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| Question ID | 2024_7165 |
| Legal act | Directive 2015/2366/EU (PSD2) |
| Topic | Other topics |
| Article | 10 |
| COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations | Not applicable |
| Article/Paragraph | Not applicable |
| Type of submitter | Other |
| Subject matter | Compliance of non-bank PSPs with the safeguarding requirements in PSD2 |
| Question | <p>Where PIs and EMLs (referred to as non-bank PSPs) have direct access to central bank operated payment systems for settling payment transactions, would keeping a balance on a settlement account with the central bank/payment system, without the central bank maintaining a safeguarding account for the non-bank PSP, be compliant with the safeguarding requirements under Article 10 of PSD2?</p> |
| Background on the question | <p>The ECB recently published the Eurosystem's harmonised policy in respect access of PIs and EMLs (referred to as non-bank PSPs), to central bank operated payments systems and to central bank accounts. This policy laid down the requirements for non-bank PSPs to fulfil in order to directly participate to central bank operated payment systems and specifies that the Eurosystem will only offer settlement accounts dedicated to the settlement of payment operations. The Eurosystem will not therefore offer safeguarding account in TARGET or in other central bank operated payment systems nor otherwise.</p> <p>From a liquidity perspective, non-bank PSPs may wish to rely on users' funds for the purposes of settling payment transactions on an intra-day basis. If this is considered in line with the safeguarding requirements in PSD2, and taking into consideration that the Eurosystem will not offer safeguarding accounts for non-bank PSPs, the provision of guidance by the European Banking Authority (EBA) on how non-bank PSPs would best comply with the safeguarding requirements in PSD2 when using direct access to the central bank operated payment systems for settling payment transactions would be beneficial to ensure a consistent approach.</p> <p>To assist in the EBA's assessment in terms of the potential reliance by non-bank PSPs on users' funds for settlement of payment activities on an intra-day basis, attention is drawn to a number of facts.</p> <ul style="list-style-type: none"> - Firstly, all accounts in TARGET are held in central bank money, the safest settlement asset. - Secondly, the TARGET Guideline does not prevent participants from opening multiple settlement accounts for the purposes of settling payments. This could facilitate separation of funds for reasons of transparency vis-à-vis the non-bank PSP's payment service users, but not for safeguarding purposes (users' funds vs non-bank PSPs' own funds), assuming that the EBA would deem it acceptable for non-bank PSPs to rely on users' funds on an intra-day only basis for the purposes of settling payment transactions. - Thirdly, non-bank PSPs may avail themselves of automated liquidity management functionalities e.g., minimum/maximum balances, standing orders; squaring mechanisms which allow for instance an end-of-day sweep of funds to the non-bank PSP's safeguarding account held at a commercial bank (i.e., no funds need be held on an overnight basis if not desired)[1]. - Fourthly settlement accounts held by non-bank PSPs in TARGET will be subject to a holding limit irrespective of the use of users' funds or non-bank PSPs' own funds; the limit will be based on the non-bank PSPs' anticipated settlement of retail payment transactions (based on e.g., historical transaction data) and will be calibrated from time to time. <p>The amendments to the TARGET Guideline are scheduled to come into effect on 9 April 2025, along with the deadline for the national transposition of the amendment to the SFD. As non-bank PSPs are likely preparing their operational models in the coming months, the consideration by the EBA of the potential use of users' funds on an intra-day basis to facilitate payment activities could provide an increased liquidity pool for non-bank PSPs in a suitably controlled manner. In this scenario, such funds would not be held in a safeguarding account (i.e. not protected during the business day should the non-bank PSP become insolvent) but could be held in a separate account to prevent comingling of users' funds with own funds. The Eurosystem is engaging with the non-bank PSP industry associations to obtain information that could assist in determining the formula for calculation of the maximum</p> |

holdings (intra-day and overnight) on settlement accounts in central bank operated payments systems including TARGET and providing an overview of TARGET functionalities. Feedback from the EBA, i.e. a guidance on suitable measures for non-bank PSPs to comply with the safeguarding requirements under PSD2 when using direct access to the central bank operated payment systems for settling payment transactions, would also be beneficial.

The recently published Eurosystem harmonised policy is accessible via the below link:

https://www.ecb.europa.eu/paym/target/target-professional-use-documents-links/tips/shared/pdf/Eurosys_pol_on_access_to_central_bank_operated_payment_systems_by_NBPSPs.pdf

[1] TIPS operates on a 24/7 basis funds therefore funds would be required at all times on the TIPS account to facilitate settlement of instant payments

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| Final publishing date | 08/05/2025 |
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| Final answer | <p>Article 10(1) of Directive (EU) 2015/2366 (PSD2) prescribes that ‘Member States or competent authorities shall require payment institutions which provide payment services as referred to in points (1) to (6) of Annex I to this Directive and electronic money institutions as defined in Article 2, point (1), of Directive 2009/110/EC 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:</p> <p>(a) funds shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and, where they are still held by the payment institution or electronic money institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or in a central bank at the discretion of that central bank, or invested in secure, liquid low-risk assets as defined by the competent authorities of the home Member State; and they shall be insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution or electronic money institution, in particular in the event of insolvency;</p> <p>(b) funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution or electronic money institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution or electronic money institution is unable to meet its financial obligations.’</p> <p>In line with Q&A 5264, it is up to the payment institution or, as applicable, the e-money institution (together, referred to herein as “non-bank PSPs”) to decide whether it will fulfil the safeguarding requirement in Article 10(1) PSD2 via one of the two methods mentioned above (the segregation method or the insurance/guarantee method), or a combination of both.</p> <p>Where a central bank operating a payment system offers accounts for safeguarding purposes, a payment institution or an e-money institution (non-bank PSPs) having direct access to that central bank-operated payment system can deposit funds as referred to in Article 10(1) PSD2 in these accounts and meet the obligations under Article 10(1)(a) of PSD2.</p> <p>Where a central bank operating a payment system does not offer accounts for safeguarding purposes, keeping funds as referred to in Article 10(1) PSD2 on a settlement account with the payment system after the end of the business day following the day when the funds have been received, cannot be considered by itself a safeguarding measure in accordance with Article 10(1) of PSD2.</p> <p>Relatedly, with regard to the safeguarding method in Article 10(1)(a) PSD2, it should also be noted that the requirement to deposit funds in a separate account in a credit institution or in a central bank at the discretion of that central bank, or invest them in secure, liquid low-risk assets only applies where those funds are still held by the non-bank PSP and not yet delivered to the payee or transferred to another payment service provider “by the end of the business day following the day when the funds have been received”.</p> <p>The clarifications in this Q&A are without prejudice to any existing or future requirements of national law in accordance with Article 10(1)(a) that insulate funds in the interest of payment service users against the claims of other creditor of non-bank PSPs.</p> |
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| Status | Final Q&A |
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| Answer prepared by | Answer prepared by the EBA. |
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