



Q&A Payment account definition

3 June 2020

Questions and answers in relation to the definition of payment account in accordance with the Law of 10 November 2009 on payment services / 3 June 2020

Preliminary remarks:

The following Questions and Answers ("Q&A") only cover the notion of payment accounts and consequences of such a definition/classification under the Law of 10 November 2009 on payment services. The Q&A are therefore addressed to all payment service providers and electronic money institutions that offer payment accounts and are established in Luxembourg.

This document will be updated when necessary and the CSSF reserves the right to adapt its approach to any matter covered by the Q&A at any time. You should regularly check the website of the CSSF in relation to any matter of importance to you to see if questions have been added and/or positions have been adapted.

The present Q&A are to be read in conjunction with the questions and answers the European Commission and/or the European Banking Authority (EBA) have published with respect to the application of the [PSD2](#).

Abbreviations

AIS - Account information services

AISP - Account information service provider

ASPSP - Account servicing payment service provider

EMI - Electronic money institution

Deposit Guarantee Schemes Directive - Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes

Law - The Law of 10 November 2009 on payment services

Law of 1993 - The Law of 5 April 1993 on the financial sector

PI - Payment institution

PIS - Payment initiation services

PSD2 - Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market

PISP - Payment initiation service provider

PSP - Payment service provider

PSU - Payment service user

RTS on SCA & CSC - Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication

QUESTION 1. Which type of accounts are qualified as payment accounts in accordance with the Law?

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A payment account is defined in point (5) of Article 1 of the Law as “an account held in the name of one or more PSUs which is used for the execution of payment transactions”.

A payment transaction is defined in point (31) of Article 1 of the Law as “an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee”.

Based on these definitions, the fundamental use of such account, rather than its denomination, shall be assessed to determine whether an account shall be considered as a payment account for the purpose of the requirements of the Law.

As soon as the account can be used for the execution of payment transactions (i.e. placing, transferring or withdrawing funds), it should be considered as payment account within the meaning of the Law and the PSD2.

As a result, many different types of accounts can fall within the scope of this definition:

- current accounts which enable the PSU to place, transfer and withdraw funds;
- credit card accounts to which a credit card is attached and which enable, by way of the credit card, the PSU to place, transfer or withdraw funds;
- e-money accounts enabling the PSU to place, transfer or withdraw funds (cf. Q3).

It is also worth noting that the above-mentioned accounts are payment accounts irrespective of whether or not they are accessible online, as the online accessibility is only relevant in order to determine any obligation to comply with the RTS on SCA & CSC (cf. Q6 and Q7).

Although certain other categories of accounts provided by professionals in the context of their activity subject to the Law of 1993, may also allow their users to do operations such as placing, transferring or withdrawing funds, these accounts are unlikely to be qualified as payment accounts as they have limited functions with no payment finality.

In this context we may mention the following accounts that are not destined for the execution of payment transactions:

- accounts to receive deposits as defined in point (3) of Article 2 (1) of the Deposit Guarantee Schemes Directive, in accordance with point (3) of Article 2 of the Law of 1993;
- fixed term deposit accounts which do not include the possibility for the holder to deposit additional funds or withdraw funds during the term of the deposit;
- savings accounts, where the holder can only place or withdraw funds through a current account;
- mortgage and loan accounts.

The above-mentioned examples should not be deemed to be an exhaustive list. Any variations in the functionalities of the account may entail a change in the legal qualification.

QUESTION 2. Are the different elements of “payment transaction” cumulative or not?

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No. A payment transaction is defined in point (31) of Article 1 of the Law as “an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee”.

According to this definition, a payment transaction exists as soon as the payer, his PISP or the payee places, transfers or withdraws funds. There is no condition that these actions are or may be executed on a cumulative basis. As a consequence, an account permitting only placements, transfers **or** withdrawals may qualify as a payment account.

Nevertheless, as is notably the case for certain types of merchants accounts, if the only transactions possible on this type of account are pay-outs realised automatically at fixed intervals, as defined in a contractual agreement entered into between a merchant and its PSP and without specific action from the merchant to initiate these transactions, these transactions are not qualified as payment transactions. Considering that there is no payment transaction, a qualification of payment account is not to be retained for these types of accounts.

QUESTION 3. Can an e-money account/wallet be qualified as payment account in accordance with the definition?

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Yes. As for other types of accounts, the underlying purpose of the e-money account/wallet should be assessed to determine whether it falls within the scope of the definition of point (5) of Article 1 of the Law.

Therefore, as long as the features of the e-money account/wallet fulfill the requirements of the legal definition of payment account and enable the account or the wallet owner to execute payment transactions, it should be qualified as payment account for the purpose of the requirements of the Law.

QUESTION 4. Is a payment account required for the provision of all the payment services defined in the Annex of the Law?

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Payment services 1 and 2 of the Annex of the Law explicitly refer to payment accounts on which cash shall be placed or from which it shall be withdrawn, in any case with a payment finality. Payment accounts are therefore an inherent component of payment services 1 and 2.

