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Status	Final Q&A
Legal act	Directive 2015/2366/EU (PSD2)
Topic	Other topics
Article	18
Paragraph	(2) and (3)
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	Yes
Name of institution / submitter	Tudor Nistor Payments Law Office
Country of incorporation / residence	Romania
Type of submitter	Law firm
Subject matter	Ability of a payment account operated by a payment institution to hold a credit balance in readiness for future payment transactions
Question	Can a payment institution hold clients funds in the related payment accounts for undefined future transactions?
Background on the question	In certain jurisdictions the distinction is (used to be) that in classic payments (payment account), funds are made available to a payment institution for a pre-defined transaction, whereas in e-money services the funds are made available to an e-money institution for the purpose of undefined future transactions. In other words, it was not allowed for payment institutions to hold funds on a payment account without a completed payment order. To the contrary, it seems that certain regulators are of the view that a payment institution may hold a credit balance in readiness for future payment transactions. The distinction between the PSD2 and the EMD2 regime should be the nature of the funds and not the nature of the payment execution.

<p>EBA answer</p>	<p>Article 18(2) Directive 2015/2366/EU (PSD2) provides that ‘Where payment institutions engage in the provision of one or more payment services, they may hold only payment accounts which are used exclusively for payment transactions’. Article 18(3) PSD2 further states that ‘Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of Article 9 of Directive 2013/36/EU, or electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC.’ A payment institution may hold clients’ funds on payment accounts for the purpose of providing payment services, including the execution of not yet specified future payment transactions, in accordance with the framework contract for setting up the referred payment account. The payment institution has to safeguard funds received for the execution of payment transactions in accordance with Article 10 PSD2.</p> <p>Disclaimer:</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 prejudge the position that the European Commission might take before the Union and national courts.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2018_4221</p>

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