**Centralized cash management of non-financial groups are no payment service provider, Article 3 lit.(N) of Directive (EU) 2015/2366 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 (Zahlungsdiensteaufsichtsgesetz = national transformation of PSD2) does not allow for an extension of the payment exemption to payments from third parties to a group company or from a group company to a third party, 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 exemption".

With the implementation of SEPA an extended payment format in the XML scheme was introduced by the EPC/ERPB allowing for initiating “payments or collections on-behalf of” (POBO/COBO) introducing XML-tags like “Ultimate Benificiary” or “Ultimate Debtor”. So with these payment options, SEPA supported the implementation of centralized cash management systems.

The centralized payment processes within a group, has various advantages. It facilitate the implementation of legal requirements 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.

We realise that the EU-legislator was aware of this and that centralised cash management systems should therefore be excluded from the scope of PSD 2. This purpose of the EU-legislator is shown in recital 17 of PSD 2. In particular, sentence 3 of recital 17 PSD 2 refers to the allowance to operate a "collection factory" without the need for a licence.

We propose that the review of the exemption should take into consideration that non-financial groups can provide and properly operate centralised cash management systems (and related services), including payment factories and related incoming and/or outgoing payments of a group entity that are centrally processed through another group entity.

Due to the narrow interpretation of the German regulator a joint letter of understanding dated 30.07.2018 was developed by 8 relevant german associations, so that the majority of German companies do not have to apply for a licence in order to be able to carry out their payment transactions and thus obtain a certain degree of security in the area of validity of the PSD2. This was confirmed by the Federal Financial Supervisory Authority (BaFin) dated 03.08.2018

We - VDT e.V. - proposes to review PSD2 in order to achieve clearer legal certainty for intra-group payment services. The exemption of group payments should refer to "payment services" provided or properly operated within a non-financial group and not to payment transactions and related services.

To avoid misunderstandings it includes as well processing/receiving payments to/from third parties for and on behalf of other group companies.

We very much appreciated that the VDT was able to participate in an online meeting “EACT/FISMA B.3 EU Payment Initiative” on June 17th, 2022 and contribute to this topic.