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## WORKING DOCUMENT

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From: General Secretariat of the Council  
To: Working Party on Financial Services and the Banking Union (Payment Services/  
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Financial Services Attachés

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Subject: Presidency Discussion Note - Discussion on safeguarding of funds held in  
settlement accounts with payment systems

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Polska Prezydencja w Radzie UE  
Polish presidency of the Council of the EU  
Présidence polonaise du Conseil de l'UE

## **Payment services package proposals (PSD3/PSR)**

*Brussels, 29 April 2025*

### **Presidency Discussion Note**

**Discussion on safeguarding of funds held in settlement accounts with  
payment systems**

## Safeguarding of funds held in settlement accounts with payment systems

Following the discussion held at the CWP on 21 February 2025 regarding the safeguarding of funds held by non-bank payment service providers in settlement accounts with designated payment systems under the Settlement Finality Directive (SFD), the Presidency presented (at the CWP meeting on 4 April) a revised drafting proposal aimed at addressing the concerns expressed by several Member States.

The discussion during the CWP and the written feedback received afterwards showed that a number of delegations supported or were generally open to the approach proposed in the Discussion Note of 4 April, recognising the importance of clarifying the safeguarding framework in this context. However, several Member States called for a clearer understanding of the potential impact on the functioning of settlement accounts, in particular as regards the risk of unintentionally discouraging the availability of such accounts for non-bank PSPs. Some Member States remained cautious about the potential impact on financial stability and the delineation of responsibilities between non-bank PSPs and system operators.

Moreover, one Member State doubted whether the proposed solution would lead to central banks deciding not to offer settlement accounts to non-bank payment service providers at all. However, Article 31 PSR requires payment system operators to have in place objective, non-discriminatory, transparent and proportionate rules on access to payment systems. Therefore, the reservations expressed by the Member States do not seem to be valid.

The European Central Bank reiterated its position, expressing reservations about the proposed approach, in particular the potential blurring of boundaries between settlement accounts and safeguarding accounts. The ECB also underlined that *'safeguarding part of, or even all, clients' funds at central banks might also have potential implications for financial stability and monetary policy transmission if otherwise users' funds are deposited at a single credit institution or invested in a single asset class. Specifically, depositing the funds at central banks instead of credit institutions may lead, among other potential financial stability implications, to a reduction in deposits at credit institutions, which may in turn have an adverse impact on their funding and thus result in a contraction of the credit supply to the economy. Reallocating funds to the central bank could also adversely impact the euro short-term rate (€STR), thereby impacting the most important benchmark rate for the transmission of monetary policy.'*<sup>1</sup>

At the same time, the evidence recently provided by the industry shows that there is significant variability between incoming and outgoing payment flows to/from non-bank PSPs overnight on a business day and over 24-hour periods on weekends and holidays. The settlement accounts of non-bank PSPs contain the funds resulting from incoming payments to the PSUs and could therefore be used to fund the settlement of outgoing payment orders from the PSUs until the end of the business day following the day on which they were received. However, there is evidence that during the night (on a business day) the flow of outgoing payments from a non-bank PSP could exceed more than 2 times the flow of incoming payments, while during a 24-hour period on a weekend/holiday the flow of outgoing payments could exceed the flow of incoming payments by 4 times. In such cases, non-bank PSPs should be able to provide additional liquidity (consisting of PSU funds) to their settlement

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<sup>1</sup> OPINION OF THE EUROPEAN CENTRAL BANK of 30 April 2024 on a proposed regulation and directive on payment and electronic money services (CON/2024/13), page 8.

accounts in order to ensure the uninterrupted and efficient processing of outgoing payments, in particular instant payments, during such periods.

In this context, the purpose of this discussion note is to provide further clarity on this issue. However, due to the continuing divergence of views among Member States, the Presidency has decided to present three different proposals on this issue.

#### Option 1.

The solution proposed under this option includes amendments aimed at addressing an issue raised by some Member States regarding the need for some requirements applicable to payment system operators to ensure that risks to financial stability are adequately addressed. In this respect, recital 31a is proposed to clarify that the payment system should be subject to the requirements of the ECB regulation on the oversight of payment systems. In addition, in order to ensure consistency with the general requirements for safeguarding, the amendments to Article 9(1a) and recital 31a specify that only those payment systems in which the PSU funds for settlement are ultimately held either in credit institutions or in central banks fall within the scope of Article 9(1a). This avoids the undesirable scenario where the payment system operator is, for example, a payment institution or non-financial institution. The proposed amendments also aim to ensure that private payment systems are not excluded.

