

Group Payment exemption: § 3n PSD2 in relation to Recital 17

We refer to the joint letter of common understanding developed between various German associations dated 30.07.2018 and the confirmation by the Federal Financial Supervisory Authority (BaFin) dated 03.08.2018 on the interpretation of the Group Payment exemption § 2 para. 1 no. 13 ZAG in relation to § 3n PSD2 and Recital 17.

The German regulator BaFin interprets the exemption of payments within a group very narrowly and understands it as only covering payment transactions within a group.

In the opinion of the authority, the legal wording of ZAG (coming from § 3n PSD2) does not allow for an extension of the payment exemption to payments from third parties to a group company (e.g. a customer pays for a purchase of goods) or from a group company to a third party (e.g. salary payments to employees), which are bundled via a central unit within the group. Furthermore, the corresponding regulation in PSD 2, under Art. 3(n), also does not support a corresponding extension of the "payment privilege".

However, centralised cash management systems are common and established in the real economy and are strongly supported by Sepa Regulation (EPC/ERPB). Within the framework of centralized cash management systems, incoming and outgoing payments are processed centrally by one unit (so-called payment factories / shared services centres). These centralized payment processes by a company within a group, has not only organizational advantages. It facilitates the implementation of the various legal requirements in payment transactions (e.g. checks of sanctions lists and embargo lists) and thus contribute significantly to the prevention of fraud or other misuse as well as the creation of transparency and the centralized control of the payment transactions of group companies.

The VDT e.V., of which we are a member, has held numerous discussions in 2018. In the context of these discussions, including with representatives of the European Commission, it was assured that exactly these centralized cash management systems, tend to have a system-stabilising and money laundering-preventing effect and should not fall under the PSD 2 authorisation requirement. This intention is moreover clarified in Recital 17.

Therefore, the VDT and 7 other associations have developed a joint letter of understanding on this issue stating that a significant number of German companies do not have to apply for a licence in order to be able to carry out their normal business daily payment transactions which was confirmed by BaFin.

In the upcoming review of the PSD2, we would like to point out that a clearer wording should be included in the reviewed PSD and thus follows the approach that activities of payment factories/shared service centres should not be subject to permission by PSD2.

Therefore, we ask for a review of § 3n PSD2 in conjunction with Recital 17 in order to achieve clearer legal certainty.

We would like to refer as well to the statements on this topic by the VDT e.V. They would be pleased to provide further information.