintechs’ in the EU to develop and market innovative payment solutions without depending on the infrastructure of the established providers is little without the sounder adoption of an IPs system. The payment methods available to merchants are restricted, particularly for cross-border transactions. Due to the absence of options, businesses have little negotiating power with the few suppliers present, making these payment methods usually more costly. PSUs would

⁴⁵ *ibid.* 6.

⁴⁶ *ibid.* 6,11.

⁴⁷ *ibid.* 12.

benefit from having additional payment choices open in stores in addition to cards.⁴⁸

2.2.3 Problem drivers

There have been four problem drivers that have hindered the uptake of euro IPs.⁴⁹ Problem driver one is insufficient incentives for PSPs to offer euro IPs. Both PSPs of the payer and the beneficiary must utilise IP technology for a transaction to be successful. Some providers would only be willing to invest in this technology with the guarantee that other providers would facilitate these transactions. Consequently, only around one-third of PSPs in the EU currently provide IPs.⁵⁰ According to PSPs' informal feedback, it is evident that to increase the supply of cross-border euro IPs, PSPs must be sure that if a PSU requests an IP, the payment may be made, regardless of where the payee is in the EU.⁵¹ Problem driver two is dissuasive transaction fees for IPs. Numerous consumers and businesses are discouraged by the expensive fees of employing IPs.⁵² As of today, the range of prices for IPs transaction fees varies greatly. This problem has been brought up by consumer organisations on numerous occasions, calling for the need for legislation to harmonise the fees for the service.⁵³ Problem driver three is high rate of rejected IPs due to false hits in sanctions screening. Where IPs are offered, many fail because the industry employs transaction-by-transaction sanction screening techniques, which can be problematic for IPs. This has caused high rate of rejected IPs.⁵⁴ Presently, there is no specific EU legislation regarding how PSPs should ensure compliance to apply EU sanction screening. This has a negative effect on the level of uptake of IPs, as well as creating operational challenges. Problem driver four is payers concerns about security of IPs. When utilising IPs, there is a possibility that they are sent to the wrong recipient due to errors or frauds. Businesses and consumers are not provided sufficient assurances to reduce their fears over the likelihood of fraud and mistakes with IPs.⁵⁵

⁴⁸ *ibid.* 13.

⁴⁹ *ibid.* 13.

⁵⁰ Commission, 'Questions and Answers on the Commission's proposal to promote euro instant payments:' (n 5).

⁵¹ SWD (2022) 546 final (n 19). 16.

⁵² Commission, 'Questions and Answers on the Commission's proposal to promote euro instant payments:' (n 5).

⁵³ The European Consumer Organisation, 'Consumers and Instant Payments Answers to the Commission's Consultation on the Content of a New Legislation' (7 April 2021). 10 <https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-027_consumers_and_instant_payments.pdf> accessed 7 March 2023.

⁵⁴ *ibid.*

⁵⁵ Commission, 'Questions and Answers on the Commission's proposal to promote euro instant payments:' (n 5).

There are more elements that may be taken into account that impact the slow uptake of IPs. However, the Commission concluded that other elements should not be taken into consideration when adopting the proposal.⁵⁶ The Commission attempts to tackle these four problems with the proposal and the new definitions and provisions.

2.2.4 How will the problem evolve?

The number of PSPs offering IPs will continue to rise even if the EU does nothing to support the supply of IPs; however, this growth will be gradually slow. Additionally, even if euro IPs are offered, the imposition of premium transaction costs will restrict customer uptake.⁵⁷ Unaddressed concerns concerning the security of IPs would only make the problem worse. Also, many euro IPs, particularly those involving cross-border transactions, would resume being rejected due to the inefficiency of sanction screening methods. Without an EU initiative to tackle the problem, the benefits of euro IPs will remain locked and the market for IPs will continue to be fragmented.

2.3 Why should the EU act?

2.3.1 Legal basis

The suitable legal basis for the proposal is Article 114 of the Treaty of the Functioning of the European Union (TFEU). The European institutions are tasked under Article 114 of the TFEU with establishing the rules necessary to establish the single market and guarantee that it operates appropriately by Article 26 of the TFEU.⁵⁸ By applying Article 114 of the TFEU, EU legislators can adopt measures to harmonise their Member States' legal provisions to establish and function in the internal market. Article 26 of the TFEU states that the EU shall adopt measures to establish or ensure the functioning of the internal market. It supports one of the main objectives of the EU, which is a thriving single internal market.⁵⁹ There are two significant limitations associated with the utilisation of Article 114. First, this provision can only be invoked without any other explicit legal foundation that applies to the issue, as emphasised in *Commission v. Council (VAT)*⁶⁰ Second, the

⁵⁶ *ibid.* 14.

⁵⁷ SWD (2022) 546 final (n 19). 23.

⁵⁸ COM (2022) 546 final (n 2). 3.

⁵⁹ European Parliament, 'EU Competence in Private Law: The Treaty Framework for a European Private Law and Challenges for Coherence : In Depth Analysis' (2015) 5. <<https://data.europa.eu/doi/10.2861/292462>> accessed 14 April 2023.

⁶⁰ Case C-533/03 *Commission v. Council (VAT)* [2006] ECR I-1025, para. 45.

measure implemented under this provision must be aimed at the approximation of laws, also known as harmonisation.⁶¹ The legislative proposal does not seem to have any other legal foundation, as well as it is aimed at harmonising the payment market.

As the CJEU has confirmed in its case law, Article 114(1) of the TFEU could be used in two situations, which are i) removal of obstacles to the exercise of fundamental freedoms and ii) removal of appreciable distortion of competition.⁶² Article 114 of the TFEU may be the legal grounds to enact EU legislation only where there is a genuine link between the adopted measure and removing existing impediments in the internal market.⁶³ Article 114 of the TFEU is used as the legal basis for other EU payment legislation in this area, such as the SEPA regulation, PSD2 and the Regulation on cross-border payments.⁶⁴ Furthermore, measures that are adopted under Article 114 of the TFEU must comply with the subsidiarity and proportionality principles.⁶⁵ In respect of the subsidiarity principle, only EU measures can require all applicable PSPs in the EU to offer the service of sending and receiving cross-border IPs. The Member States themselves do not have the competence to lay out harmonised EU rules in this matter.

2.3.2 Subsidiarity: necessity of EU action

Cross-border euro IPs adaptation cannot be secured by a single Member State alone. The only way the EU can ensure all relevant PSPs provide the service is through an EU intervention. Theoretically, Member States might ensure that domestic IPs are applied across cross-borders. There are no indications, however, that the Member States with a low level of IPs adaption have any agendas to take action to increase that level. Furthermore, Member States cannot establish harmonised EU rules for cross-border IPs on their own, whether for the screening of sanctions or to ensure safety against fraud or mistakes. If they would, it could only lead to further fragmentation.⁶⁶

⁶¹ Catherine Barnard, *The Substantive Law of the EU: The Four Freedoms* (Sixth edition, Oxford University Press 2019). 560-671.

⁶² *Tobacco Advertising I*; Case C-376/98 *Germany v European parliament and Council* ECLI:EU:C:2000:544 paras 84, 95.

⁶³ *ibid.* 571-575.

⁶⁴ COM (2022) 546 final (n 2). 3.

⁶⁵ Barnard (n 61). 576.

⁶⁶ SWD (2022) 546 final (n 19). 25.

2.3.3 Subsidiarity: added value of EU action

Only EU-level action co-ordinated on the supply and demand sides can fully exploit the network benefits for IPs for those involved. EU intervention would guarantee a higher synchronisation of the implementation of essential measures. This would reduce operating expenses and have promising general network effects.⁶⁷

2.3.4 How is proportionality achieved?

First, proportionality is achieved by excluding the obligation to offer IPs to PSPs that do not usually have access to payment systems or do not provide payment services to clients and for whom providing IPs may be more problematic or expensive. Second, PSPs have different sequential deadlines inside and outside the euro territory.⁶⁸

2.4 Objectives

The proposal aims to guarantee that IPs in euro are affordable, secure and carried out without restriction across the EU. This effort is consistent with the Commission's focus on building an economy that benefits the people and fosters a more appealing climate for investment. Furthermore, it contributes to the Commission's broader objectives regarding digitalisation and open strategic autonomy.⁶⁹

The general objective of this initiative, which falls under the Commission Work Programme's objective of "*An economy that works for the people*", is to increase the use of euro IPs in the EU significantly. This objective would make retail payment more efficient and make the benefits of IPs available for citizens and businesses in the EU. In addition, this will help with cross-border trade within the EU, conducting a more integrated single market and digital single market, ultimately supporting the recovery of the European economy.⁷⁰ This initiative's specific objectives are to increase the supply of euro IPs in the EU, to address dissuasive fees for euro IPs compared to other payment methods and to simplify and enhance the efficiency of the sanction screening

⁶⁷ *ibid.* 26.

⁶⁸ COM (2022) 546 final (n 2). 4.

⁶⁹ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

⁷⁰ SWD (2022) 546 final (n 19). 26.

process for euro IPs. Last, it is to increase payer confidence in euro IPs concerning fraud and error risks.⁷¹

2.5 Legislative proposal on instant payments in euro

The proposal 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 is a legislative proposal that the European Commission put out in October 2022. The proposal intends to make instant euro payments available to all citizens and businesses holding a bank account in the EU and in EEA countries.⁷² The proposal presents additional provisions into the SEPA Regulation regarding IPs in euro and identifies the PSPs required to adhere to these provisions. These new requirements are introduced in four new articles inserted in the SEPA Regulation, Article 5(a) to 5(d), which are explained below. In addition, there are some amendments to Article 2 and 11 of the SEPA Regulation as well as Article 3 of Regulation 2021/1230 on cross-border payments in EU, to clear up some new definitions and amend them as needed. For the purposes of this paper the author will only give a brief overview of Article 5(a) to 5(d) as they tie back to the research question. In addition, the new definitions are introduced.

2.5.1 New definitions

The proposal introduces four new definitions:

- *Instant credit transfer*, which refers to a specific type of euro credit transfer, and there are certain technical criteria that must be met to qualify as such.
- *PSU interface* (payment service interface), which provides additional clarifications concerning the right of PSUs to initiate IPs through the same channels they utilise to institute other credit transfers. Additionally, it establishes provisions regarding charges for corresponding euro credit transfer transactions.
- *Payment account identifier*, which strives to explain that a payment account identifier, as expressed in Article 5, point 1(a), of the SEPA regulation, as well as Article 5(c) in the new proposal, is to be

⁷¹ *ibid.*

⁷² Commission, ‘Legislative Proposal on Instant Payments’ (n 3).

regarded as the unique identifier specified in Article 88 of PSD2⁷³ and established in Article 4, point (33) of that Directive.

- *Listed persons or entities*, which means that PSPs must abide by the measures outlined in Article 5(d) of the current proposal to guarantee that they comply with EU sanctions. These sanctions require freezing the assets of individuals or entities and not authorising them access to funds or economic resources, whether directly or indirectly.⁷⁴

2.5.2 New requirements

The proposal includes four requirements regarding euro IPs. These new requirements correspond to the four problem drivers that were identified and should therefore promote the uptake of IPs as well as mitigate fraud and mistakes.

2.5.2.1 Article 5(a) – Obligation to offer instant payments

Article 5(a) aims to ensure that IPs are available to everyone. To accomplish this, PSPs in the EU that offer credit transfers in euros must also offer instant euro payments within a specific timeframe.⁷⁵ More specifically, PSPs currently offering credit transfers in euros will need to offer the option of sending and receiving IPs in euro. Specific technical requirements must be met for this service, such as receiving payment orders and processing IPs 24/7, every day of the year, without any time constraints or limitations to processing on business days exclusively. However, this condition does not apply to payment and electronic money institutions as they have limited access to payment systems.⁷⁶

2.5.2.2 Article 5(b) – No extra costs

Article 5(b) aims to ensure that IPs in euro are affordable by requiring PSPs to ensure that the cost of IPs in euro is not higher than that of traditional credit transfers in euro. In addition to this article in the current proposal, it also amends Regulation (EU) 2021/1230.⁷⁷ Specifically, PSPs must charge the same fees for sending or receiving IPs in euro as for non-instant credit transfers. This will involve all PSPs offering IPs, including those not mandated to provide them (such as payment and electronic money

⁷³ PSD2. Art. 88.