Recital 31a also introduces a new clarification in response to a comment from another Member State that Member States should ensure that only non-commingled PSU funds are insulated from the claims of other creditors of a non-bank PSP in the interest of the PSU, in accordance with national law .

With regard to the concerns of some Member States that the proposed approach may unintentionally impede the availability of settlement accounts for non-bank PSPs, it should be recalled that the proposed Article 31 PSR requires payment system operators to have in place objective, non-discriminatory, transparent and proportionate rules on access to a payment system by authorised or registered PSPs that are legal persons and which shall not impede their access to a payment system more than is necessary to protect the financial and operational stability of the payment system.

In order to ensure legal clarity, the EBA's mandate in Article 9(7) has been made more concrete by aligning it with the explanatory language included in recital 31a.

With regard to the ECB's concerns about the potential implications of the proposed approach for financial stability and monetary policy transmission, the Presidency draws attention to the clarification already included in recital 31a that operators of designated payment systems should be able to set a limit on the amount of funds that a non-bank PSP may hold in its settlement account, so that these funds are used only for the settlement of transactions. With regard to the potential blurring of the boundaries between settlement accounts and safeguarding accounts, and the related concern that the proposed approach would impose certain fiduciary obligations on the operators of payment systems, recital 31a maintains the clarification that it is the responsibility of non-bank PSPs (and not payment systems operators) to ensure the proper management of PSU funds held in settlement accounts when processing payments in the designated payment system.

In light of the above discussion and evidence, see the proposed changes below (in green), which aim to provide a solution that would allow non-bank PSPs to settle payments efficiently on a 24/7 basis, while ensuring a level playing field with bank PSPs:

#### Article 9 of PSD3, new paragraph (1a):

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*1a. Funds of payment service users held by a payment institution in settlement accounts with payment systems designated under ~~the Settlement Finality Directive 98/26/EC~~ shall be considered as compliant with the requirements set out in ~~safeguarded for the purpose of~~ paragraph 1 if those funds are not commingled with the funds of any natural or legal person other than the payment service users. To this end, Member States shall ensure, without prejudice to requirements of the Settlement Finality Directive 98/26/EC, that funds of payment service users held in settlement accounts with payment systems are insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of its insolvency.*

*The provisions in this paragraph shall apply only in relation to those payment systems where the funds used for settlement are ultimately held in credit institutions or central banks.*

#### Article 9 of PSD3, paragraph 7, first subparagraph:

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*The EBA shall develop draft regulatory technical standards on safeguarding requirements, laying down in particular safeguarding risk management frameworks for payment institutions to ensure protection of users' funds, and including requirements on segregation, designation, reconciliation and calculation of ~~safeguarding safeguarded~~ funds requirements, including what is set out in paragraph 5 of this Article. Those draft regulatory technical standards should also cover the aspects of segregation and reconciliation of the part of payment service user funds that are held in settlement accounts with payment systems designated under Directive 98/26/EC, as provided in paragraph 1a of this Article.*

#### New recital (31a) of PSD3:

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*Where a payment institution has been granted access to become a direct participant in a payment system designated under ~~the Settlement Finality Directive 98/26/EC~~, including a payment system operated by a central bank, funds of payment service users held in a settlement account with such payment system should be deemed to be safeguarded provided that those funds are not commingled with the funds of any natural or legal person other than the payment service users. This is necessary to enable payment institutions to ensure, in an efficient manner, sufficient liquidity in the settlement accounts to facilitate uninterrupted processing of outgoing and incoming payments, including instant payments. It should be the responsibility of a payment institution to ensure a proper management of payment service user funds when processing payments in the designated payment system. In cases where a part of an incoming payment transaction to a settlement account represents a fee earned by a payment institution for its services provided to a payment service user, the payment institution should ensure that such fee is separated from the funds of payment service users held in that settlement account without undue delay. The payment system should be subject to the Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28) or the national framework for the oversight of payment systems based on the Principles for Financial Market Infrastructures of CPSS-IOSCO. In order to ensure that equal requirements are applied to all payment institutions as to where safeguarded client funds can be held, i.e. with credit institutions or central banks, these provisions should only apply in cases where funds for settlement are ultimately held with credit institutions or central banks. The EBA should develop draft regulatory technical standards specifying the approach for segregation and reconciliation of payment service user funds held in settlement accounts, as part of a broader safeguarding risk management framework. Where deemed necessary for the soundness of monetary policy transmission mechanism or financial system at large, operators of designated payment systems should be able to set a limit for a maximum amount of funds that can be held by a payment institution in a settlement account, which*

