

Association's position paper on a clear distinction between the actors involved in the distribution of electronic money in the context of the ongoing negotiations on PSR and PSD3

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Recommendations

- ✓ **Introduce a clear distinction between the different actors involved in the distribution of electronic money: 1) payment institutions 2) agents and 3) distributors**
- ✓ **Retain a definition of an e-money distributor as suggested by the European Commission**
- ✓ **Clarify within the definition of a distributor that only the natural or legal persons in a direct contractual relationship with the licensed Payment Institution (PI) are considered distributors, while distributors may involve other entities, particularly points-of-sale, for the distribution and redemption of electronic money without performing payment services**

E-money products, such as prepaid vouchers, are easily accessible via retail outlets and can be used as a means of payment by anyone, even by persons without a bank account or credit card. These products are easy and uncomplicated to use and thus, **support financial inclusion**. In addition to that, e-money **gift cards provide a perfect gift for millions of people every year**.

In the context of the ongoing discussions on the third Payment Services Directive (PSD3) and the Payment Services Regulation (PSR), the current practice of the distribution of such e-money products is jeopardised. This industry coalition of electronic money issuers, distributors, and retailers is **highly concerned regarding the proposal to potentially merge the concepts of 'agents' and 'distributors'** as presented in the Council Presidency's Progress Report on PSR and PSD3. Engaging distributors of e-money imposes obligations on the issuing PIs and clarity is therefore needed.

Retention of the e-money distributor definition important for a well-functioning market

In its proposals for a PSR and PSD3, the European Commission suggested to introduce the legal notion of a 'distributor' to clarify the roles and responsibilities of actors involved in the distribution of e-money, defining the distributor as '*a natural or legal person that distributes or redeems electronic money on behalf of a payment institution*'.

We, the representatives of the e-money value chain, fully support the introduction of the term 'distributor' and **strongly call on the co-legislators to retain the definition and further clarify, that only the natural or legal persons in a contractual relationship with the licensed PI are indeed considered distributors**. In order to be able to provide customers with electronic money products, distributors may involve other entities, typically points of sale, which should not be considered distributors nor agents in the context of performing payment services. Selling (redemption) and buying of an e-money value does not constitute a payment service.

The **removal of the definition**, as suggested within the Council Presidency's Progress Report would, however, merge the concept of an agent with the concept of a distributor, **leading to legal uncertainty and contradicting the logic and current practice of e-money distribution**. While an agent, by its very nature, provides payment services to payment services users, **distributors** of e-money are only involved in the distribution of e-money products, facilitating their sale at various points of sale, thereby **providing the principal (the PI) with a network of physical and/or digital outlets**.

Clear distinction between different actors of the value chain needed, considering their different roles

In that role, **distributors fulfil an essential role in bringing the e-money products to the customers**, who may use them to purchase products or services online, e.g. to buy clothes online or download music, or want to make someone else happy by giving away a prepaid card as a gift.

A distributor can, e.g., be a wholesale company, providing electronic PINs for the activation of an e-money product to its point-of-sale network. **Applying the same criteria for this activity as for regulated agents would be entirely disproportionate.** Treating distributors of e-money as regulated payment services agents would **likely prompt many companies currently engaged in distribution activities to cease operations**, thus **reducing customers' access to e-money products** and hindering innovative companies from distributing their offerings, entailing significant negative effects for consumers and companies along the value chain.

Legal certainty is essential for companies to continue the distribution of e-money

We understand that also in **Council, introducing a clear distinction between the different actors in the e-money distribution value chain is envisaged.** In the Council's Progress Report, it is suggested to introduce Recital 45, intending to clarify that *'the mere selling of payment instruments containing electronic money without the provision of any other services should not be deemed to be the activity of an agent.'* However, while we appreciate the spirit and intention of the proposed Recital 45, we are very much concerned that, without a distinct definition of the distributor, legal uncertainty particularly as regards the loading or redemption of e-money, will remain and may prevent companies from engaging in the distribution of e-money.

Instead of defining distribution activities only via an exclusion of the definition of an agent, **we suggest retaining a separate definition of a distributor and introduce further clarification to distinguish between the different actors, i.e. the agent, the distributor and the point of sale. It should be explicitly stated that only natural or legal persons in a direct contractual relationship with the principal (the issuing PI) are considered distributors**, which in turn, can involve other entities, particularly points of sale. The issuing PI is always legally ultimately responsible for the actors involved in the distribution of the e-money, regardless of the network that is involved in the distribution. Oversight is in place through respective contractual relationships along the distribution chain.

This clarification would not change the current practice but instead **align with existing models** and also enhance legal certainty going forward. Business models are different and complex, with points-of-sale not providing payment services. If entities intend to provide services that go beyond the scope of the activities of a distributor, e.g. carrying out payment services on behalf of the PI, such entities will of course be treated as agents and have to fulfil the respective requirements applying to agents.

NCA's likely to struggle to handle the amount of passporting notification meaningfully

Distributors' networks may encompass hundreds or thousands of sales outlets, such as supermarkets, gas stations, and/or small shops. Requiring passporting notifications between European Member States for every change in the point-of-sale network could result in thousands of notifications per week and would result in an overwhelming bureaucratic burden, which would also counteract the intention to reduce bureaucracy as stated in the "Political Guidelines for the next European Commission 2024-2029". The issuing PIs and national competent authorities (NCAs) would struggle to handle the sheer volume of passporting notifications in a meaningful way.

Nevertheless, we fully endorse transparency, and customers should have access to information about where to purchase e-money products. Typically, this information is provided through the principal's homepage. We, therefore, do not see the need to establish a central EBA register to this end.

DISTRIBUTION OF E-MONEY

Actors and Roles