⁷⁴ COM (2022) 546 final (n 2). 8.

⁷⁵ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

⁷⁶ COM (2022) 546 final (n 2). 9.

⁷⁷ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

institutions). This requirement will go into effect within the euro area six months after its implementation. Outside the euro area, this requirement will take effect 30 months after entry into force. For some cross-border IPs performed by a PSP outside the euro area, using Regulation (EU) 2021/1230 on cross-border payments may lead to a more increased charge than the proposal implies. Therefore, the proposal also amends Regulation (EU) 2021/1230, where it is ensured that IPs in euro are at least priced at the same level or lower than corresponding regular cross-border euro transfers.⁷⁸

2.5.2.3 Article 5(c) – IBAN checks

Article 5(c) aims to ensure an increased trust in IPs by obligating providers to verify that the bank account number (IBAN) and the beneficiary's name provided by the payer match. This enhances the prevention of error and frauds and furthermore allows the payer to be alerted of a possible mistake or fraud before the payment is processed.⁷⁹ More specifically, this will obligate all PSPs to provide PSUs with a service that checks whether the payee's IBAN matches their name when sending IPs in euro. IBAN (International Bank Account Number) functions as the distinctive identifier as stated in Article 4(33) of PSD2 and the payment account identifier as outlined in Article 5 of Regulation (EU) No. 260/2012. If any discrepancy is detected, the PSP must inform the user before they complete the payment order and before the PSP executes the payment. Regardless, the PSU has the choice of whether to proceed with the payment for IPs in all circumstances.⁸⁰

2.5.2.4 Article 5(d) – Sanction screening

Article 5(d) aims to remove obstacles in handling IPs while ensuring that people subject to EU sanctions are properly screened. This will be accomplished by having PSPs check their clients against EU sanctions lists daily rather than screening each transaction individually.⁸¹ More specifically, PSPs must obey a harmonised approach to enforcing EU sanctions to avoid redundancy, inefficiencies and hindrances arising from varied screening processes. This harmonised approach pertains to certain sanctions on individuals and entities, such as the obligation to freeze assets and restrict access to funds or economic resources. The European Commission upholds a comprehensive list of such persons and entities.

⁷⁸ COM (2022) 546 final (n 2). 9,12.

⁷⁹ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

⁸⁰ COM (2022) 546 final (n 2). 10.

⁸¹ Commission, 'Payments: Commissions Proposes to Accelerate the Rollout of Instant Payments in Euro' (n 6).

2.6 Final remarks

IPs are a key driver for further innovation in digital payments. In conclusion, just about one-in-ten euro credit transfers are handled as IPs in the EU, revealing that the use of IPs still needs to be improved. For cross-border transfers between Member States, this number is significantly smaller. IPs have yet to be widely adopted in the EU to allow people, businesses, public institutions and society to enjoy their advantages. A more effective and open payment system may be achieved by increasing the usage of IPs and expanding the available payment methods.

The Commission analysed various causes that could impact this delayed adoption. There were found to be four significant obstacles. The proposal tackles these causes by establishing incentives for PSPs to provide IPs in euro, guaranteeing cost equivalence with alternative payment possibilities, and putting security and fraud prevention actions in place. The initiative aims to set transparent regulations and guidelines that will support the uptake and speed of IPs and enhance consumers' confidence in IPs.

Addressing the challenges associated with IPs in euro cannot be done by intervention at the level of a single Member State. These obstacles encompass the need for EU-level interaction, standardisation, a level playing field, compliance with regulatory requirements and more. Likewise, any actions from Member States to promote IPs adoption will likely result in additional market fragmentation, as each Member State has diverse rules and standards. Therefore, there is a demand for a co-ordinated approach to ensure integrity and effective operation, calling for EU legislation in IPs in euro to expand their availability and benefits. A co-ordinated EU approach is the most appropriate to attain a suitable level of standardisation in the payment area, which was the aim of the SEPA regulation. The market requires more cohesion concerning end-user payment solutions based on IPs. While PSPs in some Member States provide developed payment solutions, their solution usually only functions within their Member State. Consequently, consumers are restricted in utilising their chosen payment method when travelling outside their Member State in the EU. Likewise, the merchant's capability to receive payments from buyers in other member states is mainly limited to cards co-branded with international card schemes. This restricts these solutions' competitiveness within the EU and globally, vis-à-vis international players.

The market currently needs to be more cohesive, and intervention of a single Member State would presumably lead to further fragmentation. Despite

possessing the technology required for IPs in euro, it has become clear that Member States and the European payments sector need to do more to remove barriers to IPs quickly. The Commission has thus concluded that legislative action is critical to fully support the advantages of IPs. Such effort is needed to handle high costs and frictions, connect all PSPs to IPs technology and decrease the risk of fraud or mistakes linked to this payment method. The chapters findings show that the legislative proposal aims to address these needs and establish a broad acceptance and use of IPs. Therefore, the author firmly agrees that there is a necessity for a legislative proposal on IPs in euro.

3 AML/CFT risks for IPs

The growth of faster payment systems on a cross-border basis leads to simplified processes and improvement in customer satisfaction.⁸² However, as the financial system develops, so do the threats posed by criminals trying to undermine it.⁸³ Fraud prevention and AML/CFT risk management must be raised when discussing the expansion of IPs. The Commission should take into consideration whether there are any legal obstacles to introducing fraud prevention and AML measures relating to IPs. Furthermore, it must be reviewed if the speed of IPs could undermine the PSPs ability to ensure suitable AML/CFT checks. This chapter will provide an understanding of the AML/CFT rules in the EU. PSPs requirements regarding AML/CFT checks will be reviewed to gain an understanding of what they must implement to be compliant. Likewise, the author will analyse if the proposal will affect those requirements. Next, the types of risks of frauds and mistakes when performing IPs will be examined. Finally, it will be reviewed how the proposal will work in practice.

3.1 Introduction

Money laundering is a significant issue in today's world, involving the use of illegal funds to finance criminal activities and terrorism. Despite improvements in anti-money laundering regulations, the United Nations evaluates that between 2% and 5% of the world's GDP is entangled in money laundering, translating to approximately EUR 700 billion to 2 trillion annually. Unfortunately, multinational efforts to combat this problem have been unsuccessful, with a study by Ronald F. Pol of La Trobe University in Melbourne, Australia, finding that only 0.1% of illegally obtained money is recovered from criminals. As a result, criminals and organised terrorist groups can freely use most of their funds for criminal intentions.⁸⁴ The issue continues within the EU.

⁸² 'The Latest Trends in Instant Payments and How They Impact Banks'
<<https://www.eastnets.com/newsroom/the-latest-trends-in-instant-payments-and-how-they-impact-banks>> accessed 14 April 2023.

⁸³ Commission, 'Keynote speech by Commissioner McGuinness at European Payment Institutions Federation (EPIF) Conference' (n 12).

⁸⁴ '27 Informative Money Laundering Statistics in 2023' (20 May 2023)
<<https://legaljobs.io/blog/money-laundering-statistics/>> accessed 17 April 2023.

3.1.1 Framework

The AMLD framework is aimed at preventing money laundering and terrorists from financing activity that can threaten the EU's internal market.⁸⁵ Essentially, the internal market can be interpreted as abolishing restrictions and measures between Member States, allowing for the free movement of goods, people, capital and services (known as the "four freedoms") within the EU.⁸⁶ The internal market is an evolution from the common market established by the Rome Treaty, which was aimed at removing trade barriers between Member States to improve the economic means and to contribute to "*an ever-closer union among the peoples of Europe*".⁸⁷ In respect of money laundering and its connection to the free movement of capital, removing restrictions on capital movement allows criminals to move illegal funds across borders more easily. While the EU's internal market and the four freedoms should encourage economic growth and integration, there is a risk that criminals can employ it to launder money. This is why the EU has set out regulations to support measures that prevent and detect money laundering and terrorist financing.⁸⁸

Gatekeepers such as banks and other obligated entities are crucial in preventing money laundering and terrorist financing by implementing preventive measures. The traceability of financial information plays an essential part in preventing such activities. In 1990, the EU implemented its first Anti-Money Laundering Directive to prevent the abuse of the financial system for money laundering purposes. This Directive requires that obligated entities perform due diligence measures such as identifying and verifying clients' identities, monitoring transactions and reporting suspicious activities when entering a business relationship. The legislation has since been regularly updated to manage the risks associated with money laundering and terrorist financing.⁸⁹ Since the first AMLD, there have been various amendments. The latest amendment was introduced with the 6AMLD, and it must be viewed concurrently with the 5AMLD and 4AMLD, since they complete each other.⁹⁰ The overall objective of the AMLD is to "*prevent the*

⁸⁵ 4AMLD. Recital 1.

⁸⁶ TFEU. Art. 26.

⁸⁷ European Parliament, 'The Internal Market: General Principles' (July 2022) <<https://www.europarl.europa.eu/factsheets/en/sheet/33/the-internal-market-general-principles>> accessed 14 May 2023.

⁸⁸ *ibid.*

⁸⁹ Commission, 'EU Context of Anti-Money Laundering and Countering the Financing of Terrorism' (20 July 2021) <https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism_en> accessed 19 April 2023.

⁹⁰ David Muradyan, 'The Efficiency of the European Union's Anti-Money Laundering Legislation An Analysis of the Legal Basis and the Harmonisation of the EU Anti-Money Laundering Legal Framework' (Stockholms universitet 2021). 12.

use of the Union's financial system for money laundering and terrorist financing". More specifically, the AMLD governs the supervision of various entities following Article 2 of the 4AMLD. According to the provision, obliged entities are credit institutions, financial institutions and natural and legal persons exercising certain activities. These entities must ensure compliance with the AMLD and are consequently bound by various requirements to do so, such as notifying suspicious transactions and verifying the identity of their customers when performing business.⁹¹

3.1.2 AML/CFT legislative package

As the financial system evolves, so do the threats posed by criminals trying to damage it.⁹² Therefore, the European Commission has put out comprehensive legislative proposals to further strengthen the EU's AML/CFT rules. One of the proposals is to establish a new EU authority to fight money laundering. The Commission is committed to protecting EU citizens and the financial system from money laundering and terrorist financing, and this package is a part of that action. The objective is to enhance the detection of suspicious activities and transactions and eliminate loopholes that criminals use to launder illegal money or fund terrorist activities through the financial system. The EU's Security Union Strategy for 2020–2025 recognises that enhancing the framework for AML/CFT will also aid in safeguarding EU's citizens from organised crime and terrorism. The introduction of this ambitious package significantly improves the EU framework by assessing the latest challenges associated with technological advancements and the emerging challenges of technological innovation. These proposals strive to establish a more coherent framework that makes it easier for entities subject to AML/CFT to comply, especially those engaged in cross-border activities.⁹³ The payment sector is going through a significant transformation. By embracing innovation, these further measures will support innovation momentum while guarding the industry against being undermined by financial crime. This legislative package will supplement the fight against AML/CFT for IPs further.

⁹¹ 4AMLD. Chapter I, II and IV.

⁹² Commission, 'Keynote speech by Commissioner McGuinness at European Payment Institutions Federation (EPIF) Conference' (n 12).

⁹³ Commission, 'Beating Financial Crime: Commission Overhauls Anti-Money Laundering and Countering the Financing of Terrorism Rules' (European Commission - Press corner, 20 July 2021) <https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3690> accessed 17 March 2023.

