

# Single Rulebook Q&A

<b>Question ID</b>	2020_5216
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2015/2366/EU (PSD2)
<b>Topic</b>	Authorisation and registration
<b>Article</b>	4
<b>Paragraph</b>	22
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	No applicable
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<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Law firm
<b>Subject matter</b>	Money Remittance
<b>Question</b>	<p>Where an entity accepts payment on behalf of a payee (such as a debt collector and the debt due to the payee is extinguished upon receipt of payment by the debt collector), is it correct to say that this does not constitute Money Remittance? (i.e. there is no need to rely on the commercial agency exemption since there is no payment service being provided).</p> <p>In addition, if there is no Money Remittance in this situation, can the same be said if the entity receives money into one account then pays these monies to a second account in its name, before transferring the money to the relevant payee?</p> <p>If this is Money Remittance, can the commercial agency exemption be relied on where an entity receives monies but then transfers them to another account held by it before then transferring to the relevant payee?</p>
<b>Background on the question</b>	We are often approached by clients asking for our view on whether a particular activity may fall in scope of PSD2, particularly in the context of commercial arrangements whereby you might have a number of (non-group)

companies involved in providing various services to each other and to end customers, with customers (being payers) paying for services via one company who aggregates payment on behalf of all the other companies before paying them (minus their own fees). Where an entity is accepting payment on behalf of the payee (whereby the debt of the payer is extinguished), arguably there is no payment service involved. This view is also shared by the European Commission in the PSD1 Questions and Answers Document (in the response to question 414 in the following link: [https://ec.europa.eu/info/sites/info/files/faq-transposition-psd-22022011\\_en.pdf](https://ec.europa.eu/info/sites/info/files/faq-transposition-psd-22022011_en.pdf)) This view also corresponds with a view taken by the Financial Conduct Authority in UK in its PERG 15 guidance (response to question 25): Q25. We are a bill payment firm. Do the PSRs 2017 apply to us? Not in our view where you receive payment on behalf of the payee so that your receipt constitutes settlement of the payer's debt to the payee. By contrast, if you provide a remittance service which does not involve receipt on behalf of the payee and corresponds to the definition of "money remittance" in regulation 2, you will be providing a money remittance service.

<https://www.handbook.fca.org.uk/handbook/PERG/15.pdf> The view is that there is no payment service taking place and the relevant parties to the transaction do not need to rely on the commercial agent exemption. For information, the relevant payment flow might look like: Customer - Company 1 Bank Account - Company 2, Company 3, Company 4 In the above payment flow, Company 1 receives payment from the relevant customer on behalf of itself as well as Companies 2, 3 and 4. When Company 1 receives the money from the customer, this extinguishes the customer's debt to Companies 2, 3 and 4. Company 1 collects the money (as bill collector), deducts its fees for its services (as arranged with Companies 2,3 and 4 for services that Company 1 has provided to them, not for acting as a bill collection agent) and then pays Companies 2, 3 and 4 the relevant fees owed to them. In addition, there could be circumstances where owing to the volume of customers involved, Company 1 needs to use an account specific payment institution that allows it to aggregate the relevant customer payments before paying these onto another bank account in Company 1's name. From this second account, Company 1 can then make the payments to Companies 2, 3 and 4 in the same way as outlined above. This payment flow might look like: Customer -Company 1 Account with Payment Institution - Company 1 Bank Account - Company 2, Company 3, Company 4 The question becomes whether by using the services of a payment institution, the nature of the service being provided by Company 1 becomes Money Remittance since in this scenario an extra layer is introduced between the customer and Company 1 Bank Account. When Company 1 receives monies into its account with the payment institution, the customer's debt is extinguished. However, in order to be able to pay the monies to Company 2, 3 and 4, given the volume of payments involved, Company 1 must first aggregate these in its bank account (held with a credit institution). At this point, does the service become money remittance when Company 1 pays the monies from its bank

	<p>account to Companies 2, 3 and 4 since technically there is a movement of money? (For background, the payment institution does not provide Company 1 with the ability to aggregate the payments and therefore, Company 1 must use its bank account with another institution for that purpose). In addition, if Company 1 were to rely on the commercial agency exemption whereby it is appointed as the agent of each of Companies 2, 3 and 4, would this exemption extend to a situation as outlined above where Company 1 receives money into one account and then instructs its payment institution to transfer these monies to a second account it owns before transmitting the monies to Companies 2, 3 and 4.</p>
<p><b>Final answer</b></p>	<p>The receipt and forwarding of funds qualifies as a payment service according to Article 4(3) Directive (EU) 2015/2366 (PSD2) in conjunction with Annex I PSD2. Depending on the design of the contractual agreements it could qualify, for instance, as money remittance (Article 4(22) in conjunction with number 6, Annex I, PSD2) or as another payment service e.g. the execution of payment transactions (number 3, Annex I, PSD2). See also Recital 9 PSD2.</p> <p>Pursuant to Article 3, point (b), PSD2 and Recital 11 of PSD2, a payment service provider could be excluded from the scope of PSD2 if, as a commercial agent, it is authorised by the payee to negotiate or conclude the sale of goods or services and if it does not also act on behalf of the payer.</p> <p>It is the responsibility of the service provider offering payment services to ensure that it has the necessary authorisation under PSD2 granted by the national competent authority according to the actual design of the business model. The settlement of the payer's debt to the payee is not in itself to be a reason to exclude the service provider from the scope of PSD2.</p> <p><b>Disclaimer:</b></p> <p>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 prejudice the position that the European Commission might take before the Union and national courts.</p>
<p><b>Link</b></p>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5216">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5216</a></p>

