



Electronic Money Association
68 Square Marie-Louise
Brussels 1000
Belgium

Ministerie van Financiën
Korte Voorhout 7
Postbus 20201
2500 EE Den Haag

17 October 2024

Dear Sir/Madam,

**Re: EMA response to the consultation on the Implementing Act and
Implementing Decree on the Regulation on Instant Transfers in Euros**

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response:

Thank you for the opportunity to respond to the draft Implementing Act and Implementing Decree for the Instant Payments Regulation in the Netherlands (Uitvoeringswet en Uitvoeringsbesluit verordening instantovermakingen in euro's). The proposed changes appear to be in line with the Finality Directive.

We very much welcome the introduction in the Instant Payments Regulation of an amendment to the Settlement Finality Directive (SFD) to allow non-bank PSPs direct access to designated payment systems, of course subject to certain conditions. This has been a longstanding policy objective of the EMA, and something that firms in this sector have requested for many years. We hope this will improve the level playing field for non-bank PSPs, encourage innovation in the payments sector, and improve outcomes for consumers and businesses alike.

However we were disappointed to see the conclusions drawn by the European Central Bank (ECB) in their [Policy Statement of 19 July 2024](#), where they determined that non-bank PSPs (“**NBPSPs**”) should be denied the facility to safeguard funds with Eurosystem central banks. We are further concerned by the provision for funds held solely for settlement purposes, not to qualify as safeguarded funds, when held by central banks.

The two issues are distinct but together give rise to a range of concerns that include: (i) promoting greater dependence on accounts offered by competing private banks, at a time of scarcity of access to such services (especially for small fintechs), (ii) increasing the costs of direct participation in payment systems, by requiring funding for additional safeguarded funds, and (iii) a consequent deterrence to direct participation in payment systems.

The policy comes at a time when legislators - seeking greater competition in the financial services market - have introduced conditional provisions for central bank safeguarding services in the recently adopted Instant Payments Regulation (“**IPR**”) and in the forthcoming revised Payment Services Directive (“**PSD3**”), suggesting that central banks exercise discretion in this regard. The Policy risks sending a pre-emptive signal to both Eurosystem and other EU Central Banks that such discretion should only be exercised in the negative. If set as a general policy binding all Eurosystem central banks, it would run counter to the wording and intention of Article 10(1) of PSD23 / Article 9(1) draft PSD3. This would effectively remove the newly introduced option for NBPSPs to safeguard funds at a central bank. The discretion conferred explicitly to individual central banks - under these PSD2/3 Articles - would not then be exercisable, since Eurosystem central banks would be bound by the policy and would have to reject safeguarding requests without consideration of the national merit of such provisions.

Participation in designated payment systems

Enabling direct NBPSP access to payment systems designated under the Settlement Finality Directive (“SFD”) is an important and welcome step in fostering competition.

The proposal to restrict the balance that can be held in settlement accounts, to an amount which is required to meet scheme obligations is understood. However, excluding safeguarded status for such balances is at odds with encouraging direct participation, and - as a policy - it fails to provide desirable mitigation of the risks to the safety and soundness of the financial system. There are no capital flight risks, no consumer confusion, and no de-risking related concerns.

The sole objective for regarding such funds as safeguarded is to be able to use safeguarded funds when making transfers to settlement accounts. Funds that are not yet paid out - which are still in a payment institution’s (“PI”)/ electronic money institution’s (“EMI”) account - have to be safeguarded; so, if funds in central bank accounts cannot be regarded as safeguarded, then EMIs and PIs must find other funds of an equivalent amount of money, which must be deposited in a safeguarding account with a credit institution pending settlement.

This cost will act as a premium on direct participation that only EMIs and PIs will have to pay, and which will not be borne by credit institutions undertaking the same activity.

Given the current cost of capital, this is likely to result in an immediate withdrawal from any such proposed participation. The cost of capital is likely to exceed the revenue generated by payment services, thus undermining the value of direct participation for NBPSPs wishing to make use of this functionality.

Conditions for requesting participation in designated payment systems

Article 35a(2) PSD2 directs Member States to establish the procedure for assessment of compliance with the Art 35a requirements for PIs and EMIs who wish to participate in payment systems, which may be in the form of self-assessments or an explicit decision by the competent authority on compliance or other procedure. The industry would benefit from clarity as to what the proposed approach will be in the Netherlands in that regard.

Assessment procedure options in order to directly access designated payment systems, could include:

- **Self-assessment:** PIs and EMIs will have to conduct a self-assessment of their compliance with safeguarding (and, potentially, other) requirements in order to directly access payment systems;
- **Decision/approval by a Competent Authority:** PIs and EMIs will be subject to an explicit decision from the relevant regulator, which states whether they are compliant with safeguarding (and, potentially, other) requirements and can therefore access payment systems directly.



Between the two options, NBPSP would find the self-assessment to be the preferred option.

EMA members as of October 2024:

| | |
|---|--------------------------------------|
| Airbnb Inc | MuchBetter |
| Airwallex (UK) Limited | myPOS Payments Ltd |
| Amazon | Navro Group Limited |
| Ambr | Nuvei Financial Services Ltd |
| American Express | OFX |
| Banked | OKG Payment Services Ltd |
| Bitstamp | OKTO |
| Blackhawk Network EMEA Limited | One Money Mail Ltd |
| Boku Inc | OpenPayd |
| Booking Holdings Financial Services International Limited | Own.Solutions |
| BVNK | Papaya Global / Azimo |
| CashFlows | Park Card Services Limited |
| Circle | Payhawk Financial Services Limited |
| Coinbase | Paymentsense Limited |
| Contis | Paynt |
| Crypto.com | Payoneer Europe Limited |
| Currenxie Technologies Limited | PayPal |
| Curve UK LTD | Paysafe Group |
| Decta Limited | Paysend EU DAC |
| Deel | PayU |
| eBay Sarl | Plaid B.V. |
| ECOMMPAY Limited | Pleo Financial Services A/S |
| Em@ney Plc | PPS |
| emerchantpay Group Ltd | Push Labs Limited |
| EPG Financial Services Limited | Remitly |
| eToro Money | Revolut |
| Etsy Ireland UC | Ripple |
| Euronet Worldwide Inc | Satispay Europe S.A. |
| Facebook Payments International Ltd | Securiclick Limited |
| Financial House Limited | Segpay |
| First Rate Exchange Services | Soldo Financial Services Ireland DAC |
| Flywire | Square |
| Gemini | Stripe |
| Globepay Limited | SumUp Limited |
| GoCardless Ltd | Syspay Ltd |
| Google Payment Ltd | TransactPay |
| | TransferGo Ltd |



IDT Financial Services Limited
iFAST Global Bank Limited
Imagor SA
Ixaris Systems Ltd
J. P. Morgan Mobility Payments
Solutions S. A.
Kraken
Lightspark Group, Inc.
Modulr Finance B.V.
MONAVATE
MONETLEY LTD
Moneyhub Financial Technology Ltd
Moorwand Ltd

TransferMate Global Payments
TrueLayer Limited
Uber BV
VallettaPay
Vitesse PSP Ltd
Viva Payments SA
Weavr Limited
WEX Europe UK Limited
Wise
WorldFirst
Worldpay