Payment services 3 and 4 of the Law do not specifically refer to the use of payment accounts. It is however mentioned that transfers of funds on a payment account held with an ASPSP are included in payment service 3. In addition, the first and third indents of payment services 3 and 4

relate to the execution of direct debits and of credit transfers, the definitions of which both refer to debiting and crediting the user's payment account. Regarding the second indent, payment cards are in general attached to a payment account. The three indents constitute concrete illustrations of placing, transferring or withdrawing funds as suggested by point (31) of Article 1 of the Law and should thus be read together. As a consequence, payment accounts are an inherent component of payment services 3 and 4.

Payment service 5 relates (i) to the issuance of payment instruments and (ii) to the acquisition of payment transactions (i.e. acquiring). Regarding the issuance of payment instruments, it may be stressed that this activity is not directly related to payment accounts. Regarding acquiring, the merchants may or may not have a payment account opened with their PSP. As a conclusion, payment accounts are not in all cases an inherent component of payment service 5.

The definition of payment service 6, i.e. money remittance (point (44) of Article 1 of the Law) clearly excludes the use of payment accounts in the name of the payer or the payee.

Although the definition of the new payment service 7, i.e. PIS (point (38b) of Article 1 of the Law) and the new payment service 8, i.e. AIS (point (38a) of Article 1 of the Law) require the existence of a payment account held at another PSP (i.e. an ASPSP) in the name of the PSU, the provision of these services does not require the opening of a payment account by the PISP and the AISP providing such service.

QUESTION 5. Who can provide payment accounts?

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Payment accounts can be provided by the PSPs defined in point (37) of Article 1 of the Law, in particular by credit institutions, PIs, EMIs and post offices (i.e. POST Luxembourg). Furthermore, the persons exempted according to Articles 48 or 48-1 of the Law can also provide payment accounts.

These legal and physical persons are referred to as ASPSPs.

Whereas retail banks normally offer payment accounts to their customers, i.e. current accounts or credit card accounts (cf. Q1), other types of banks, such as investment banks, might also offer payment accounts to their customers. Notwithstanding the exceptions foreseen in Article 3 of the Law, as soon as the conditions of point (5) of Article 1 of the Law are fulfilled, the accounts are to be considered as payment accounts, irrespective of the type of credit institution or other entity listed in point (37) of Article 1 of the Law providing the account or of the title of the account.

QUESTION 6. When is a payment account to be considered accessible online?

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A payment account (cf. Q1) is considered to be accessible online by its account holder when the latter can access its account via technical means as for example a browser or mobile application, regardless of whether this access allows consultative services only, transactional

services only, or both. It is irrelevant whether the account holder actually uses this online access.

The consequence of a payment account for which the related online access permits a consultative access only, a transactional access only, or both being considered as accessible online is that the ASPSP is obliged to provide TPPs access to such accounts for AIS only, PIS only or both (cf. Q7).

Accounts on which payment transactions can be carried out, but where the PSU has to instruct the ASPSP by email or telephone for instance, and where the PSU does not have an online access, qualify as payment accounts. These payment accounts are not accessible online.

Furthermore, when the ASPSP allows its PSUs to be informed of the balance and/or related transactions on their accounts through an online portal (e.g. private mailbox managed by the ASPSP) to download pdf statements, this access cannot be qualified as an online access to a payment account because:

- the online portal is purely a communication system for PSUs that wish to access their statements in electronic format;
- the online portal does not give any real time view of the PSUs' payment transactions because the pdf are created periodically (monthly, quarterly...); and
- the online portal does not provide any other access than the downloading/consultation of these pdf statements.

QUESTION 7. What are the consequences of the qualification of payment account accessible online?

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The existence of payment accounts is relevant to help in the qualification of the payment services, in particular in order to determine whether a funds' flow may qualify as a certain payment service (cf. Q4). This was already the case under PSD1.

When an ASPSP provides (i) a payment account that is (ii) accessible online by the account holder, it must comply with the obligation to offer at least one access interface enabling secure communication with, and access by, the AISP and PISP to the payment account data of the PSU in line with Section 2 of Chapter V of the RTS on SCA & CSC¹. These two conditions are cumulative. As a consequence, if either the account cannot be qualified as payment account or it is not accessible online, the ASPSP is out of scope of this access interface obligation.

¹ For the sake of clarity, the other sections and chapters of the RTS on SCA & CSC apply to all PSPs.

QUESTION 8. Is the definition of payment account the same as the one used in the Law of 13 June 2017 on payment accounts and transposing directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features?

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Point (7) of Article 1 of the Luxembourg Law of 13 June 2017 on payment accounts defines “payment accounts” as

“An account held in the name of one or more consumers and used at least for the execution of the following payment transactions:

- (a) Pay-in funds to another payment account;
- (b) Withdraw cash; and
- (c) Execute payment transactions, including credit transfers, for the benefit of a third party and be the beneficiary of such transactions executed by a third party”.

The definition provided by the Law of 13 June 2017 is different to that in the Law and these differences reflect the different objectives and addressees of the two laws concerned.

The Law of 13 June 2017 is consumer orientated and aims at ensuring the transparency and comparability of fees related to payment accounts, and facilitating payment account switching and access to payment accounts with basic features whilst the Law focuses on the regulatory requirements for professionals in the provision of payment services and e-money services.