

Feedback provided via website

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Response DPA to the n.pranger@betaalvereniging.nl
have Your Say on PSD3

Subject
Feedback Dutch Payments Association on the European Commission's PSD3 proposal

Dear Sir, Madam,

The Dutch Payments Association ('DPA') welcomes the Commission's proposal for a new Directive on payment services and electronic money services in the Internal Market ('PSD3').

In the following pages we will provide you with our response. Hoping to make a meaningful contribution, we wish you all the best with the next steps.

Yours sincerely,
DUTCH PAYMENTS ASSOCIATION



Gijs Boudewijn
General Manager

About the Dutch Payments Association

The Dutch Payments Association (hereinafter: 'DPA') organises collective and non-competitive tasks in the national payment system for its members. Our members are payment services providers who are active on the Dutch market: credit institutions, payment institutions and electronic money institutions. Our responsibilities lie in the areas of infrastructure, standards, and shared product features. We aim for an optimal efficient, secure, reliable, and accessible payment system.

General remarks

The DPA and its members welcome the European Commission's (hereinafter: 'Commission') proposal for a new Directive on payment services and electronic money services in the Internal Market (PSD3). We are pleased to see that the Commission made targeted amendments to PSD2. We welcome the merger of the PSD2 and existing EMD2 regimes, noting the potential for synergy between the two Directives. Furthermore, the Dutch Payments Association supports the proposal to allow direct access to settlement systems for payment institutions. In a separate response the DPA provides feedback on PSR.

We, however, believe the Commission's proposal requires several amendments to reach the goal of further enhancing the payments industry in Europe. Most importantly, we would like to stress the importance of a smooth transitional period for payment- and electronic money institutions.

What follows are more detailed comments on the specific articles and sub-articles proposed by the Commission, divided per section. The related articles are written in **blue**, the sub-articles ***in bold and italic***, and comments are written in standard style.

[Chapter 1 Licensing and supervision](#)

[Article 9 - Safeguarding requirements](#)

Art. 9(1)(b): [...] *For the purposes of the first subparagraph, point (a), where the payment institution still holds the funds and has not yet by the end of the business day following the day when the funds have been received, delivered those funds to the payee or transferred those funds to another payment service provider, the payment institution shall do either of the following:*

- (a) deposit those funds either in a separate account in a credit institution authorised in a Member State, or at a central bank at the discretion of that central bank;*
- (b) invest those funds in secure, liquid low-risk assets, as determined by the competent authorities of the home Member State;*

While this article has not been changed compared to PSD2, this passage still creates confusion as to what a PSP may or may not do. We therefore ask for clarification. One interpretation of this article means that a PSP is unable to hold the funds (in a customer account foundation) it has collected from a payer, and to which the payee is the beneficiary, in a customer account foundation ('*stichting derdengelden rekening*' in Dutch) as a risk mitigation tool in order to offset its own financial exposure for chargebacks due to the payer for example. Or should it be interpreted as funds can be kept on a non-customer account foundation for 1 day before it must be moved to a customer account foundation?

[Article 22 – Outsourcing](#)

Art. 22(1): *Member States shall ensure that payment institutions that intend to outsource operational functions of payment or electronic money services inform the competent authorities of their home Member State thereof.*

Reference should be made to the EBA Outsourcing Guidelines as to what is deemed outsourcing and when a supervisory authority needs to be notified as there is now a discrepancy. Article 22 states that outsourcing of operational functions needs to be notified to the supervisory authority, but De Nederlandsche Bank (Dutch National Bank) for example only requires to be notified of critical or significant outsourcing.

[Article 44 – Transitional provisions](#)

Art. 44(1): *Member States shall allow payment institutions that have been authorised pursuant to Article 11 of Directive (EU) 2015/2366 by [OP please insert the date = 18 months after the date of entry into force of this Directive] to continue to provide and execute the payment services for which they have been authorised, without having to having to seek authorisation in accordance with Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive until [OP please insert the date = 24 months after the date of entry into force of this Directive]*

Member States shall require such payment institutions as referred to in the first subparagraph to submit to the competent authorities all information that enables those competent authorities to assess [...].

We would like to receive further clarification regarding the transitional measures for payment- and electronic money institutions with a PSD2 or EMD2 license that continue to be active under PSD3. It is not clear what information would be required for a license under PSD3, i.e., whether it would require a full application or only to provide the additional information new to PSD3 i.e. a wind-down plan, details on security and operational resilience under DORA. We strongly advocate for a simplified re-authorisation process for pre-existing institutions to minimise the burden on these firms.

In addition, in instances where existing payment institutions wish to apply for an e-money license, we would welcome the possibility of a variation of permissions, rather than the firm having to apply for full permissions. This would help to realise the full benefits of a streamlined merged regime, and additionally would help to promote competition in payments and e-money markets by simplifying the regulatory processes.

Lastly, art. 44 mentions a transitional period of 24 months while on page 8 under the header 'Transitional provisions' a transitional period of 30 months is mentioned.

This concludes the comments and suggestions from the Dutch Payments Association.