3.2 PSPs requirements for AML/CFT checks

A PSP is a provider of payment services, such as a credit institution, payment institution or electronic money institution.⁹⁴ PSPs are allowed to provide payment services in the EU, as described by Article 4 of the PSD2.⁹⁵ To ensure the uprightness of the internal market, there are rules and requirements for PSPs. PSPs in the EU are subject to AML and CFT obligations under several EU regulations, including the AMLD and the PSD2.⁹⁶ PSPs must have in place an adequate AML/CFT policies and procedures. These procedures should strive to identify, assess and mitigate risks that are connected to their services. Furthermore, these procedures must be reviewed and updated consistently.

Some of the requirements are due diligence, which consists of verifying the identity of customers and beneficial owners and assessing the risk associated with each customer relationship, and reporting suspicious transactions (STR), which involves Member States mandating obliged entities to immediately report any suspicious transaction to the appropriate national authorities, such as the Financial Intelligence Units (FIUs).⁹⁷ PSPs, like a bank, act as gatekeepers and oversee keeping track of their respective transactions.⁹⁸ Therefore, PSPs must monitor their customers and transactions to catch suspicious actions.⁹⁹ PSPs are obligated to keep records, which requires the PSPs to keep specific documents and information for at least five years.¹⁰⁰ Furthermore, PSPs must implement internal control to set and keep a firm and sufficient system of policies, procedures and rules to contain, catch and report suspicious transactions. PSPs must also conduct staff training, which concerns executing a training program for staff on AML and CFT responsibilities, suspicious detection and reporting so that suitable actions are carried out to mitigate risks.¹⁰¹ It is also crucial that PSPs co-operate with authorities, which involves co-operation with national authorities, involving FIUs and supplying them with relevant knowledge concerning money

⁹⁴ Directive 2015/2366. Annex 1.

⁹⁵ PSD2. Art. 1,4(11).

⁹⁶ De Nederlandsche Bank, 'Transaction Monitoring Requirements for Payment Initiation Services Service 7' (24 November 2022) <<https://www.dnb.nl/en/sector-information/supervision-sectors/payment-institutions/integrity-supervision/transaction-monitoring-requirements-for-payment-initiation-services-service-7/>> accessed 14 March 2023.

⁹⁷ 4AMLD. Art. 33.

⁹⁸ De Nederlandsche Bank, 'Transaction Monitoring Requirements for Payment Initiation Services Service 7' (n 96).

⁹⁹ 4AMLD. Art. 13.

¹⁰⁰ 4AMLD. Art. 40.

¹⁰¹ 4AMLD. Art. 46.

laundering and terrorist financing.¹⁰² These were some of the most essential requirements PSPs must guarantee in order to be compliant and to mitigate money laundering and terrorist financing risks that are associated with their services.

3.3 How will the proposal affect compliance with AML/CFT requirements?

According to a FATF report that reviewed new technology for AML/CFT for faster payments, such as IPs, there is a narrower time window to catch criminal activity. Thus, better solutions are required to maximise this window and detect the fraud in real time. The report further indicates that the technology for these fast payments must be “*more dynamic, provide network analysis and operate at customer, institutional, jurisdictional and cross-border levels*”¹⁰³ PSPs must encompass modern anti-fraud solutions by incorporating AML into IPs architecture to ensure a faster, fraud-resistant payment system for all concerned.¹⁰⁴

PSPs must make sure that they have adequate and real-time fraud and money laundering / terrorist financing prevention tools in place before offering IPs, as well as any other forms of payments, to be in complete compliance with the law. The Commission has expressed that the proposal does not diminish PSPs’ responsibilities under current AML/CFT legislation, such as the above mentioned.¹⁰⁵ With the new proposal, PSPs must still adhere to all obligations under relevant legislation, however, the proposal amends explicitly and adds requirements regarding sanction screening and IBAN checks that must be met simultaneously with previous requirements. Specifically, the instant nature of IPs does not affect the obligation from obliged entities to undertake their needed AML/CFT checks and, if required, to file suspicious transaction reports (STRs). These AML/CFT requirements and reports are often ex-post requirements, unlike sanction screening requirements which must be carried out within the 10-second timeframe of the IP transaction. Furthermore, the proposal does not influence how effectively and quickly the FIUs examine such STRs.¹⁰⁶

¹⁰² 4AMLD. Section 3 Cooperation.

¹⁰³ FATF, ‘Opportunities and Challenges of New Technologies for AML/CFT’ 11. <<https://www.fatf-gafi.org/en/publications/Digitaltransformation/Opportunities-challenges-new-technologies-for-aml-cft.html>> accessed 5 May 2023.

¹⁰⁴ ‘The Latest Trends in Instant Payments and How They Impact Banks’ (n 82).

¹⁰⁵ Commission, ‘Questions and Answers on the Commission’s proposal to promote euro instant payments.’ (n 5).

¹⁰⁶ *ibid.*

3.4 Payers concerns about security of IPs regarding fraud, errors and mistakes

Credit transfers, both IPs and regular, may be delivered to a payee that the payer wanted to avoid obtaining. This may result from fraud or errors caused by the payer, such as incorrectly inputting the payee's account number. The latter can entail illegal impersonation, such as when a fraudster completes the payment in place of a legitimate payer due to a cyberattack or the theft of the payment instrument. Fraud and errors for IPs can also be result of an unlawful action that takes place before an honest payer completes the payment (pre-payment fraud).¹⁰⁷ Lately, there has been an expansion in fraud not contained by the existing fraud prevention efforts established on strong customer authentication.¹⁰⁸ Strong customer authentication measures comprise an authentication derived from using two or more independent components classed as knowledge¹⁰⁹, possession¹¹⁰ and inherence¹¹¹. If one of those components is breached, it should not compromise the trust in the others.¹¹² In some instances, PSUs may face financial losses because they provided incorrect details to their PSP concerning the beneficiary. As demonstrated in the PSD2, PSPs are not liable for any losses the payer suffers if a payment transaction is conducted employing the beneficiary's IBAN, which the payer provided.¹¹³ Multiple fraud and mistakes could be avoided if the PSPs would check and ascertain if the beneficiary's name and IBAN match each other and alert the payer in the case of dissimilarities.

3.4.1 Payment frauds

Payment frauds occur when the criminal can carry out the payment transaction in place of the legitimate payer. Fraudsters can achieve this through theft or cyberattack for example.¹¹⁴ The PSD2 addresses payment fraud, with specific emphasis on Strong Customer Authentication (SCA) and PSPs' responsibility for unauthorised transactions.¹¹⁵

¹⁰⁷ SWD (2022) 546 final (n 19). 21.

¹⁰⁸ Commission, 'Questions and Answers on the Commission's proposal to promote euro instant payments:' (n 5).

¹⁰⁹ Knowledge, meaning something solely the user knows.

¹¹⁰ Possession, meaning something solely the user possesses.

¹¹¹ Inherence, meaning something that the user is.

¹¹² PSD2. Art. 4(30).

¹¹³ Commission, 'Questions and Answers on the Commission's proposal to promote euro instant payments:' (n 5).

¹¹⁴ SWD (2022) 546 final (n 19). 86.

¹¹⁵ PSD2. Art. 73,74.

3.4.2 Pre-payment frauds

Pre-payment frauds occur when the criminal manipulates the legitimate payer, and the payer subsequently makes a payment in compliance with payments legislation. When reviewing feedback from customer organisations, recently many users have been tricked into transferring funds using credit transfers to fraudulent accounts.¹¹⁶ These types of fraud, which entails manipulating the payer, are not prevented by any provisions in PSD2, such as the SCA¹¹⁷, which aims to make sure that the transaction is requested by the payer itself.

Various Authorised Push Payment frauds (APP frauds) affect credit transfers, involving invoice frauds, where the invoices are intercepted and the fraudster's merchant account number is substituted, and numerous types of impersonation scams. Impersonation scams can include, for example, CEO frauds, where an e-mail demanding payment appears from the payer's employer, and phone spoofing, where the scammer impersonates bank staff and demands that the payer transfers funds to a different account due to "fake" security bases. There are more refined APP frauds, such as when the payer is tricked into authorising a credit transfer (regular or IPs). This can be done by manipulating the payer directly, such as deceiving the payer into assuming he is dealing with an actual payee or even an agent of his PSP. Such fraud happens before the financial transaction is carried out.

The EBA has uncovered that, compared to other payment instruments, credit transfers (both regular and IPs) are where fraudsters are most likely to abuse the payer.¹¹⁸ Founded on fraud statistics gathered from EBA for 18 EEA countries, the average fraud rate for all credit transfers in value in the second half of 2020 was 0.0011%, of which 43% were brought on by manipulating the payer to start SCA-approved transactions. Based on these analyses, the total amount of APP fraud for all SEPA euro credit transfers in the EU in 2020, including IPs, is predicted to be roughly EUR 323 million.¹¹⁹ Cross-border credit transfers, both within and without EEA, have shown a higher

¹¹⁶ The European Consumer Organisation, 'Consumers and Instant Payments Answers to the Commission's Consultation on the Content of a New Legislation' (n 53). 4.

¹¹⁷ PSD2. Art. 97.

¹¹⁸ European Banking Authority, 'Discussion Paper on the EBA's Preliminary Observations on Selected Payment Fraud Data under PSD2, as Reported by the Industry' (EBA/DP/2022/01, 17 January 2022) 23.

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Discussions/2022/Discussion%20Paper%20on%20the%20payment%20fraud%20data%20received%20under%20PSD2/1026061/Discussion%20Paper%20on%20the%20EBA%27s%20preliminary%20observations%20on%20selected%20payment%20fraud%20data%20under%20PSD2%20as%20reported%20by%20the%20industry.pdf accessed 1 April 2023.

¹¹⁹ *ibid.* 11.

total fraud rate than domestic credit transfers, up to 20 times higher.¹²⁰ Presently, no EU payments legislation precisely covers these frauds to safeguard payers from illegal operations, neither concerning more traditional payment procedures nor more recent ones, such as IPs. Similarly, no ex-post remedy is provided in EU payments legislation for any payer errors when entering the IBAN.¹²¹ Furthermore, in accordance with PSD2¹²², the PSP that executes a credit transfer, regular or IPs, has no legal responsibility to ensure that the name of the payee provided by the payer is correct. Likewise, the PSP will not be liable if the payment ends up at the wrong account due to these reasons. This scenario might occur when the payer makes errors or for the payer being a victim of specific types of fraud.¹²³

3.4.3 Mistakes

Besides frauds, mistakes can also happen when the payer manually enters the IBAN number, which has a maximum length of 28 characters, which might result in errors. The IBAN is based on an incorporated check digit method in the IOS standards, which makes it possible to avoid most typing mistakes. Check digits can lower the danger partially but not completely. For instance, a payer mistake might result in an IBAN that is legitimate and coherent but belongs to a different beneficiary. Further, mistakes can happen due to human errors, such as having an employee employ the incorrect client file.¹²⁴

A common assumption amongst payers is that even in pre-payment fraud or mistakes concerning IBAN information, they can cancel or reverse such transactions when utilising more traditional slower credit transfers. However, they cannot do so concerning IPs, which are undoubtedly extensively faster. PSPs have no legal duty to stop, cancel or reverse a payment demand issued by the payer to preserve the stability and predictability of payments. Such cancellation can only be negotiated by a written contract, most likely in exchange for a fee. This would be done between the PSU and the relevant PSP.¹²⁵ This differentiates from refunds, which can be delivered as a new transaction paid from the original payee back to the original payer. Some payment methods offer such return alternatives. The only refund option provided by legislation relates to direct debits since, in these cases, the payer has restricted power over when and how much funds would be taken out of

¹²⁰ SWD (2022) 546 final (n 19). 87.

¹²¹ *ibid.* 21.

¹²² PSD2. Art. 88 (which is applicable to every type of payment transaction completed) between two accounts (IPs included).

¹²³ SWD (2022) 546 final (n 19). 86.

¹²⁴ *ibid.* 87.