*is sufficient for processing of outgoing and incoming payments, including instant payments. To facilitate ensure protection of non-commingled funds of payment service users' funds held in settlement accounts with designated payment systems in the event of the insolvency of a payment institution, Member States should ensure that those funds are insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution. Where a payment institution uses an insurance policy or some other comparable guarantee from an insurance company or a credit institution to safeguard the funds of payment service users, it should be able to use both its funds and those funds of payment service users in the same settlement account.*

#### Option 2.

The solution presented under option 2 aims at giving national competent authorities (NCAs) the discretion to include funds held in settlement accounts as part of the safeguarded funds, provided that they meet the necessary safeguarding requirements. This could be done at the request of a payment institution, with NCAs also setting specific conditions to ensure that funds in settlement accounts remain separate from other funds. However, the main drawback of this approach is the potential for fragmentation among Member States, which would be undesirable from the perspective of the harmonisation of the EU internal market.

See the proposed amendments below (in green), which aim to provide a solution that would give NCAs discretion to include funds held in settlement accounts as part of the safeguarded funds, provided they meet the necessary safeguarding requirements:

#### **Article 9 of PSD3, new paragraph (1a):**

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*1a. National competent authorities may decide, at the request of payment institutions, that funds of payment service users held by a payment institution in settlement accounts with payment systems designated under the Directive 98/26/EC shall be considered as compliant with the requirements set out in paragraph 1 if those funds are not commingled with the funds of any natural or legal person other than the payment service users. To this end, Member States shall ensure, without prejudice to requirements of the Directive 98/26/EC, that funds of payment service users held in settlement accounts with payment systems are insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of its insolvency.*

#### **Article 9 of PSD3, paragraph 7, first subparagraph:**

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The EBA shall develop draft regulatory technical standards on safeguarding requirements, laying down in particular safeguarding risk management frameworks for payment institutions to ensure protection of users' funds, and including requirements on segregation, designation, reconciliation and calculation of ~~safeguarding safeguarded~~ funds requirements, including what is set out in paragraph 5 of this Article. Those draft regulatory technical standards should also cover the aspects of segregation and reconciliation of the part of payment service user funds that are held in settlement accounts with payment systems designated under Directive 98/26/EC, as provided in paragraph 1a of this Article.

#### **New recital (31a) of PSD3:**

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*Where a payment institution has been granted access to become a direct participant in a payment system designated under ~~the Settlement Finality~~ Directive 98/26/EC, including a payment system*

*operated by a central bank, funds of payment service users held in a settlement account with such payment system ~~should~~ may be deemed to be safeguarded provided that those funds are not commingled with the funds of any natural or legal person other than the payment service users. The national competent authorities are the bodies that can take a decision in such cases, upon the request of payment institutions. This is necessary to enable payment institutions to ensure, in an efficient manner, sufficient liquidity in the settlement accounts to facilitate uninterrupted processing of outgoing and incoming payments, including instant payments. It should be the responsibility of a payment institution to ensure a proper management of payment service user funds when processing payments in the designated payment system. In cases where a part of an incoming payment transaction to a settlement account represents a fee earned by a payment institution for its services provided to a payment service user, the payment institution should ensure that such fee is separated from the funds of payment service users held in that settlement account without undue delay. The EBA should develop draft regulatory technical standards specifying the approach for segregation and reconciliation of payment service user funds held in settlement accounts, as part of a broader safeguarding risk management framework. Where deemed necessary for the soundness of monetary policy transmission mechanism or financial system at large, operators of designated payment systems should be able to set a limit for a maximum amount of funds that can be held by a payment institution in a settlement account, which is sufficient for processing of outgoing and incoming payments, including instant payments. To ~~facilitate ensure~~ protection of non-commingled funds of payment service users' funds held in settlement accounts with designated payment systems in the event of the insolvency of a payment institution, Member States should ensure that those funds are insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution. Where a payment institution uses an insurance policy or some other comparable guarantee from an insurance company or a credit institution to safeguard the funds of payment service users, it should be able to use both its funds and those funds of payment service users in the same settlement account.*

### Option 3.

The last option introduces the amendments clarifying the treatment of funds held by payment institutions in settlement accounts in designated payment systems, so that Article 9(1a) now explicitly excludes accounts held in central bank-operated payment systems from being automatically considered as safeguarded under the requirements of the Directive. This exception is in line with the institutional and policy considerations of the Eurosystem, as reflected in the ECB's decision<sup>2</sup> stating that non-bank payment service providers should not be eligible to open safeguarding accounts with Eurosystem central banks.

