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

Subject:	Presidency Discussion Note Discussion on agents
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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, 15 May 2025

Presidency Discussion Note Discussion on agents

Definition of agents

Although the issue of agents has been discussed on several occasions, the Presidency notes that there are still divergent views among Member States. The discussions on the notion of agents held at the CWP meetings in January and on 29 April did not meet with the approval and support of the majority of Member States.

With regard to the proposal presented at the January CWP meeting, Member States indicated that the negative criteria proposed by the Presidency were not sufficient and that the PSD3 should explicitly state which activities are considered appropriate to qualify a given entity as an agent.

The Presidency also notes that there was not a broad support among Member States for the proposals presented at the April CWP meeting, i.e. the reintroduction of the concept of distributor. The Presidency notes the views of Member States that a legal definition of the term “distributor” is no longer necessary, as its deletion will further lead to simplification of the regime. Nevertheless, Member States have asked for further clarification with regard to the persons considered as distributors under the current framework, which the Presidency has sought to provide in this Discussion Note (recital 45). A number of clarifications are also introduced in recital 45, such as specifying what constitutes the activity of a distributor and the fact that distribution models are often multi-level.

Some Member States are also reluctant to change the current definition of agent as it is currently a well-established definition and changing it could have unintended consequences on existing business models in the market and could create confusion in the market.

One Member State considers it necessary to introduce two main cumulative criteria that can be used to determine whether a given entity can be qualified as an “agent”. These criteria are based on (i) whether it enters into possession of the funds on behalf of the PSP’s customers (collection of funds on behalf of third parties) or (ii) whether it is directly involved in the PSP’s provision of payment services. The second criterion would encompass several business models such as (i) tobacconists collecting funds and opening payment accounts on behalf of a payment institution (that would still be required to be registered) or (ii) marketplaces collecting the prices of transactions on an account opened in its name in the books of a PSP. In the view of this Member States, this would be more precise than the current definition, which is too broad and subject to wide divergencies of interpretation between Member States.

In the light of the above considerations, the Presidency would like to propose further amendments to the concept of agent and clarifications in the recitals by presenting three options.

Option 1. Keeping the current definition of agent and introducing the qualification criteria to a separate article

The Presidency would like to propose keeping the current definition and introducing the qualification criteria (mentioned in the introduction to this discussion note) to a separate article, while providing further clarifications in the recitals.

See below the proposed new amendments (in green). Please note that amendments in red are amendments proposed by the PL PRES at the January CWP meeting.

Article 2. Definitions

(26 28) 'agent' means a natural or legal person who acts in the name and on behalf of a payment institution in providing payment services;

NEW Article 18a

Without prejudice to Article 2 (26), a person shall not be considered an agent unless that person:
a) enters into possession of the funds on behalf of the payment institution's customers; and
b) is directly involved in the payment service provider's provision of payment services.

(45) To expand the reach of their services, payment institutions may need to use entities providing payment services on their behalf, including agents ~~or, in the case of electronic money services, distributors.~~ Payment institutions issuing electronic money should be allowed to distribute electronic money via persons acting on their behalf, without such activity constituting a payment service. Payment institutions may also distribute and redeem electronic money through persons acting on their behalf for those activities. These persons may involve other natural or legal persons. Neither this person nor the parties they involve should be deemed as agents and the activities they perform on behalf of the payment institution issuing electronic money should not be deemed as a payment service. They only facilitate electronic money distribution and the redemption of electronic money. The distribution of electronic money should also cover the receipt, in exchange for electronic money, of funds from the holder acquiring the electronic money. Where a person distributing or redeeming electronic money acting on the behalf of payment institutions receives, in exchange for electronic money, funds from a holder acquiring the electronic money, those funds should be considered to have been received by the payment institution itself, considering that this person is acting on behalf of the payment institution. Persons distributing or redeeming electronic money on the behalf of payment institutions for those entities should always act on behalf of the payment institution issuing the electronic money, which remains ultimately liable for any acts of these persons in the distribution of electronic money, and for compliance with AML/CFT requirements as regards the activities carried out via these persons. This principle should not be circumvented by contractual provisions stating that these persons purchase the electronic money from the issuer and resell it, in their own name, to electronic money holders.