¹²⁵ PSD2. Art. 80(5).

the account by the payee.¹²⁶ Regarding the risks of fraud or errors and legal guarantees of recovering funds, there is little distinction between regular credit transfers and IPs. Even so, the unexplored nature of IPs, their fast pace and higher margins for fraud and mistakes may cause payers worries concerning the security of IPs. This would lead to lowered IP uptake, even when they are a possible alternative. These worries, valid or not, appear to be a factor in the slow uptake of IPs where they are an option. The need to build a trust with consumer and businesses is essential in encouraging more widespread uptake of IPs.¹²⁷

3.5 How will the system work in practise?

The proposal adds two requirements regarding security of IPs, Article 5(c) and Article 5(d). With Article 5(c), the proposal mandates that all PSPs offering euro IPs provide the IBAN name check service. However, it is up to the PSU to employ this service, which involves reviewing and notifying the payer of any dissimilarities before the IP transaction is authorised. Where a mismatch is noticed, the payer will receive a notification concerning the potentially damaging outcomes of proceeding with the transaction.¹²⁸ It is required by the proposal that this service is accessible to all PSUs. However, the proposal does not limit PSPs from charging a fee for this new service. One Member State currently offers this service for free and has successfully managed fraud and errors employing this approach. PSUs not wanting to use this service can choose not to – it will likely depend on what each PSP will charge.¹²⁹ As regards to Article 5(d), PSPs must confirm daily whether their clients are designated persons or entities subject to EU sanctions. In addition, they must immediately perform this check after any new or revised designations occur. Utilising this harmonised approach, such as the proposal should bring, provides PSPs more legal certainty and eliminates frictions that impede the efficient performances of IPs in euro while guaranteeing the sanctions screening remains adequate. If a PSP for either the payer or payee fails to perform the required verification and then partakes in conducting an IP for a payer or payee that is subject to EU sanctions, it will be accountable for any financial losses and harms incurred by the other PSP concerned in the payment due to penalties under EU sanctions regulations.¹³⁰

¹²⁶ PSD2. Art. 73.

¹²⁷ SWD (2022) 546 final (n 19). 22.

¹²⁸ ‘The Latest Trends in Instant Payments and How They Impact Banks’ (n 82).

¹²⁹ *ibid.*

¹³⁰ COM (2022) 546 final (n 2). 11.

3.6 Final remarks

IPs in Euro can improve efficiency and the customer experience, AML/CFT compliance measures must be however be carefully reviewed and adapted. Financial institutions and regulators must cooperate and utilise technology to effectively combat financial crime to balance enabling IPs and guarantee strong AML/CFT controls. For IPs made either in-person or remotely to be accepted widely, according to BEUC, consumer protection laws must be strengthened. The industry appears to be becoming more conscious of the need for more assistance in supporting payers to protect themselves against fraud and errors made before payments.¹³¹

This chapter has provided the understanding of what PSP must do to be compliant to the AML/CFT legal framework in the EU and what problems IPs are in this regard. The provisions as currently written are aimed at combating fraud and mistakes in an efficient way. The proposal is consistent with the requirements of AML/CFT, and the speed of IPs does not undermine the PSPs' ability to ensure appropriate AML/CFT checks. The presented set of new requirements complete each other and, taken concurrently, comprise an effective package of actions that would, in the most effective manner, both increase the supply of euro IPs by PSPs and facilitate a safer environment for users against fraud and mistakes. However, the new requirements must also be practical and proportionate, so they are workable for PSPs. There have been some worries that without amendments, the new proposal could impose challenges when ensuring effective AML/CFT controls. These challenges will be reviewed in detail in the following chapters.

¹³¹ The European Consumer Organisation, 'Consumers and Instant Payments Answers to the Commission's Consultation on the Content of a New Legislation' (n 53). 4.

4 Article 5(c) - IBAN name check

This chapter will analyse the new provision of the proposal, Article 5(c), in detail, which adds in account identifier name check requirements. The author will give a general introduction of the service as well as reviewing previous problem of utilising it. Furthermore, a detailed explanation of the article will be provided. Moreover, AML/CFT problems in this regard of the provision will be highlighted. The author will then analyse possible implications with the proposed requirements. This will be done with support from feedback from relevant stakeholders that have pointed out various suggestions for amendments. Finally, a general discussion of the chapter findings and results will be provided. This chapter aims to review to what extent the requirement tackles fraud and furthermore, analyse if the new requirement is practical and proportionate, so they are workable for PSPs. It is important that the proposal finds the right balance between addressing the threads of fraud and mistakes, while not creating excessive regulatory burden on PSPs.

4.1 In general

Consumer security and fraud prevention measures are critical components in payments, IPs included. PSPs have already implemented complex and developed fraud protection systems, which they constantly modify and enhance. PSPs likewise educate their consumers on avoiding fraud, particularly emerging types of fraud.¹³² For PSUs to have more trust in and ensure the use of IPs, they must be secure. Due to fraud and errors, payers wishing to send a credit transfer to a specific payee may provide a payment account identifier that does not match an account kept by that payee.¹³³ The proposal adds a requirement that should boost consumers' trust in IPs. The requirement obligates providers to confirm that the beneficiary's name and bank account number (IBAN) provided by the payer match.¹³⁴ IBAN name check solutions are not common¹³⁵; and therefore, there are many things that need to be taken into account before obligating PSPs to provide this service. According to this new requirement, PSPs must provide a service that enables PSUs to be notified in the event of an IPs transfer when a payee's name and

¹³² Commission, 'Feedback from: Italian Banking Association' (2023) F3374222 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F3374222_en> accessed 16 April 2023. 8.

¹³³ COM (2022) 546 final (n 2). 14.

¹³⁴ Commission, 'Questions and Answers on the Commission's proposal to promote euro instant payments:' (n 5).

¹³⁵ SWD (2022) 546 final (n 19). 47.

payments account identifier differ. This service would be available for the PSU to employ voluntarily.¹³⁶ IBAN name checks strive to decrease specific types of accidentally misdirected payments and APP fraud by matching the name on the recipient's account. This enhances security of IPs and gives users the confidence to send payments to the correct place.¹³⁷

According to the PSD2¹³⁸, the payee's unique identifier is the only factor in deciding whether the transaction was accurately completed, and PSPs are not mandated to ensure the payee's name is correct. When carrying out an IP, there is insufficient time for the payer to detect fraudulent activity or mistakes and attempt to retrieve the money before it is transferred to the payee's account. Accordingly, PSPs should verify to see if there is any mismatch between the payee's unique identification and the name that the payer has provided. If there is, they should let the payer know before completing an IP.

4.2 The proposal's way

Article 5(c) adds a new requirement in the proposal, that PSP has to offer their customers the possibility of checking that the recipient's name corresponds to the IBAN, the bank account number. According to the first paragraph of Article 5(c)(1), when performing an instant credit transfer, the payer's PSP must confirm if the payment account identifier and the payee's name supplied by the payer match. In the case of any discrepancies noticed, the PSP must inform the payer and display the extent of the difference. It is a requirement that PSPs deliver this service instantly after the payer has delivered to its PSP the payment account identifier of the payee and the name of the payee before the payer is presented with the opportunity to confirm the transfer.¹³⁹ Article 5(c)(2), ensures that payers are not prevented from authorising the IP concerned despite a detection and notification of a discrepancy being detected. Article 5(c)(3) ensures that PSPs must make sure that PSUs have the option to decline receiving this service. Additionally, PSPs must guarantee that PSUs who choose not to get the service can choose to do so. Article 4(c)(4) states that when a transaction is authorised despite a detected

¹³⁶ Commission, 'Feedback from: Italian Banking Association' (n 132). 8.

¹³⁷ 'Confirmation of Payee Response to Our Call for Views CP21/6' (Payment Systems Regulator, October 2021) 3. <<https://www.psr.org.uk/media/ktonkca3/psr-rp21-1-confirmation-of-payee-response-paper-oct-2021.pdf>> accessed 25 April 2023.

¹³⁸ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on Payment Services in the Internal Market, Amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and Repealing Directive 2007/64/EC [2015] OJ L 337.

¹³⁹ COM (2022) 546 final (n 2). Art 5(c)(1).

and reported discrepancy, or when a PSU chooses not to use this service, the funds may be sent to a payment account that is not owned by the payee that the payer has specified and PSPs must inform them of this. When PSUs opt out of receiving the service, PSPs are required to send this warning information at the same time as the notification of discrepancies. Article 4(c)(5) states that regardless of the PSU interface the payer uses to submit a payment order for the IP, they will still be able to get the service mentioned in paragraph 1. Finally, Article 4(c)(6) lays out the implementation dates for the service. PSPs within a Member State with euro currency must comply with the provision 12 months after entry while PSPs in Member State where the currency is not euro must comply with the provision 36 months after the date of entry into force.

Commissioner McGuinness stated in her European Payments Institutions Federation Conference speech that this should strengthen consumer protection and supply an additional layer of security.¹⁴⁰

4.3 AML/CFT concerns

It can be a concern that a very static IBAN name check will have a negligible impact on preventing fraud, particularly with the fast-evolving essence of fraud. In practice, a static IBAN name check would consider fraud scenarios like scams and whaling. However, it ignores other fraud scenarios like phishing, malware and swap IBAN. As a result, the IBAN name check cannot be viewed as the only solution for all types of fraud, and fraud issues need to be handled more comprehensively.¹⁴¹ Constructing an IBAN name check at the EU level would be a significant task for the industry and individual PSPs. Standards for exchange and uniform regulations amongst PSPs must be constructed at the industry level using a scheme-like method. This will then require to be created and executed at the level of individual PSPs into a service furnished to PSUs. Therefore, it should be considered that developing an IBAN name check will require time and resources.¹⁴² This task might be better achieved by leaving it up to a third entity, such as the EPC, to develop the rules and technical specifications needed to supply the IBAN name check service. Considering the expense and complication of such a task, the author believes some amendments might be required.

¹⁴⁰ Commission, 'Keynote speech by Commissioner McGuinness at European Payment Institutions Federation (EPIF) Conference' (n 12).

¹⁴¹ Commission, 'Feedback from: Italian Banking Association' (n 132). 8

¹⁴² *ibid.*

4.4 Possible implications

There are several practical implications of the proposed requirements in Article 5(c) that, if unaddressed, could result in general customer confusion when initiating IPs and work against the Commission's objectives of the proposal.¹⁴³ It should not be understated that developing an IBAN name check will need time and resources. Multiple operational, technological and legal matters must be assessed and managed. Many modifications are required due to the complexity and expense of the project, which various parties across the EU demonstrate in their feedback on the European Commission's proposal for an Instant Payment Regulation.¹⁴⁴ The author will go over the relevant challenges the provision brings in this regard.

4.4.1 Obligations

Article 5(c)(1) states that the obligation lies on the payee PSPs to satisfy the legal responsibility of the IBAN name check. This implies that the payer PSP counts on the payee PSP to carry this obligation out. In their feedback, the Italian Banking Association (ABI) believes that both parties should be held accountable by placing a responsibility on the payee PSP to react to the payer PSP's request on whether the name and IBAN match, extending the obligation to both sides.¹⁴⁵ The Electronic Money Association (EMA) supports this belief further with their feedback, where they find it essential that the payee's role as currently drafted should be amended. They express that given that the payer's PSP would be unable to complete its obligation, it is implicit that the payee's PSP will need to help (in some way) with the process to find any discrepancies. Therefore, the EMA recommends that Article 5(c)(1) be changed to clearly state that the payee PSP must receive and react to requests for checks from the payer's PSP.¹⁴⁶ This should help ensure uniform discrepancy recognition practices across all Member States and develop a level playing field for PSPs.

4.4.2 Liability

The wording of Article 5(c)(1) and (4) suggests that PSPs should ensure notification when there is "*any discrepancies detected and the degree of any such discrepancy*". Recital 12 of the proposal additionally describes some

¹⁴³ Commission, 'Feedback from: Electronic Money Association' (2023) F3374226 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F3374226_en> accessed 15 April 2023. 3.

¹⁴⁴ Commission, 'About this Initiative' (n 4).

