

Group Payment exemption: Art. 3 (n) PSD2

The exemption provided in Art. 3 (n) PSD2 is an important regulation to foster efficient cash management in corporations without increasing the risk of money laundry or other prohibited actions. Unfortunately, its scope is too limited, as it does not cover payments from or to the respective group. Therefore, especially European SMEs are hampered as their organization often requires efficient processes regarding customers and suppliers over affiliated companies to remain competitive.

E.g., in many corporations shops are organized as individual companies. Whenever a customer buys an item in such shop, the customer assumes that it is possible to return it at another shop of the group, if necessary. In case the customer needs to be refunded, a license would be required. Another evident case would be, that a customer orders an item online, but choses to fetch and pay it at a shop, that is established as an individual company.

In the opinion of the authority, the legal wording of the German § 2 (1) Nr. 13 Zahlungsdiensteaufsichtsgesetz (ZAG) (implementation of Art. 3 (n) PSD2) does not allow for an extension of the payment exemption to payments from third parties to a group company (as stated above) 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 (cash pooling). Furthermore, the corresponding regulation in PSD 2, under Art. 3 (n), also does not support a corresponding extension of the "payment privilege".

However, centralized 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 centers). 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. (Verband Deutscher Treasurer, Pariser Straße 2, DE-65552 Limburg), 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-stabilizing and money laundering-preventing effect and should not fall under the PSD 2 authorization requirement.

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Regarding the upcoming review of the Payment Service Directive we would like to point out that a modification of Art. 3 (n) PSD2 should be taken into account that payments from and to corporations shall be exempted from a license requirement as well, if the payment is required to fulfill an payment obligation by or to a group company.

If further clarification is needed, please do not hesitate to contact us.