

Distributors within the Meaning of PSD3

Are E-Money Agents a Disappearing Concept?

PSD3 Reform: Distributors vs. E-Money Agents

Overview of the New European Legal Framework

- 1** Negotiations on the reform of European payment services law are already well advanced.
- 2** The future legal framework will be governed by two new European legal acts: the **Payment Services Regulation (PSR)** and the **third Payment Services Directive (PSD3)**.
- 3** The PSR will establish the private law regulations for payment services in Europe, directly applicable as a regulation.
- 4** The PSD3 will define the supervisory guidelines for the national legislators of the member states.
- 5** In addition to payment services, the new PSD3 will also regulate the supervisory requirements for companies that conduct business with e-money or issue it.

The Existing System: E-Money Agents under EMD2

01

EMD2 Regulation

The provisions governing e-money have been regulated in the second E-Money Directive (EMD2), which is scheduled to be abolished when PSD3 comes into force.

02

E-Money Agent Requirement

Art. 3 (4) EMD2 obliges Member States to allow e-money institutions to distribute and redeem e-money via natural or legal persons, known as **e-money agents**.

03

German Implementation

The German implementation (Section 1 (10) ZAG) defines an e-money agent as an independent commercial operator who distributes and redeems e-money on behalf of an e-money institution.

04

Issuance Restriction

The issuance of e-money units via e-money agents is strictly not permitted.

05

Institution-Only Issuance

According to Art. 3 (5) EMD2, the e-money units must always be issued by the e-money institutions themselves.

The PSD3 Shift: Abolishing the E-Money Agent Concept

No More E-Money Agents

Under the future PSD3 regime, there will no longer be any e-money agents.

Agent Concept Reserved

The directive reserves the existing agent concept exclusively for use with payment services.

New "Distributor" Term

Instead of the e-money agent, the new term "**distributor**" is to be introduced for e-money activities.

Abolishing E-Money Institutions

PSD3 also aims to abolish the concept of dedicated e-money institutions.

Payment Institution Authorization

Instead, payment institutions will be allowed to apply for additional authorization to provide e-money services.

Definition and Function of the New "Distributor"

Official Definition

According to Article 2(36) of the draft PSD3 (PSD3-E), a distributor is defined as a natural or legal person who distributes or redeems e-money on behalf of a payment institution.

Similar to E-Money Agents

This definition is very similar to the definition of e-money agents in the EMD2, as both focus on

Key Difference

The key definitional difference is that distributors will be used by payment institutions, whereas e-money agents were used by e-money institutions.

Conceptual Distinction

The move away from the term "e-money agent" is intended to establish a clearer conceptual distinction between agents (for payment services) and distributors (for e-money activities).

Separate Service Type

Under the future PSD3 regime, e-money services are not payment services, but a separate type of regulated service requiring a specific license.

Permitted Activities and Regulatory Uncertainty

→ Distributor Utilization

Member States should allow payment institutions that provide e-money services to utilize distributors for the distribution and redemption of e-money (Art. 20(1) PSD3-E).

→ Limited Subcontracting

Distributors are only permitted to be subcontracted for **distribution and redemption**; they cannot be used to provide the full range of e-money services.

→ Licensed Services Scope

Licensed e-money services include the issuance, management of payment accounts for e-money units, and transfer of units, but do not include distribution and redemption.

→ Functional Similarity

In terms of function, there will be little difference between the previous e-money agents (under EMD2) and the new distributors (under PSD3).

→ Misleading Provision

Article 20(2) of the draft PSD3 is worded misleadingly because it stipulates that requirements for payment agents must be applied to e-money distributors, if a payment institution intends to provide e-money services through distributors. According to the definition of e-money services, distributors may only be used for distribution and redemption of e-money.

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