¹⁴⁵ Commission, 'Feedback from: Italian Banking Association' (n 132). 9.

¹⁴⁶ Commission, 'Feedback from: Electronic Money Association' (n 143). 3.

characteristics of the payee's name that the payer expects to complete an IP to could raise the possibility that the PSPs will encounter a discrepancy. These characteristics include the existence of diacritics or various probable transliterations of names in diverse alphabets, dissimilarities between names repeatedly used and names listed on official identification documents in the case of natural persons, or contrasts between commercial and legal names regarding entities.¹⁴⁷ The IBAN name check could lead to results that are not particular in a match / no match, i.e., it could conduct diverse degrees of dissimilarity that could create confusion and anticipation on the PSUs. To evade this, a change of obligation could be presented where the PSP translates these percentages of differences into a more straightforward message of match / no match / close match to the PSUs – with the result that the PSPs would take responsibility in the circumstance of mistakes and corresponding complaints. It could provoke legal uncertainty and vain disputes to have PSPs provide the degree of discrepancy without any clarification. Additionally, such transcoding would lead to inconsistent PSPs processing in the lack of a standard application. Such inconsistency might raise confusion for PSUs. For example, for one PSP matching, 65% may be considered a close match, while for another PSP, it would be regarded as a no match. Therefore, it might be suitable to amend the provision so that PSPs are only mandated to review whether the IBAN and the beneficiary's name correspond or not.

In their feedback, the ABI suggests that the obligation to provide the degree of discrepancy (recital 12 and Article 5(c)(1)) should be amended. In addition, they bring forth the concept of another solution, which would be to have in place standardised rules to determine the extent of discrepancies. They further state that a transparent liability framework for the IBAN name check service is crucial if a PSU approves a payment transaction despite a detected difference. Recital 13 of the proposal states that if a PSU authorises a payment transaction despite the PSP alerted for a discrepancy, the PSP is not liable for the losses. To make it clear that, in line with Article 88 of PSD2, the PSP will not be responsible for the execution of the payment transaction to an unanticipated payee, recital 13's phrasing should be integrated into Article 5(c).¹⁴⁸

4.4.3 Interfaces/channels

The “*PSU interface*” is described in the proposed regulation as “*any method, device or procedure through which the payer can place a paper-based or electronic payment order to its PSP for a credit transfer, including online*”

¹⁴⁷ COM (2022) 546 final (n 2). 14.

¹⁴⁸ Commission, ‘Feedback from: Italian Banking Association’ (n 132). 9.

banking, mobile banking application, automated teller machine, or in any other way on the premises of the PSP”.¹⁴⁹ Article 5(c) stipulates that the checks must be conducted regardless of the PSU interface employed. Having to supply this service for all PSU interfaces, as laid down in the proposal, could be excessive and disproportionate. For example, when examining e-commerce payments or payments at physical POS, the chance of misdirected payments is descending since the payee’s PSP already has a working relationship with the retailer. An additional name check could, consequently, only generate friction, which might confuse consumers and defeat the Commission’s goal of expanding the use of IPs for retail payments. It would not be helpful to obligate an IBAN name check in use cases, and therefore an exemption for these situations could be added in Article 5(b). Likewise, the IBAN name check could be helpful in other contexts of usage, and therefore, it should not be solely attached to the IPs transaction. The ABI points out that the IBAN name check should exclusively be enforced on interfaces with real-time dealings with PSUs.¹⁵⁰ The EMA points out that applying a check to every IPs transaction, on every customer payment channel, that is accessed in every use case is ‘*impractical and unnecessary*’.¹⁵¹ The EMA, thus, suggests adopting the check in payment channels with a risk-based approach. This could be accomplished by incorporating exceptions in Article 5(c) for the name check in access channels for use cases where the threat of misdirected payments is descending, especially for e-commerce and POS channels.¹⁵²

Moreover, according to Article 5(c), all IP transactions must undergo a check, regardless of whether the payer and payee have an established relationship (trusted beneficiary) or whether a check was completed for a prior transaction and the payee’s information hasn’t changed since then. Again, this may lead to excessive checks being carried out, harming the payer’s experience and accomplishing little in reducing fraud. Performing an IBAN name check for transactions involving trusted beneficiaries adds little value; accordingly, there should be an exception. In this regard, the EMA recommends that Article 5(c) be amended to align with a risk-based approach.¹⁵³ This could be done by demanding checks exclusively in the case where IPs are initiated to a new payee (within the necessary access channels) if details about an established payee (the trusted beneficiary) have altered since the prior transaction was completed, or if the payer’s PSP detects a threat of fraud. Additionally, the EMA proposes that Article 5(c) includes explicit exceptions for particular types of transactions.¹⁵⁴ For example, the condition to complete

¹⁴⁹ COM (2022) 546 final (n 2). Art. (5)(b).

¹⁵⁰ Commission, ‘Feedback from: Italian Banking Association’ (n 132). 10.

¹⁵¹ Commission, ‘Feedback from: Electronic Money Association’ (n 143). 3,4.

¹⁵² Commission, ‘Feedback from: Electronic Money Association’ (n 143). 4.

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

checks would not apply to transactions carried out from a bank account where only one account in the payer's name may be used to transfer money or where the transaction is regarding the delivery of merchant acquiring services and more similar situations. PSPs should, however, not be prevented from voluntarily conducting the checks on an exempt transaction based on their risk evaluation of the transaction.

4.4.4 Timelines

Article 5(c)(6) states that PSPs in Member States with euro currency must comply with the provision 12 months after the Regulation's entry into force, and PSPs in Member States with non-euro currency have 36 months. The implementation timeframe must be attainable to allow for efficient implementation and coordination that contains any trouble to customers and does not accidentally redirect fraud risk, for instance, to more undersized companies. The deadlines for the intended implementation that are now envisioned may not be achievable, according to experience from countries where a CoP service has previously been implemented (the UK and the Netherlands).¹⁵⁵ To ensure that the name-matching solutions do not negatively affect the use of IPs, PSPs (and their solution vendors) need time to optimise them. To ensure minimum risk, the EMA suggests allowing for a coordinated testing phase – which is not feasible if the implementation period is not extended.¹⁵⁶

Looking at the CoP journey of the UK in more detail as guidance, they are introducing the CoP service in phases over a more extended period. This has allowed for a “*single technical environment and a single set of rules and standards*”, allowing PSPs to work concurrently.¹⁵⁷ The UK's major banks started using CoP in 2019, but smaller PSPs as well as other smaller operators are still rolling it out and won't be ready to provide the service until 2024 according to the plan.¹⁵⁸ The potential of high initial quantities of false negative results is also stressed by experience in jurisdictions already adopting CoP services. The creation of a CoP service is complicated and needs for collaboration at the national, individual PSP and pan-European level. While some PSPs may be able to use recent investments in API

¹⁵⁵ The CoP is a very similar service to the IBAN name check. However, CoP checks if the name matches the account number, while the IBAN name check ensures that the IBAN provided is associated with the correct name.

¹⁵⁶ Commission, 'Feedback from: Electronic Money Association' (n 143). 6.

¹⁵⁷ Payment Systems Regulator, 'Policy Statement Extending Confirmation of Payee Coverage Response to Consultation CP22/2' (October 2022) 5.

<<https://www.psr.org.uk/media/migeob4s/ps22-3-extending-cop-coverage-oct-2022.pdf>> accessed 5 May 2023.

¹⁵⁸ *ibid.* 6.

interfaces under PSD2, these APIs provide a fundamentally different service than CoP, and there are still many operational, technical and legal issues that will need to be taken into account. Furthermore, the suggested timeline does not consider the strong dependency of many PSPs on vendor solutions to supply a name check service. It is challenging to find vendor solutions with enough bandwidth to support numerous implementations across PSPs and to give them sufficient time to conduct due diligence, procure a solution and onboard a supplier.¹⁵⁹ This could lead to a long queue of PSPs waiting to implement their solution, and it is a risk that the waiting diminishes benefits and endangers poor customer adoption. The EMA points out in their feedback that every wide-scale payment initiative, such as this one, calls for a staged and EU-wide coordinated approach, carefully assessing the effect on all stakeholders concerned. Therefore, they firmly advise extending the implementation timeframe for Article 5(c)(6), as it would enhance the probability of success and lower the chance of unintentional effects for consumers and PSPs. They recommend concentrating the implementation in a matter that provides the best results for customers. Considering the reliance on the market to decide on a pan-European practice for a name checking service, the presence of vendor solutions and the possible effect on IPs services that customers already trust, the EMA believes that it would be appropriate to allow at least 36 months from the time of entry into force for the market to adopt and implement this complex solution.¹⁶⁰

4.4.5 Misuse

There is a risk that the provision and IBAN-name check could be misused. This may occur when several requests are made to the service quickly to determine whether a particular person is the account owner. Such misuse carries serious abuse concerns because anyone can use it to determine if a natural or legal person owns a specific payment account, which goes beyond the European Commission's declared goal of fraud prevention. Because the service does not mandate a real-time transfer, the proposed legislation does not appear to provide many practical barriers to prevent such an abuse study of client data. This could expose consumers to unknown threats, notably in the context of social engineering or in light of other abusive intents from third parties.¹⁶¹ Therefore, the proposal should include measures to avoid abuse of the method for checking account numbers and names.

¹⁵⁹ Commission, 'Feedback from: Electronic Money Association' (n 143). 6.

¹⁶⁰ Commission, 'Feedback from: Electronic Money Association' (n 143). 6.

¹⁶¹ Commission, 'Feedback from: Italian Banking Association' (n 132). 11.

4.4.6 More flexibility

The proposal only requires checking the correspondence between the payee name and IBAN.¹⁶² This part could be more flexible by allowing for other approaches, such as checking tax numbers. Allowing for a more adaptable approach would help the end goal of the provision, which is confirming that the payee is the intended one.¹⁶³

4.4.7 Charges for the service

As seen in the proposal, PSPs may charge for the use of the service and PSUs can choose whether to use this service or not.¹⁶⁴ However, in the provision itself, it is noted that the ability to charge is not referenced in the proposed regulation recitals or incorporated in Article 5(c). It could provide more clarity to insert the ability to charge for using IBAN name check service in Article 5(c). This would support consistent application and ensure a cohesive approach amongst PSPs. Likewise, it needs to be clarified in the Explanatory Memorandum to which PSPs can charge the fee for the service. It could be unclear whether it is the payer's PSP when sending the check or the payee's PSP when they respond. The proposal should be apparent on which PSP, or if both, can add on fee to their PSUs for the IBAN check. The EMA supports that PSPs may charge for the service as they consider that the expenses and benefits of supplying the IBAN name check may be spread differently to all PSPs.¹⁶⁵

4.4.8 Implementation approach and costs

In the Commission's recommendation in the impact assessment, PSPs can determine the implementation approach for the IBAN name check service.¹⁶⁶ PSPs might employ solutions presently offered by fintech companies in some Member States, potentially growing the number of service providers in that sector. A broad industry-wide arrangement or scheme, which could draw on developments assembled in the framework of current industry-wide initiatives, may also be used to execute solutions collaboratively. This could implicate potential changes to the SCT Inst. Scheme, which has been under consultation. These schemes are revised every two years to consider the

¹⁶² COM (2022) 546 final (n 2). Art. 5(c)(1).

¹⁶³ Commission, 'Feedback from: Italian Banking Association' (n 132). 11.

¹⁶⁴ COM (2022) 546 final (n 2). 10.

¹⁶⁵ Commission, 'Feedback from: Electronic Money Association' (n 143). 5.

