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Legal act	Directive 2015/2366/EU (PSD2)
Topic	Authorisation and registration
Article	10
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
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Disclose name of institution / entity	No
Type of submitter	Other
Subject matter	Safeguarding
Question	Are payment institutions able to simultaneously adopt different safeguarding methods with respect to funds held?
Background on the question	<p>The safeguarding obligation Article 10(1) PSD2 requires payment institutions which provide payment services as referred to in points (1) to (6) of Annex I to: "...safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, in either of the following ways..." The methods then described in Arts. 10(1)(a) and (b) can be characterised as (a) the "Segregation Method"; and (b) the "Insurance Method". The Segregation Method requires a payment institution to separate the relevant funds from all other funds it holds, and, if the funds are still held at the end of the business day following the day on which they were received, to either deposit the funds in separate account with an authorised credit institution, or invest the funds in sufficiently secure, liquid assets. The Insurance Method requires a payment institution to arrange for the relevant funds to be covered by an insurance policy which an authorised insurer, or a comparable guarantee given by an authorised insurer or credit institution. Can an institution use both methods of safeguarding? While PSD2 is clear in</p>

	<p>providing that both the Segregation and Insurance are valid methods that can be used to comply with the safeguarding obligation, recent discussions with a National Competent Authority has revealed some apparent uncertainty as to whether the legislation permits a payment institution to use both methods at the same time. For example, where a payment institution is required to safeguard €100, can it validly safeguard €50 using the Segregation Method and the other €50 using the Insurance Method? Or must the entire €100 be safeguarded using only one of the two methods? Why would an institution wish to utilise both methods? While historically segregated bank accounts were popular among payment institutions as a safeguarding method, PIs are increasingly facing difficulties in establishing and maintaining such accounts - principally because the number of credit institutions prepared to offer these products (at commercially viable pricing) is declining. This is leading PIs to consider alternative approaches, including for example using the Insurance Method in tandem with the Segregation Method. Given however that the amount of relevant funds held by a PI typically fluctuates on a day-to-day basis, it makes operational sense to obtain an insurance policy which covers a “base amount” of a PI’s expected relevant funds, and ensure that any surplus balance in funds is placed in a segregated account. This is an operationally efficient manner of ensuring that the precise amount of relevant funds is safeguarded each day.</p>
<p>Final answer</p>	<p>According to Article 10(1) of Directive (EU) 2015/2366 (PSD2), a payment institution is required to safeguard “all funds” in “either” of the two following ways: (a) using the segregation possibility or (b) applying the insurance/guarantee possibility.</p> <p>Taken literally, the word “either” would in principle suggest that one of the two methods must be chosen for all the funds. However, the directive does not explicitly prohibit that both methods be simultaneously applied. We consider therefore that it is up to the payment institution to decide whether it will fulfil the safeguarding requirement via one of the two methods or a combination of both.</p> <p>Either way, the payment institution must ensure that all funds are covered at any time by the safeguarding, and that the internal governance foresees a proper documentation regarding the safeguarding approach itself and, in particular, how and through which method the funds are safeguarded.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5264</p>