

Single Rulebook Q&A

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Status	Final Q&A
Legal act	Directive 2015/2366/EU (PSD2)
Topic	Authorisation and registration
Article	4.12, 4.24, 4.44, 10, 87.2 and Recital 37
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	-
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Disclose name of institution / entity	Yes
Name of institution / submitter	Autorité de contrôle prudentiel et de résolution (French prudential authority)
Country of incorporation / residence	France
Type of submitter	Competent authority
Subject matter	Acquisition and money remittance payment service
Question	Can a payment institution (PI) which provides a payment service of acquiring of payment transactions for its users can provide this service without holding payment account.
Background on the question	When providing acquisition of payment transactions to payees, some PIs commit themselves towards the payee to transfer back same day value all funds acquired by the PI in the name of the payee to a payee's account held in a third party payment services provider (PSP) (usually a bank). Against this background, some National Competent Authorities have considered that such PI did not hold any payment account in the name of the payees. As an alternative, they considered that the PI was offering acquisition of funds in combination of money remittance services. The definition of the acquiring of payment transactions under PSD2 (art. 4.44) does not refer expressly to any obligation for the PSP to deposit funds collected to a payment account.

However, when a PI provides a payment acquisition service, it agrees to receive the amount of a payment transaction on behalf of as the payee and must make those funds available to this one. In addition, user funds must be separated from the PI funds (Recital 37 and Article 10) when these funds are held overnight. This making the funds available implies that the amount of the payment transaction is available to the payee immediately after these funds have been credited to the PI account (Article 87.2). These funds are considered available if they are identified as belonging to the user and can be used for payment transaction purposes. Thus, after having provided the acquisition service to a user (as payee): · the PSP holds an amount for the account of this user, · these funds must be identified as belonging to this user · and this latter must be able to use these funds to perform a payment transaction. Even though there is a commitment by the PI to transfer back the funds collected via their acquisition services, operational problems might occur whereby those funds may not be transferred back with the same day value to the third Party PSP (or simply because of bank holidays). In that case, funds collected by the PI must be recorded on payment accounts and then transferred to the PI's segregated account. In our view, the acquisition service can therefore not be assimilated to a money remittance service which is the only service , which is expressly exempted by PSD2 from holding payment accounts, even though under normal circumstances, the PI will not hold funds from the payees.

Final answer

The acquiring of payment transactions within the meaning of Annex I, point 5, Directive (EU) 2015/2366 (PSD2) does not automatically require to open and maintain payment accounts with the payment institution itself.

This depends on the design of the respective acquiring model, i.e. on the actual way of transferring the funds. Please see thereto recital 10, PSD2 and the answer to [Q&A 2018_4298](#).

There may be acquiring models that involve the opening and maintaining of payment accounts for the payment services user (PSU) at the payment institution itself provided that it is the payment institution itself that executes the payment transaction. Please see the definition of payment accounts in Article 4(12) PSD2.

However, this is not always the case and depends on the respective business model. An acquirer could, for example, only establish internal records, which do not qualify as payment accounts, in order to know to whom and how much payments/repayments needs to be done. The actual execution of the payment transaction according to Annex I, point 3, PSD2 is then done by another payment services provider i.e. a credit institution or another payment institution.

In addition, a payment institution providing the acquiring of payment

transactions can comply with the safeguarding requirements in accordance with Article 10(1)(a) PSD2 - as one of the potential safeguarding methods - through a separate account held with a credit institution.

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The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

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