¹⁶⁶ SWD (2022) 546 final (n 19). 48.

market demands and the development of technical standards.¹⁶⁷ Standard practice and harmonised rules between PSPs are essential to guarantee interoperability across the current name check services and provide a similar payer experience across all Member States. It is difficult to estimate the implementation costs accurately because IBAN name checks solutions are relatively uncommon (used on a larger scale only in one Member State or offered by individual banks in others). Costs would vary depending on the implementation strategy selected by PSPs, which the legislative proposal would not mandate. The extent of integration of such solutions with other PSP fraud prevention practices will also play a part. Looking at the solution and approach taken in the Netherlands, PSPs were required to carry out two main tasks to implement the solution. The first task concerned integrating API, allowing account name verification into their online and mobile banking systems. The second task involved modifying their customer databases to confirm that the payment information provided by the payer could correspond with the payee's PSP customer data utilising an algorithm.¹⁶⁸ Along with these one-time investment expenses, the service provider also assesses fees for each check completed. In addition, PSPs will also have continuous maintenance and support expenses. The level of the one-off implementation costs and the recurring charges and the size of the PSP appear to be correlated, according to data collected from the UK and the Netherlands. The one-off implementation costs ranged between 10,000 euros and 2 million euros. The large gap is explained because some bigger PSPs have considerably more legacy systems that require adaptations, while more undersized PSPs have newer, better agile technological abilities. The ongoing costs ranged from a few thousand euros to 350,000 euros per year, with expenses paid to the service provider for each completed check making up for most of that sum.¹⁶⁹

PSPs will likely draw on their earlier investments and understanding acquired while creating open banking APIs under PSD2, which should decrease the costs of implementing this alternative. The expenses might also be decreased by enlarging the measure's applicability because the implemented solutions could confirm the payee of regular credit transfers (indicating synergies across other products delivered by the same PSP). Additionally, with the strengthened consumer protection leading to increased use of IPs, PSPs will be able to create and employ more advanced fraud prevention technologies.

¹⁶⁷ European Payment Council, 'Public Consultation on the Change Requests for the 2023 SEPA Payment Scheme Rulebooks' (Press Release, 13 September 2021) 1. <https://www.europeanpaymentscouncil.eu/sites/default/files/kb/file/2021-09/ECP190-21%20_Press%20Release_%20Public%20consultation%20on%20the%20change%20requests%20for%20the%202023%20SEPA%20payment%20scheme%20rulebooks_0.pdf> accessed 4 May 2023.

¹⁶⁸ SWD (2022) 546 final (n 19). 48,49.

¹⁶⁹ *ibid.*

Finally, operational savings would also partially neutralise the expenses by reducing the volume of complaints that PSPs would have to process. These complaints may be expensive to investigate and may even incorporate goodwill payments.¹⁷⁰

It is estimated that a significant number of PSPs would become subject to implementation costs.¹⁷¹ However, the implementation costs might balance out due to more infrequent complaints and refund requests for fraud and misdirected IPs. Society as a whole would gain from the decline in fraud. As the impact assessment discovered, the proposal states that offering IPs for PSPs who don't already do so and providing a way to check that the payee's IBAN matches the payee's name would incur one-off implementation costs. They further state that these costs would be proportionate and limited for most PSPs and in addition, ongoing expenses would be limited. Nevertheless, the Commission believes that the overall cost effect for PSPs would be neutral over time. Substantial savings would result from the proposed new approach for sanction screening, such as reduced time and effort consumed following up fraud and errors and decreased costs associated with handling cash and cheques. In addition, the Commission believes this will strengthen the ability to compete better with the incumbents in the PoI market by delivering innovative IP-based PoI solutions, counting cross-border payments.¹⁷²

4.5 Discussion

This provision can potentially raise the payer's trust in euro IPs regarding the risk of fraud and errors. By adding this obligation, the rate of transactions sent to an incorrect payee is anticipated to be reduced.¹⁷³ This approach has been deemed successful in Member States which have already offered this service with good results. The Netherlands has successfully enforced an IBAN name check solution since 2017, which has substantially reduced fraudulent activities such as invoice fraud by 81% and misdirected payment caused by payer errors by 67%, according to SurePay, the Dutch IBAN name check inventor and provider.¹⁷⁴ The number of prevented fraud cases rises as more individuals come to trust the service. SurePay's CEO and co-founder David-Jan, stated that this service sends out a no-match warning 100,000 times a day. Fraud will nonetheless exist despite this fraud prevention, however, the risk is mitigated significantly by warning the users in case of a no match.

¹⁷⁰ For example, payments from PSPs to minimize reputational harm.

¹⁷¹ SWD (2022) 546 final (n 19). 48.

¹⁷² COM (2022) 546 final (n 2). 7.

¹⁷³ SWD (2022) 546 final (n 19). 46.

¹⁷⁴ 'Factsheet' (Surepay) <<https://surepay.nl/en/about-surepay/factsheet/>> accessed 27 April 2023.

Similarly, in the UK, on a trend-adjusted basis, for the largest PSPs delivering the CoP service, there was a significant decrease in numbers seen between Q3 2019 and Q4 2020. By utilising the CoP service, payments sent to the incorrect payee were reduced by 28% in value and by 31% in the number of transactions.¹⁷⁵ It should be observed that not all PSPs in the UK use this service, which indicates that the reduction would be even higher if all PSP would implement it.¹⁷⁶ Where PSP do not offer CoP service in the UK, it creates the situation of where fraudsters can easily figure out which PSP don't implement the service and direct their frauds to the customers of those PSPs. The UK authorities have considered encouraging more small, non-participating PSPs to start providing the service to their customers in light of the practical outcomes of the COP's service.¹⁷⁷ This affirms that for the solution considered in Article 5(c) of the proposal to be helpful, it must be mandated for all PSPs offering IPs.

Consumers who participated in the open public consultation in a resounding majority of 93% found it crucial to have protections against the possibility of fraud or error, such as IBAN name check service that could be used for free or at a cost. Consumers would have more confidence that their payments are going to the correct recipients' thanks to a procedure like this, which would meet their expectations. The reaction from consumer organisations in the UK has further shown support.¹⁷⁸ The European Consumer Organisation ("BEUC") considers the absence of a solution such as CoP or IBAN name check to be absurd and they find it essential that this measure should be compulsory.¹⁷⁹ This solution is likely to be supported by the Member States, as well as the Council of the European Union, where point 16 of the ECOFIN conclusions that was issued on 22 March 2021 supported the belief that CoP functionality would improve consumers' and businesses' trust in IPs while addressing AML/CFT risks.¹⁸⁰

¹⁷⁵ SWD (2022) 546 final (n 19). 46.

¹⁷⁶ 'Authorised Push Payment (APP) Scams Call for Views' (Payment Systems Regulator, February 2021) <https://www.psr.org.uk/media/5yvpidyc/psr_cp21-3_app_scams_call_for_views_feb-2021.pdf> accessed 27 April 2023.

¹⁷⁷ 'Confirmation of Payee Response to Our Call for Views CP21/6' (n 137). 21.

¹⁷⁸ *ibid.*

¹⁷⁹ The European Consumer Organisation, 'Consumers and Instant Payments Answers to the Commission's Consultation on the Content of a New Legislation' (n 53). 7.

¹⁸⁰ Council of the European Union, 'Council Conclusions on the Commission Communication on a Retail Payments Strategy for the European Union' (22 March 2021) <<https://data.consilium.europa.eu/doc/document/ST-7225-2021-INIT/en/pdf>. > accessed 18 May 2023.

4.6 Final remarks

As with any significant proposed change, some areas require further consideration, including clarity concerning the provisions. It is clear the proposal aims to tackle fraud with the new provision; however, the requirement must be suitable for PSPs to achieve the objectives. Aspects of the proposal as currently written might have unforeseen implications that would negatively affect the security of IPs.

Established on the outcomes noticed in the Netherlands and the UK markets, it is conceivable that the IBAN name check service will effectively prevent errors and reduce specific kinds of APP scams, particularly invoice fraud. For other types of fraud, such as impersonation scams, it could be that this will not work as well in practice. In the case of impersonation scams, it is more imaginable that the payer will ignore the notice of no match and resume with the payment. In addition, it must be recognised that this service might not prevent fraud in all circumstances where the victim's name corresponds to the account. For instance, where fraudsters use money mules to fool innocent people into utilising their bank accounts to launder stolen funds or when accounts are opened utilising stolen identities.¹⁸¹ Despite these weaknesses, a service that allows a payer to instantly verify that the IBAN and the payee's name match before authorising an IP would be a vital element of measures to prevent errors and fraud and to safeguard consumers. Most importantly, it would stimulate consumers' and businesses' trust in IPs.¹⁸² It is evident that there is an immense ability to reduce losses incurred in the EU resulting from Article 5(c). However, anti-fraud rules need to contribute to innovation. IBAN name checks operate agreeably, but additional robust tools should be materialised with the rapid changes technology brings. If the legislation were less prescriptive, it would enable other solutions that deliver customers the same safety without causing as much inconvenience.¹⁸³

¹⁸¹ SWD(2022) 546 final (n 19). 47.

¹⁸² *ibid.*

¹⁸³ The European Digital Payments Industry Alliance, 'EDPIA Views on the European Commission Proposal on Instant Payments' (December 2022) <<https://www.edpia.eu/wp-content/uploads/2022/12/EDPIA-views-on-the-EC-instant-payments-proposal-December-2022.pdf>> accessed 28 April 2023.

5 Article 5(d) - Sanction screening

This chapter aims to review to what extent Article 5(d) of the proposal tackles fraud. This chapter will analyse the new provision of the proposal, Article 5(d), in detail which mandates PSPs to carry out screening checks daily of their client base. The author will give a general introduction of the service as well as reviewing previous problem of utilising it. Furthermore, a detailed explanation of the article will be provided. Moreover, AML/CFT problems in regards of Article 5(d) will be highlighted. The author will then analyse possible implications will the proposed requirements to examine if added requirements create excessive regulatory burden on PSPs. As in chapter 4, this will be done with support from feedback from relevant stakeholders that have pointed out various suggestions for amendments. Finally, a general discussion of the chapter findings and results will be provided.

5.1 In general

Sanction screening is a measure employed to detect and prevent financial crime and is a practical instrument to minimise financial risk exposure. Sanction screening compares an organisation's records against data lists to catch any resemblances that reveal that records contain sanctioned parties. Organisations mainly adopt sanction screening to comply with domestic- and international legal requirements and lower risk by detecting and avoiding damaging business counterparties. In addition, sanction screening is a critical element of a thorough risk-based strategy. It is a significant step in, for example, knowing your customer (KYC), anti-money laundering and countering terrorism processes.¹⁸⁴ Sanctions are a vital instrument in the EU's common foreign and security policy, which can interfere with containing conflict or reacting to existing or arising problems. The Council of the EU can adopt, renew, or lift sanctions regimes established on recommendations from the High Representative of the Union for Foreign Affairs and Security Policy.¹⁸⁵

Currently, no explicit legislation in the EU establishes the method for PSPs to comply with their obligations concerning EU sanctions. Consequently,

¹⁸⁴ 'The Complete Guide to Sanctions Screening: Everything You Need to Know' (12 May 2022) <<https://www.nomentia.com/blog/the-complete-guide-to-sanctions-screening>> accessed 14 May 2023.