~~*Where a payment institution providing electronic money service makes use of an agent, said agent may not issue electronic money itself but may redeem it on behalf of the payment institution. The mere selling or distribution of electronic money by a third party acting on behalf of the issuer, including the collection of funds on behalf of the issuer, from the holders of e-money in exchange for electronic money, without the provision of any other payment services should not be deemed to be the activity of an agent.*~~ *Where a payment institution providing electronic money service*

makes use of an agent, said agent may not issue electronic money itself but may redeem it on behalf of the payment institution.

Moreover, it should be noted that in order to be classified as an agent, it is not sufficient for a given entity to merely participate in the provision of a payment service or to merely carry out some client-facing activities. This means that, for instance, the simple fact of receiving a payment order from the payment service user and forwarding this order to the payment institution is not sufficient for an entity to be classified as an agent of a payment institution. Only a natural or legal person acting in the name and on behalf of a payment institution in providing payment services that (i) enters into possession of the funds on behalf of the payment institution's customers; and (ii) is directly involved in the payment institution's provision of payment services should be classified as an agent of a payment institution. Such qualification is needed in order to also encompass certain business models such as tobacconists collecting funds and opening payment accounts on behalf of a payment institution or marketplaces collecting the prices of transactions on an account opened in its name in the books of a payment service provider.

Payment institutions may also exercise their right of establishment in a host Member State, different from the home Member State, through branches. In such cases, it is appropriate that the payment institution communicates to the national competent authority all the relevant information related to agents, distributors and branches and informs national competent authorities of any changes without undue delay. To ensure transparency vis-à-vis end users, it is also appropriate that agents, distributors persons distributing e-money on behalf of a payment institution or branches acting on behalf of a payment institution inform payment service users of that fact.

Option 2. Introducing change to the definition of an agent

As an alternative option, the Presidency would like Member States to consider the definition proposed by one of the Member State. Although some Member States were not in favour of changing the definition of an agent, some agreed that amendments are necessary and desirable. It should also be noted that some Member States have presented an approach similar to that proposed by this Member State. This newly proposed definition introduces several qualifications of an agent, i.e. i) presenting and offering payment services, ii) concluding framework contracts regarding payment services, iii) distributing or redeeming e-money, and iv) providing services in support to the provision of payment services.

(26 28) 'agent' means a natural or legal person who acts in the name and on behalf of a payment institution in providing payment services and who conducts at least one of the following tasks: presents and offers payment services, concludes framework contracts regarding payment services, distributes or redeems electronic money, provides services in support to the provision of payment services;

(45) *To expand the reach of their services, payment institutions may need to use entities providing payment services on their behalf, including agents or, in the case of electronic money services, distributors. Payment institutions issuing electronic money should be allowed to distribute electronic money via persons acting on their behalf, without such activity constituting a payment service. Payment institutions may also distribute and redeem electronic money through persons acting on their behalf for those activities. These persons may involve other natural or legal persons.*

Neither this person nor the parties they involve should be deemed as agents and the activities they perform on behalf of the payment institution issuing electronic money should not be deemed as a payment service. They only facilitate electronic money distribution and the redemption of electronic money. The distribution of electronic money should also cover the receipt, in exchange for electronic money, of funds from the holder acquiring the electronic money. Where a person distributing or redeeming electronic money acting on the behalf of payment institutions receives, in exchange for electronic money, funds from a holder acquiring the electronic money, those funds should be considered to have been received by the payment institution itself, considering that this person is acting on behalf of the payment institution. Persons distributing or redeeming electronic money on the behalf of payment institutions should always act on behalf of the payment institution issuing the electronic money, which remains ultimately liable for any acts of these persons in the distribution of electronic money, and for compliance with AML/CFT requirements as regards the activities carried out via these persons. This principle should not be circumvented by contractual provisions stating that these persons purchase the electronic money from the issuer and resell it, in their own name, to electronic money holders.

~~Where a payment institution providing electronic money service makes use of an agent, said agent may not issue electronic money itself but may redeem it on behalf of the payment institution.~~ The mere selling or distribution of electronic money by a third party acting on behalf of the issuer, including the collection of funds on behalf of the issuer, from the holders of e-money in exchange for electronic money, without the provision of any other payment services should not be deemed to be the activity of an agent. Where a payment institution providing electronic money service makes use of an agent, said agent may not issue electronic money itself but may redeem it on behalf of the payment institution.