Recital 31a further elaborates that, while funds in designated payment systems may be considered safeguarded if they are not commingled, payment systems operated by central banks are excluded from this safeguard qualification.

It should be noted that the proposal to exclude payment systems operated by central banks from the proposed possibility to consider payment service users' funds held by a payment institution in

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<sup>2</sup> Decision (EU) 2025/222 of the European Central Bank of 27 January 2025 on access by non-bank payment service providers to Eurosystem central bank operated payment systems and central bank accounts (ECB/2025/2)

settlement accounts as complying with the requirements of Article 9(1) PSD3 may not be a solution that would address the issue that was initially raised in the LT non-paper.

See the proposed amendments below (in green), which aim to provide a solution that would allow funds of PSUs held by a payment institution in settlement accounts only with payment systems that are not operated by central banks:

#### **Article 9 of PSD3, new paragraph (1a):**

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*1a. Funds of payment service users held by a payment institution in settlement accounts with payment systems designated under ~~the Settlement Finality Directive 98/26/EC~~, with the exception of accounts held in the payment systems operated by central banks, shall be considered as compliant with the requirements set out in ~~safeguarded for the purpose of~~ paragraph 1 if those funds are not commingled with the funds of any natural or legal person other than the payment service users. To this end, Member States shall ensure, without prejudice to requirements of ~~the Settlement Finality Directive 98/26/EC~~, that funds of payment service users held in settlement accounts with payment systems are insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of its insolvency.*

#### **New recital (31a) of PSD3:**

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*Where a payment institution has been granted access to become a direct participant in a payment system designated under ~~the Settlement Finality Directive 98/26/EC~~, ~~including a payment system operated by a central bank~~, funds of payment service users held in a settlement account with such a payment system should be deemed to be safeguarded provided that those funds are not commingled with the funds of any natural or legal person other than the payment service users. This is necessary to enable payment institutions to ensure, in an efficient manner, sufficient liquidity in the settlement accounts to facilitate uninterrupted processing of outgoing and incoming payments, including instant payments. It should be the responsibility of payment institutions to ensure the proper management of payment service users' funds when processing payments in the designated payment system. In cases where part of an incoming payment transaction to a settlement account represents a fee earned by a payment institution for services provided to a payment service user, the payment institution should ensure that this fee is separated from the payment service users' funds held in that settlement account without undue delay. The EBA should develop draft regulatory technical standards specifying the approach for segregating and reconciling payment service user funds held in settlement accounts, as part of a broader safeguarding risk management framework. Where deemed necessary ~~for the soundness of monetary policy transmission mechanism or of the financial system at large~~, operators of designated payment systems should be able to set a limit on the maximum amount of funds that can be held by a payment institution in a settlement account, which is sufficient for the processing of outgoing and incoming payments, including instant payments. ~~To facilitate ensure~~ protection of ~~non-commingled funds of~~ payment service users' funds held in settlement accounts with designated payment systems in the event of the insolvency of a payment institution, Member States should ensure that those funds are insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution. Where a payment institution uses an insurance policy or some other comparable guarantee from an insurance company or a credit institution to safeguard the funds of payment service users, it should be able to use both its funds and funds of payment service users in the same settlement account. ~~The provision of separate accounts for the purpose of safeguarding user's funds at a central bank is at the discretion of that central bank, maintaining the qualification that existed under PSD2. The Eurosystem has explicitly decided, in~~*

*Decision ECB/2025/2, not to offer safeguarding accounts to non-bank payment service providers. This decision was prompted by central bank-specific considerations, i.e. important institutional (Article 17 of the ESCB/ECB Statute) and policy considerations (monetary and financial stability concerns, avoiding a blurring of the distinction between central bank money and commercial bank money). With regard to central bank-operated payment systems, where access is granted to eligible entities to facilitate the settlement of transactions in central bank money, it is important to recognise an important underlying factor, namely the nature of the relationship between the central bank and the account holder. The Eurosystem considers account holders in central bank-operated payment systems to be principals rather than agents. In this context, and for the avoidance of doubt, funds held by non-bank payment service providers in settlement accounts in central bank-operated payment systems are therefore excluded from the possibility of being considered as compliant with the safeguarding requirement provided for other payment systems, as these funds are not commingled with the funds of any natural or legal person other than the payment service users.*

**Question for the Member States:**

1. *Which option(s) you prefer as a solution that would enable non-bank PSPs to ensure sufficient liquidity in their settlement accounts with designated payment systems in order to facilitate efficient and uninterrupted processing of outgoing and incoming payments, including instant payments on 24/7 basis?*