¹⁸⁵ Commission, 'Overview of Sanctions and Related Resources' <https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources_en> accessed 14 April 2023.

when cross-border transaction IPs occur, PSPs use transaction-based screening, which results in numerous alerts that the payee or payer may be on an EU sanction list. In recent feedback from PSPs, the proportion runs from 0.4% to 9.4%, compared to regular credit transfer, which is almost 0%.¹⁸⁶ This high percentage of alerts caused by transaction-based screening is the primary cause for rejecting initiated euro IPs. PSPs cannot complete the transaction immediately due to the time required to verify the alert. This results in the payment not being executed, or when it is, it is no longer executed as IPs but rather as regular credit transfers. This could be more efficient, considering that approximately 99.8% of these cases are false positives. By operating transaction-based screening, there is a significant volume of inaccurately flagged and subsequently rejected euro IPs, creating operational difficulties for PSPs who wish to offer IPs to their customers. This challenge has deterred PSPs across different Member States from offering cross-border IPs, leading to a slower uptake. In addition, this challenge undermines the trustworthiness and predictability of IPs among users, leading to a reduced adoption of IPs. There are two noteworthy obstacles regarding sanction screening for cross border IPs: i) the time constraints for manual intervention and ii) the prohibitive cost of manually assessing warnings for IPs.¹⁸⁷ Likewise, the real-time nature of IPs present obstacles for fraud prevention. A faster AML screening process is required to handle all IPs.¹⁸⁸

Prior issues with sanction screening for IPs have been high false positive matches and rejection rates. AML/CFT-related rejections are notably more recurring than domestic transactions when conducting a cross-border IP.¹⁸⁹ This can be due to insufficient time to investigate these transactions, a lack of compliance with multi-jurisdictional requirements, and a conflict of law. There have been consistently enhanced screening instruments and methods developed over time, with efforts to optimise them even before the implementation of SCT Inst. Nevertheless, SCT Inst revealed problems surrounding the underlying sanctions screening framework unfitting to accommodate real-time processing demands.¹⁹⁰

¹⁸⁶ SWD (2022) 546 final (n 19). 20,21.

¹⁸⁷ *ibid.* 44.

¹⁸⁸ Commission, 'Feedback from: DIGITALEUROPE' (2023) F2223305 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F2223305_en> accessed 17 April 2023.

¹⁸⁹ Commission, 'Feedback from: Italian Banking Association' (n 132). 11.

¹⁹⁰ Anni Mykkänen and Alessia Benevelli, 'ECSAs Ad-Hoc Task Force on Sanctions Screening and Instant Payments' (7 December 2021) <<https://www.ecb.europa.eu/paym/groups/shared/docs/49f55-ami-pay-2021-12-07-item-2.3-instant-payments-and-sanctions-screening.pdf>> accessed 16 April 2023.

5.2 The proposal's way

Article 5(d) of the proposal is in regards of screening of PSUs with regard to Union sanctions in case of instant credit transfer. Paragraph 1 of article 5(d) states that: “PSPs executing instant credit transfer shall verify whether any of their PSUs are listed persons or entities”. Furthermore, it is explained that PSPs should carry out this verification immediately after the entry of any new or amended restrictive measures adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available, and at least once every calendar day.¹⁹¹ In paragraph 2 of article 5(d), it is stated that when executing an IP, the PSP of the payer and the PSP of the payee involved in the transfer should not verify if the payer or the payee's payment accounts are associated with any restricted or sanctioned individual or entities, except for the verification cited in paragraph 1. Paragraph 3 of article 5(d) proceeds to explain that if a PSP fails to conduct the verifications mentioned in paragraph 1 and completes an IP, resulting in another PSP involved in the same transfer being unable to freeze assets of listed persons or entities, the first PSP will be liable to compensate for the financial damages caused to the other PSP. The financial damages include penalties imposed on the other PSP due to restrictive measures found in Article 215 TFEU, such as asset freezing or prohibition of making funds or economic resources available. Paragraph 4 of article 5(d) states that PSPs must comply with this article 6 months after entry into force.

5.3 AML/CFT concerns

The author supports the Commission's aim to foster a successful way to provide PSPs compliance with the EU sanction regime without compromising the speed of IPs delivery. However, the new sanction method raises some AML/CFT concerns. The lack of transaction-based IPs screening could undermine the measures to combat money laundering and terrorist financing in the EU. This could lead to failure to specify suspicious transactions. The layering phase of money laundering could accelerate due to the capability to transfer money multiple times within the same day and across borders, which makes it more difficult to trace and block those transactions. In addition, instant-bulk payments could further weaken the efforts to fight money laundering.¹⁹² In general, more criminals are involved in laundering money,

¹⁹¹ COM (2022) 546 final (n 2). 10.

¹⁹² Commission, ‘Feedback from: Malta Bankers’ Association’ (2022) F3373606 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F3373606_en> accessed 17 April 2023. 4.

for example, drug and tax evasion money, than intentionally violating sanctions. Screening the customer base is already a common practice in place, so screening of customers for subject persons will remain the same. However, the change is that live transactions will not be screened. The responsibility will be on each subject PSP to update their sanction lists to screen their customer base every day with the new list, and each PSP is liable for breaching this.

5.4 Possible implications

The Commission's aim to make the screening process for euro IPs more efficient is a step in the right direction. Nonetheless, this goal must align with PSPs' compliance obligations under other legislation, including sanctions. It is crucial that the new provision is workable for PSPs and avoid imposing excessive regulatory burden to them. Therefore, the author will go over the relevant challenges the provision brings.

5.4.1 Harmonised procedures

In theory, the new screening requirement should not impact PSPs beyond what is necessary, as they already have responsibilities and obligations regarding sanctions. However, there may be issues with the screening lists used outside the EU and UN lists. It is necessary to clarify that the requirement that Article 5(d) sets out for *ex-post* daily sanction screening is solely for EU and UN lists. In the case of any expectations or responsibility to screen against other sanctions lists, that should be specified. This will help consistency in the lists utilised by PSPs and guarantee harmonisation.¹⁹³ The Commission must consider that PSPs previously filtered payments established on their risk mitigation and policies. This is specifically valid for PSPs involved with international activity, as they already must filter payments for different lists besides the EU lists – such as lists from the UN and other countries where they offer banking services. Consequently, placing a ban on real-time filtering of IPs could result in PSPs being incapable of complying with the proposal as they have other obligations with their international activities.¹⁹⁴ Presuming that the Commission intends to refrain from pushing PSPs to not comply to their other obligations, harmonising screening requirements across the EU would likely reduce the number of false

¹⁹³ *ibid.*

¹⁹⁴ Commission, 'Feedback from: Banco Bilbao Vizcaya Argentaria S.A.' (2022) F3373405 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F3373405_en> accessed 16 March 2023. 2.

negatives. However, this would not eliminate the need for real-time screening of other obligations.¹⁹⁵

Reducing false positives could possibly be better achieved if the proposal defines which lists are exempt from the real-life filtering requirement. Establishing a system that would update this information would support this further. To accomplish this, some have proposed that this task should be delegated to the Commission or an EU agency. The designated agency should be required to provide advice and guidelines supporting harmonising the approach to tackle the issue. Furthermore, it should set precise criteria for how PSPs fulfil these obligations. Therefore, the proposal's final text should avoid restricting PSPs from performing additional controls or real-time screening if needed.¹⁹⁶

5.4.2 Scope of sanctions

The existing exemption for IPs screening solely pertains to EU sanctions based on Article 215 TFEU. However, measures enacted under Article 75 TFEU to fight terrorism must also be included. This is because the lists of asset-freezing measures do not distinguish between the legal justifications for each measure's adoption. It should be considered to include a clause saying that competent national authorities (NCAs) shall adhere to the EU exemption at the national level, given that Member States can enact their restrictive restrictions. Due to this alignment, instant payment transfers could no longer be screened against national freezing lists.¹⁹⁷

5.4.3 Timing of verification

Regarding verification timing, Article 5(d)(1) states that PSPs must "*immediately*" verify whether a person is listed. When a new or amended restrictive measure is adopted following Article 215, PSPs must implement the adopted sanctions as soon as they are published in the EU Official Journal. However, these sanctions lists are generally available in the system after one day of delay. In addition, new lists need to be processed manually, which can contain specifying the screening measures, the procession of alerts, and sometimes internal consultation. Some jurisdictions authorise up to two working days for these steps.¹⁹⁸ For those reasons there are concerns in regard

¹⁹⁵ *ibid.*

¹⁹⁶ *ibid.*

¹⁹⁷ Commission, 'Feedback from: Italian Banking Association' (n 132). 13.

¹⁹⁸ *ibid.* 12.

to the timing of verification. The ABI suggests altering the phrasing of Article 5(d)(1) of the proposal from “*immediately*” to “*as soon as possible*” or “*without undue delay*” and amending the “*carry out*” to “*initiate*”.¹⁹⁹ This modification would establish that PSPs that execute IPs should initiate verifications without undue delay rather than carrying the verification immediately. The French Banking Federation (FBF) supports this view further and finds that the IPs screening exemption may demand constant screening of third-party databases continuously. Moving from daily screening of databases to continuous screening would require significant actions in terms of personnel, training, and rotation of the teams accountable for handling alerts 24/7. This would raise expenses and outsourcing. Thus, they suggest modifying Article 5(d)(1) from stating that PSPs shall “*carry out*” the verification to that PSPs shall “*initiate*” the verifications, giving them a more sensible frame to comply with the article.²⁰⁰ In its observations on the proposal, Banco Bilbao Vizcaya Argentaria S.A, the multinational financial service company, found that obligating PSPs to verify immediately will create legal uncertainty because it takes time to update the screening software and check the whole customer base against the new list. To provide more legal certainty, they suggest it should be obligated to comply with new measures within 24 hours instead of obligating the verification immediately.²⁰¹

Article 5(d)(1) goes on and states that these immediate verifications take place at least once every calendar day. Performing daily screenings of the entire customer database raises the question if it is an inefficient use of resources. The EMA holds the view that the advantages of conducting daily re-screening are unclear. They argue, that unless a new sanction list is introduced, there should be no requirement to re-screen existing customers. Re-screening the same data against an identical sanction list would produce the same outcome.²⁰² The implementation of daily re-screening would, however, have a commercial impact. It would add additional costs due to a charge that service providers have for these repeated screening. Daily discarding of the same false positives adds operational work and expense without providing any real benefits. The EMA suggests that adding a more specific definition of re-screening under the Regulation, emphasising that it shouldn’t entail repeatedly conducted screening with the same results is needed.²⁰³ While, there is overall a support for the harmonised approach, there are doubts if the re-screening is suitable. Daily screening of the entire

¹⁹⁹ Commission, ‘Feedback from: Italian Banking Association’ (n 132). 12.

²⁰⁰ Commission, ‘Feedback from: French Banking Federation’ (2023) F3374196 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F3374196_en> accessed 18 April 2023.

²⁰¹ Commission, ‘Feedback from: Banco Bilbao Vizcaya Argentaria S.A.’ (n 194). 3.

²⁰² Commission, ‘Feedback from: Electronic Money Association’ (n 143). 7,8.

²⁰³ *ibid.*

customer database is only practical when there are changes to the list of persons or entities listed, raising the question of whether it is a waste of resources to obligate daily screening of the entire customer database. Exclusively new relationships and customers with updated identifiers should be examined when the list stays unchanged. In addition, conducting screenings on “*every calendar day*”, which entails Saturdays, Sundays, and holidays,²⁰⁴ would demand allocating resources on weekends and other holidays, which was not previously needed. The FBF support that there is a necessity for an amendment in this regard. This could involve amending the text of Article 5(d)(1) to require PSPs to carry out verifications at least no later than one day after the onboarding of a new relationship rather than completing verifications “*at least once every calendar day*”.²⁰⁵

5.4.4 Timeline

According to Article 5(d)(4), the timeline to comply with this provision is six months. A concern in this regard is if that timeframe is too narrow to be realistic for PSP to comply with. After entry into force, PSPs will be required to revise their internal processes regarding the control execution on financial sanctions for harmonisation purposes. In addition, there is a significant amount of personal data records that are involved in daily sanction screenings that must be taken into consideration. The uncertainty of the legislative process timeline has furthermore caused worries.²⁰⁶ Various parties have supported this belief, some of whom mentioned this problem in feedback on the proposal. For example, feedback from Intesa Sanpaolo, one of the top banking groups in the EU, asked for an extension of 6 months to deal with all the obligations. The additional six months would lead to at least 12 months for PSPs to comply with Article 5(d).²⁰⁷ The author finds it appropriate to rethink the timeline to comply with Article 5(d) and clarify it for those involved.

5.4.5 Liability

Article 5(d)(3) of the proposal obligates that credit institutions compensate each other for damages that result from violating Article 5(d)(1), failing to asset freeze or prohibition of making funds or economic resources available. The damages in this context are presumed to be penalty payments where an

²⁰⁴ ‘Calendar Day Definition’ (Law Insider)

<<https://www.lawinsider.com/dictionary/calendar-day>> accessed 14 May 2023.