Moreover, it should be noted that in order to be classified as an agent, it is not sufficient for a given entity to merely participate in the provision of a payment service or to merely carry out some client-facing activities. This means that, for instance, the simple fact of receiving a payment order from the payment service user and forwarding this order to the payment institution is not sufficient for an entity to be classified as an agent of a payment institution. Only a natural or legal person acting in the name and on behalf of a payment institution in providing payment services that presents and offers payment services, concludes framework contracts regarding payment services, distributes or redeems electronic money, and provides services in support to the provision of payment services should be classified as an agent of a payment institution.

~~Payment institutions may also exercise their right of establishment in a host Member State, different from the home Member State, through branches. In such cases, it is appropriate that the payment institution communicates to the national competent authority all the relevant information related to agents, distributors and branches and informs national competent authorities of any changes without undue delay.~~ To ensure transparency vis-à-vis end users, it is also appropriate that agents, ~~distributors~~ persons distributing e-money on behalf of a payment institution or branches acting on behalf of a payment institution inform payment service users of that fact.

Question for the Member States:

1. Which option do you prefer as a way forward on the issue of agents?

Remaining provisions on the relation between agents and e-money

The Presidency notes that the newly proposed recital 45a (at the CWP meeting on 4 April) did not receive the support of the Member States, as the distinction between “repurchase” and “redemption” is not clear and may create additional legal uncertainty. The Presidency therefore proposes to delete this recital. Moreover, in the light of the proposed amendments, Article 20a is deleted as they it is no longer considered necessary.

Please note that amendments in blue are the ones proposed by the previous Presidencies.

Article 20

~~Distributors~~ Agents of payment institutions that provide electronic money services

1. Member States shall allow payment institutions that provide electronic money services to ~~distribute and~~ redeem electronic money through ~~agents, distributors~~. ~~Payment institutions shall not issue electronic money through agents.~~
2. Member States shall ensure that payment institutions that intend to ~~provide~~ ~~redeem~~ electronic money ~~services~~ through an ~~agent~~ ~~distributor~~ apply the requirements laid down in Article 19 ~~mutatis mutandis~~.
3. Where the payment institution intends ~~to make use of an agent in the provision to redeem~~ ~~distribute~~ electronic money ~~services~~ in another Member State ~~through an agent~~ ~~by engaging a distributor~~, Articles 30 to 33, ~~with exception of Article 31(4) and (5) of this Directive~~, including the delegated acts adopted in accordance with Article 30(5) of this Directive, shall apply mutatis mutandis to such payment institution.
4. ~~The mere selling or distribution of electronic money, including the receipt of funds by the person distributing the electronic money on behalf of the payment institution in exchange for the electronic money issued, on behalf of the issuer of electronic money, shall not by itself constitute the activity of an agent.~~

New Article 20a. Issuance and redemption of electronic money [presented at the 04 April CWP meeting] – deleted

~~Member States shall allow payment institutions that provide electronic money services to redeem electronic money through agents. Payment institutions shall not issue electronic money through agents.~~

New Recital 45a [presented at the 04 April CWP meeting] – deleted

~~Taking into account that the redemption of electronic money is deemed to be an electronic money service and hence a payment service under this Directive, the redemption of e-money should be treated as the activity of an agent, and not of a distributor. However, in cases where a distributor, pursuant to a contractual relationship with the issuer, repurchases the electronic money from the holder of electronic money in exchange for funds, this should not be deemed as redemption of electronic money if the electronic money is not extinguished. This is without prejudice to the obligation of the issuer to redeem the electronic money at par value at the request of the electronic money holder.~~

Definition of e-money services

In the discussion note presented at the January CWP meeting, the Presidency suggested that the definition of e-money services should include the redemption of electronic money, as

failure to do so might lead to misinterpretation and to the impression that the redemption of electronic money is left as an unregulated activity.

Although there were not many responses from Member States on this specific point, it was argued that the definition of e-money services should not include the redemption of electronic money, as the redemption itself is a right of the electronic money holder to exchange the electronic money held back to other forms of fiat money, but should not be seen as a payment service in itself. Based on this view, it is therefore the natural counterpart to the provision of electronic money to customers. In view of the amendments proposed above in this discussion note, the Presidency suggests, for reasons of consistency, that the previous wording of the definition of “electronic money services” should be maintained, i.e. that it should cover only the issuance of electronic money.