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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 Article 9 PSD3

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

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Payment services package proposals (PSD3/PSR)
Brussels, 15 May 2025

Presidency Discussion Note
Discussion on Article 9 PSD3

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Article 9 PSD3

On the basis of the discussions at the previous meetings of the Council Working Party and the written comments submitted by the Member States, the Presidency notes that Article 9 PSD3 refers to several issues that are important for the Member States, in addition to the question of whether the funds on the settlement accounts can be considered to be safeguarded. The Presidency would therefore like to present the issues and amendments proposed by these Member States in order to know the overall position of the Council on certain aspects.

Paragraph 1, first subparagraph, point (a)

One Member State indicated that the current wording of Article 9(1)(first subparagraph)(a) states that safeguarded funds shall not be commingled at any point of time. However, payment institutions sometimes receive the funds that are already commingled, making this requirement not feasible. The proposed solution is to require safeguarding to happen as soon as possible and to prohibit commingling after safeguarding has occurred.

Paragraph 1, second subparagraph, point (b)

Several Member States argue against the inclusion of the phrase “issued by institutions authorised in a Member State” in Article 9(1), second subparagraph, point (b), pointing out that the current wording does not allow for government bonds to be used for safeguarding purposes. In their view, since the term “institutions” according to CRR encompasses exclusively credit institutions and investment firms, the insertion would indeed unduly restrain the range of low-risk assets available for safeguarding for payment institutions, significantly constraining their possibility to invest in alternative instruments, which could be safer than assets issued by those institutions. Moreover, some Member State indicated that this addition was unclear, particularly in the case of bonds the notion of issuer authorized in a Member State in not always applicable. In line with this view, the Presidency therefore proposes to reinstate the text of the Commission’s proposal.

As an alternative it was also suggested to change the phrase “issued by institutions authorised in a Member State” to “issued by highly rated institutions, governments or government agencies”.

Some Member States also raised the issue that the requirements for low-risk assets should be the same for institutions not issuing electronic money (paragraph 1, second subparagraph, point (b)), and for institutions issuing electronic money (paragraph 5). Member States consider that the detailed requirements set out in paragraph 5 should apply in both cases and that, for simplicity purposes, the investment criteria for payment services and electronic money services should be the same.

Paragraph 2

One Member State expressed some doubts about the requirement in Article 9(2), as they find the provision proposed by the Commission to be rather burdensome, in particular for smaller institutions. It is argued that this requirement mandates multiple methods for safeguarding funds, which is problematic given the difficulties these entities have faced under PSD2 in securing adequate insurance or equivalent guarantees. Consequently, they are often left with the option outlined in paragraph 1(a), specifically depositing the funds in a separate account. It is therefore proposed to impose that, after a certain threshold, institutions must distribute

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the funds received among several accounts opened with different credit institutions, thus avoiding concentration risk. In the view of this Member State, the proposed phrase "where appropriate" seems ambiguous and does not fully resolve the issue. Therefore the Presidency suggests to consider the proposed amendments to paragraph 2.

Finally, on the basis of Member States' written comments, the Presidency introduces additional linguistic and clarifying changes to paragraphs 4 and 7.

In light of the above comments and reasoning, please see the new proposed changes below (highlighted in yellow).

Article 9
Safeguarding requirements

1. Member States shall require a payment institution which provides payment services as referred to in Annex I, points (1) to (5), or point (8) ~~electronic money services~~, to safeguard all funds it has received from payment service users or through another payment service provider for the execution of payment transactions, or where applicable the funds received in exchange for electronic money that has been issued, in ~~either~~ one or several of the following ways:

(a) those funds shall be safeguarded as soon as possible and once the safeguarding has occurred those funds shall not be commingled at any time with the funds of any natural or legal person other than the payment service users on whose behalf the funds are held;

(b) those funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution authorised in a Member State, which does not belong to the same group as the payment institution itself, for an amount equivalent to the amount that would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

For the purposes of the first subparagraph, point (a), where the payment institution still holds the funds and has not yet by the end of the business day following the day when the funds have been received, delivered those funds to the payee or transferred those funds to payee's ~~another~~ payment service provider, the payment institution shall do either of the following:

(a) deposit those funds either in a separate account in a credit institution authorised in a Member State, or at a central bank at the discretion of that central bank;

(b) invest those funds in secure, liquid low-risk assets, ~~issued by institutions authorised in a Member State,~~ as determined by the competent authorities of the home Member State;

~~c) cover those funds by an insurance policy or some other comparable guarantee from an insurance company or a credit institution authorised in a Member State, which does not belong to the same group as the payment institution itself, for an amount equivalent to the amount that would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.~~

Member States and payment institutions shall ensure that ~~insulate~~ 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, in particular in the event of insolvency. For the purposes of the second subparagraph, point (a), Member States may allow payment

institutions to deposit those funds in a separate account in a post office giro institution referred to in Article 2, paragraph 1, letter b), of [Regulation XXX (PSR)], provided that the post office giro institution is established in the home Member State of the payment institution and is supervised and subject to prudential requirements comparable to those applied to credit institutions. Payment institutions shall ensure that they safeguard the amount that corresponds to the claim towards the payment institution of the payment service user stemming from the offering of payment services.
Payment institutions shall inform their payment service users in a clear and transparent manner how funds of the individual user are safeguarded and whether it is the insolvency laws and courts of the Member State where the payment service user is located or the insolvency laws and courts of another Member State where a claim in case of the insolvency of the payment institution shall be raised.

1a. 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 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.

2. Payment institutions shall avoid concentration risk to safeguarded customer funds by ensuring that, after a certain threshold, defined by each Member State, ~~the same safeguarding method is not used for the totality of their safeguarded customer funds. In particular, they shall endeavour~~ all consumer funds are not to safeguarded ~~all consumer funds~~ with ~~only~~ one credit institution.
The above paragraph does not apply when the funds are deposited at the central bank, in accordance with point (a) of the previous paragraph.

[For comparison purposes, the current version of paragraph 2 included in the consolidated tables:
2. Payment institutions shall avoid, where appropriate, concentration risk to safeguarded customer funds ~~by ensuring that the same safeguarding method is not used for the totality of their safeguarded customer funds. In particular, they shall endeavour not to safeguard all consumer funds with one credit institution~~.]

3. Where a payment institution is required to safeguard funds under paragraph 1 and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for services other than payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements of paragraph 1. Where that portion is variable or not known in advance, Member States shall allow payment institutions to apply this paragraph on the basis of a representative portion assumed to be used for payment services, provided that such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the competent authorities.

4. Where a payment institution provides electronic money services, funds received for the purpose of issuing electronic money need not be safeguarded until the funds are credited to the payment institution's payment account or are otherwise made available to the payment institution in accordance with the execution time requirements laid down in Regulation XXX [PSR]. In any event,

such funds shall be safeguarded by no later than the end of the business day following the day when the funds have been received, after the issuance of electronic money.
A payment institution providing electronic money service shall ensure that all holders of electronic money, both the payment service user having exchanged funds ~~money~~ for electronic money and the beneficiary of a payment transaction in electronic money, are always entitled to redemption at par value and upon request, through the issuing payment institution.

5. Where a payment institution provides electronic money services, for the purpose of application of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of Article 336(1) of Regulation (EU) No 575/2013 for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in Article 336(4) of that Regulation.

For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.
In exceptional circumstances and with a proper justification, the competent authorities may, based on an evaluation of security, maturity, value or other risk elements of the assets as specified in the first and second subparagraphs, determine which of those assets shall not be considered as secure, low-risk assets for the purposes of paragraph 1.

6. A payment institution shall inform the competent authorities in advance of any material change in measures taken for safeguarding of funds received for payment services provided and in case of electronic money services in exchange for electronic money issued.

7. 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, ~~the opportunity to consider~~ the potential of concentration risk taking into account the principle of proportionality 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.

The EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date= 1 year after the date of entry into force of this Directive].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Questions for the Member States:

1. *Do you oppose any of the newly proposed amendments?*
2. *Do you agree with the replication of provisions as set out in Article 9(5) to Article 9(1), subparagraph 2, point b?*