²⁰⁵ This is supported by the French Banking Federation.

²⁰⁶ Commission, ‘Feedback from: Intesa Sanpaolo’ (2022) F3373678

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12931-Instant-payments/F3373678_en> accessed 16 April 2023.

²⁰⁷ *ibid.*

unauthorised transaction was carried out. This provision exposes PSPs to a very heavy liability. The EU Sanctions Law does not acknowledge strict liability, which implies that establishments can solely be held accountable for violating sanctions if they intentionally or negligently infringe sanctions regulations. Because the verification obligation is put on each PSP and its customers, if there is a failure or issues with the transfer, the payee's PSP should not be held responsible for the payer PSPs error, and vice versa.²⁰⁸ Hence it is hard to imagine the cases where this regulation would apply. It is therefore more realistic that the burden should lie with the holder of the screening obligation, rather than the method the article suggests. Using the proposal's way, credit institutions will have to continue to filter IPs.

The stand adopted in the proposal could lead to an excessive expansion in PSP liability if they fail to freeze funds. For instance, if a payee's PSP had a brief technical issue, and they failed to freeze incoming transfers to one or more listed customers. In this scenario, the transfer may stem from 20 separate PSPs. In this case, the 20 payers' PSPs can still be penalised by their competent authorities and then claim compensation from the payee's PSP that had the technical issue. The payee's PSP may then be liable for 21 penalties, including those imposed by their authority and those levied on the other 20 PSPs. The author considers this unreasonable and disproportionate. Therefore, PSPs would likely feel more comfortable if they are exempted from this responsibility. Furthermore, the proposal's compensation instrument would not resolve the possibility of harm to the reputation of the PSP if fined. Based on the information provided, some amendments should be considered. An amendment in this regards could be adding a non-liability clause which clarifies that a PSP cannot be held liable for any applicable Sanctions Regulations if another PSP fails to perform the necessary verification, resulting in the first PSP executing an IP for a payer or a payee subject to EU sanctions.²⁰⁹

5.5 Discussion

The author believes that the proposal is on the right path towards ensuring sanction screening is as effective as possible. However, as stated above, there are some questions raised at different levels which could lead to adjustments to this proposal. The EU should oversee and scrutinise threats from modifying the sanction regime. The updated procedure for IPs should not create

²⁰⁸ Commission, 'Feedback from: French Banking Federation' (n 200). 4.

²⁰⁹ Commission, 'Feedback from: Italian Banking Association' (n 132). 12.

loopholes used by fraudsters.²¹⁰ This requirement is anticipated to impact the successful processing of IPs transactions and lower the IPs rejects. The requirement must, however, be workable for PSPs as there has been much notable feedback from the public consultation.

There is an overall support for the Commission's objective to remove obstacles posed by different approaches to sanction screening. This can successfully improve the smooth execution of IPs. It must be acknowledged that the provision introduces additional obligations on PSPs, which might lead to excessive burden. The transition from transaction-based screening to client databased screening is typically seen as a good step. It must, however, be aligned with pertinent legal criteria for transaction-based screening from other rules and regulatory expectations to be considered positive.

5.6 Final remarks

The present legislative proposal may achieve the aim of reconciling IPs by enhancing AML/CFT checks and obligations for sanction screening. The author assesses that Article 5d can strike a compromise between making IPs easier and guaranteeing adherence to the prohibition of providing funds and economic resources exclusively to entities subject to the EU sanctions list. However, it is important to remember that this is just one of the several triggers PSPs must comply with under sanction regulations.

Overall, the author believes that the proposal is expected to achieve the objective of making IPs more secure. However, the current provision seems to be too broad and disproportioned. It must be considered that the impact of the provision will affect PSPs, for example, with added costs and administrative efforts. Reckoning the consequence of these obligations and considering the needs and capacities of different PSPs is essential to balance the provisions' purposes and excessive regulatory burden.

²¹⁰ The European Digital Payments Industry Alliance (n 183).

6 Next steps forward

6.1 Next steps forward

The Commission has released the proposed regulation. The European Parliament and Council will then be given a summary of the open feedback period, which ended on January 5, 2023. PSPs were given the opportunity to offer their opinions on the proposal through a public consultation procedure. Following the publication of the draft regulation in all the EUs official languages, the public consultation was open for eight weeks. The Commission affirmed to carefully analyse any comments received and bring them to the European Parliament and Council in order to add to the conversation on the legislation. It is important to note that the legislative proposal normally lasts for 18 months, during which time it is anticipated that the draft regulation will go through additional revisions. After the regulation is put into effect, its implementation will happen gradually over a certain period.²¹¹ The legislative proposal from the Commission will be amended by the European Parliament and the Council in the second quarter of 2023.²¹² The Regulation then takes effect 20 days after it is published in the European Union Official Journal after being adopted.

6.2 What are different stakeholder views?

The proposal seeks to promote European ascendancy in the payments industry and increase competitiveness. The Commission emphasises that this proposal will have a noticeable impact on company operations, particularly those of small- and medium size, giving them more control over their cashflow in light of the current economic unpredictability. IPs are unquestionably in high demand, but it is critical that the proposed measures are workable for PSPs. Commissioner McGuinness stated that the entire financial system “*lives or dies on the basis of trust*”, implying that trust is the key to financial stability.²¹³ The criminals continuously improve their frauds, and the EU

²¹¹ ‘Show Me the Money! Europe’s Instant Payments Proposal’ (McCannFitzGerald, 8 November 2022) <<https://www.mccannfitzgerald.com/knowledge/financial-services-regulation/show-me-the-money-europes-instant-payments-proposal>> accessed 18 April 2023.

²¹² Commission, ‘Keynote speech by Commissioner McGuinness at European Payment Institutions Federation (EPIF) Conference’ (n 12).

²¹³ Commission, ‘Speech by Commissioner McGuinness on Beyond the Horizon: the Future of Financial Services at Central Bank of Ireland Financial Services Conference’ (European

needs to get ahead faster. Considering all these developments, assessing stakeholders' views, and doing what is best for the financial market is essential.

Overall, consumer organisations firmly support the measure of requiring PSPs to offer IPs at the same price as other credit transfers. Furthermore, they support broader consumer protection. The merchant and business sectors, notably SMEs, demonstrate a substantial level of support for IPs. They think that IPs can increase options and, as a result, lower costs for processing and receiving payments. However, PSPs have different perspectives based on their current situations, specifically whether they currently provide euro IPs and at what costs. PSPs that already supply euro IPs without charging extra are in support of the proposal, while those that don't, or only do so for a premium fee, tend to prefer a voluntary basis for this service. Overall, PSPs affirm their firm support for the creation of harmonised regulations for sanction screening. Likewise, Member States show strong support for these efforts in general.²¹⁴

According to the proposal, IPs should be universally functional in euros within six months after approval. As of today, it is unclear what the enforcement date will be as the proposal has yet to be approved. However, PSPs must be prepared to adjust quickly after the legislation is passed. Presently, one in three PSPs in the EU does not offer the benefit of delivering IPs in euros, which signifies that approximately 70 million payment accounts don't have access to send and receive IPs in euros.²¹⁵ This implies that there will be a significant transformation for many PSPs, which will involve much preparation to guarantee compliance with added requirements. More specifically, that they will be prepared to provide the service of IBAN matching and verifying clients against the EU sanctions list at least daily.

Commission - Press corner, 3 November 2022)

<https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_6532> accessed 5 May 2023.

²¹⁴ Commission, 'Commission Staff Working Document Executive Summary of the Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) no 260/2012 and (EU) no 2021/1230 as Regards Instant Credit Transfers in Euro' COM (2022) 546 final)

<https://ec.europa.eu/finance/docs/law/221026-summary-impact-assessment_en.pdf> accessed 18 May 2023.

²¹⁵ 'EU Commission SCT Inst Mandate: How to Choose the Most Efficient Strategy: The Payments Association' (18 April 2023) <<https://thepaymentsassociation.org/article/eu-commission-sct-inst-mandate-how-to-choose-the-most-efficient-strategy-2/>> accessed 17 April 2023.

7 Conclusions

Security is of the highest importance with any new technology. Consumers must develop trust in a specific payment method before voluntarily welcoming it since trust is paramount in accepting new payment solutions. However, convenience also emerges as a critical driver of customer motivation. Likewise, speed has become an increasingly expected feature, in line with consumers' digital lifestyles. The world of payments is going through some exciting changes right now. Consumers' importance on convenience draws attention to the fundamental issue of balance.

The thesis sheds light on the degree to which the proposal on instant payments in euro assesses the security of AML/CFT measures and other mistakes while ensuring the speed and uptake of IPs. The author firmly embraces the efforts of the European Commission to facilitate the use and uptake of IPs, which aligns with the Eurosystem's retail payments strategy and as the findings in the thesis demonstrated, there is a demand for an initiative to promote IPs in euro. By this, the EU is facilitating an environment that enables the uptake and speed of IPs. The speed of IPs might increase risks such as pre-payment scams and mistakes, however, the proposal successfully addresses these worries with implemented measures. The thesis discoveries reviewed that the proposal incorporates several efforts to manage the security issues increased by IPs. For instance, Article 5(c) of the proposal requires an IBAN name check to help prevent fraud and mistakes by ensuring that the payee's name matches the supplied IBAN. Further, by guaranteeing compliance with EU sanctions lists, the introduction of Article 5(d) enhances the efficiency of fraud prevention. The introduction of these provisions should reduce risks and guarantee regulatory norms adherence. The author believes that the proposals approach finds an appropriate balance for security and the speed and uptake of IPs.

While the IBAN name check contributes to reduction in fraud and errors, it is vital to acknowledge that it is not a standalone solution for comprehensive fraud prevention. Similarly, while the new screening requirements are an important component of fraud prevention, they are not fool proof. Additional security measures are necessary to combat the fraud and mistakes effectively. Furthermore, PSPs must continuously enhance their transaction monitoring systems, incorporate advanced technologies, and stay updated with emerging fraud trends. A comprehensive anti-fraud strategy should include multiple layers of security measures. The IBAN name check is anticipated to work well, as was the results in other Member States utilising a CoP service.

Likewise, the sanction screening requirement is a good addition to safety measures, making screening more efficient leading to a better fraud prevention tool. The author therefore believes that the proposal has taken the right steps to consider IPs security.

Furthermore, the thesis findings demonstrate that although the proposal takes a step in the right direction with promoting IPs and enhancing security, continuing conversations and stakeholder feedback might result in more improvements and changes. Even if the proposed framework considers security with these measures, the measures must be functional for PSPs. It is crucial to address these challenges in a way that does not create excessive regulatory burden on PSPs. Allowing sufficient time for the market to develop and implement reasonable efforts that preserve IPs speed is crucial. As the research found, numerous issues have been brought up at various levels, which may need adjustments before the proposal goes into force. With rapid changes technology brings, more durable methods should be developed and there have been worries from various stakeholders. The current proposal is anticipated to be enhanced when stakeholders from around the EU continue to react. Interested parties may influence the European Parliament or Council to revise some of the suggested adjustments or eliminate some. As a result, the final text can be distinct from the present suggestions. This acknowledgement emphasizes the importance of regularly reviewing and modifying the legal framework to maintain efficiency and align with evolving industry needs.

Nonetheless, the author acknowledges the proposal effectively manages these problems by integrating additional requirements that facilitate the adoption of IPs and prioritize their safety, thereby striking a harmonious balance between these considerations. In conclusion, the author believes the proposal appropriately meets the security issues raised by AML/CFT and mistakes. The dedication to achieving a balance between security and speed is revealed by including specific standards and controls, which eventually increase the efficiency and adoption of IPs. The proposal aims to support the momentum for innovation while safeguarding the sector from being undermined by financial crimes and errors. The author believes it is not a perfect solution but a step in the right direction.

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