



**Single
Rulebook
Q&A**

Question ID	2020_5335
Status	Final Q&A
Legal act	Directive 2015/2366/EU (PSD2)
Topic	Monetary amount of the professional indemnity insurance
Article	5
Paragraph	3
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	EBA/GL/2017/08 - Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance
Article/Paragraph	Guideline 1: Professional indemnity insurance and comparable guarantee
Date of submission	27/06/2020
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Disclose name of institution / entity	No
Type of submitter	Other
Subject matter	How to use bank guarantees instead of PII
Question	Is it acceptable to use third party (other than credit institutions) commitments that are covered by a guarantee from a credit institution as a comparable guarantee instead of professional indemnity insurance (PII)?
Background on the question	PSD2 gives the option to use bank guarantees instead of PII but in reality it is not so easy to replace one with another. The problem with bank guarantees is that they work a bit differently than Professional indemnity (PI) insurance. If with PI insurance the applicant also usually serves as a

	<p>beneficiary, then with guarantees the applicant and beneficiary can never be the same person. Payment guarantee works so that if an applicant fails to pay the beneficiary then the guarantor bank pays on behalf of the applicant. The Payment services provider (PSP) cannot fail to pay itself and therefore cannot be also the beneficiary. Also, the PSP cannot set the client as a beneficiary in a guarantee because PSP does not know prior to the claim who the actual client would be who makes the claim. So, although PSD2 gives the option to use comparable guarantees instead of PI insurance, it appears in practice impossible to do. One solution is to bring in a third party (a major shareholder for example). If a PSP gets a commitment from a third party to cover the claim to them then a bank can issue a guarantee that covers that payment commitment. Essentially this setup is even less risky for the PSP than just a bank guarantee because it needs both the third party and a bank to default on the payments for risks to materialise.</p>
<p>EBA answer</p>	<p>Directive 2015/2366/EU (PSD2) and the EBA Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance do not specify the type of comparable guarantee that can be used in accordance with Article 5(2) and (3) of PSD2.</p> <p>Therefore, payment initiation service providers and account information service providers could use third party commitments covered by a guarantee from a credit institutions as a comparable guarantee, provided that these meet the requirements of Article 5(2) and (3) of PSD2 respectively and the EBA Guidelines.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5335</p>

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