



Modulr's position on consultation Instant Payments Regulation in the Netherlands

Modulr Finance B.V.

Position of Modulr regarding the Dutch Ministry of Finance's consultation on the implementation of the Instant Payments Regulation in the Netherlands, in connection with the Settlement Finality Directive amendment

The following are the preliminary comments by Modulr Finance BV (Modulr)¹ on the Dutch Ministry of Finance's consultation on the implementation of the Instant Payments Regulation in the Netherlands in connection with the [Settlement Finality Directive](#) (SFD) amendments that the Regulation in object contains.

We understand that the consultation is aimed at gathering views about the way in which the Instant Payments Regulation is transposed into Dutch legislation, and we would like to provide our comments in connection with the amendments to the SFD which such a Regulation contains.

Modulr welcomes the amendments to the SFD that the Instant Payments Regulation engenders, as these bring payment institutions (PIs) and electronic money institutions (EMIs) under the definition of 'institution'. This makes it possible for them to participate in a system as a direct participant, which is essential to the offering of instant transfers for PIs and EMIs.

Modulr fully supports the objective of enhancing an internal market for payments where the access to, and use of, payment services functions smoothly across all European Union Member States. Modulr is the payments and embedded payments Application Programming Interface (API) platform for digital businesses. While Modulr is not a bank, it provides payments and accounts infrastructure as an alternative to traditional banking infrastructure. Modulr allows businesses to automate payment flows, embed payments into their platforms and build entirely new payment products and services themselves, all managed in real-time, 24/7 from one API.

In 2016, Modulr FS Limited (FRN 900573) was authorised as an authorised Electronic Money Institution (EMI), regulated by the Financial Conduct Authority, UK. In 2019, Modulr FS Limited became one of a few non-bank financial institutions to be a directly connected participant of Faster Payments (instant payment system) and BACS (batch payment system) schemes and is able to hold and settle funds at the Bank of England. In 2020, Modulr FS Europe Limited (638002) was authorised by the Central Bank of Ireland as an EMI for access to the European Economic Area (EEA) market. In 2021, to further its European expansion strategy, Modulr established a new entity, Modulr Finance BV, in the Netherlands from which it serves EEA customers, after the merging of the Irish entity with the Dutch entity. To further these objectives, Modulr Finance BV was granted an EMI licence by De Nederlandsche Bank (DNB) in December 2021.

1. The Instant Payments Regulation and the amendment to the SFD

As for the participation in payment systems, Article 35 of the PSD2 provides for non-discriminatory access for payment service providers (PSPs) to payment systems. Article 2(a) provides for an exemption regarding

¹ Modulr Finance BV (a company incorporated in the Netherlands) is authorised as an EMI by the De Nederlandsche Bank (DNB).

payment systems designated under the SFD. We recall that in February 2021, the European Commission conducted a targeted consultation about the SFD review, asking industry views about the inclusion of PIs and EMIs among the list of possible participants in designated systems. Modulr responded to that targeted consultation explaining we were, and are, in favour of such an inclusion.

Again, question 24 of the 2022 European Commission targeted consultation about the PSD2 review asked whether an amendment of the SFD to allow PIs and EMIs to be direct participants in SFD designated systems, and consequently if the exclusion of systems designated under in Article 35.2(a) should be removed in order to facilitate such participation.

Modulr replied at the time that this should indeed be the case, as the fact that PIs and EMIs do not currently have access to direct settlement creates a risk in the European market in itself.

Modulr provides cost-efficient services to small and medium-sized enterprise (SME) clients, and enables other financial service providers and software providers in the travel and accounting and payroll industries to embed, automate and build cost-efficient payment propositions. Our financial services clients do not have to invest heavily in (manual) payments processes but instead embed the payment functionality that we offer them. Therefore, Modulr's financial services clients can invest those cost savings in product development, business development, and similar to both improve the offering to their consumer and business clients and be able to offer payment services at a lower cost. Furthermore, Modulr also services clients that find it difficult to gain access to bank accounts because of, either: 1. the costs of payments with incumbent banks are too high, while Modulr offers lower costs, due, for example, to lack of legacy technology; 2. the banks' product offering does not enable that very business model – e.g. embedding payment capability into software or ; 3. the client does not fit the risk profile of the bank, and is consequently offboarded, due to de-risking behaviours from the bank.

In our view, EMIs enhance the availability, choice and low-cost payment offering, tailored to the small business or consumer's market. Furthermore, we have direct experience of commercial banks 'de-banking' EMIs in other jurisdictions. Commercial banks can off-board EMIs more quickly than EMIs can be onboarded to alternative providers. Therefore, we believe that enabling EMIs to have direct access to SEPA settlement has a significantly positive impact on the stability of the provision of payment services, as well as on its costs, benefiting SMEs and consumers greatly.

We would also like to highlight, where Modulr has observed direct access in other regimes, such as the UK where we settle directly with the Bank of England, material benefits were created because our services are more efficient, do not rely on legacy systems and can be consequently offered to clients at a lower cost. We anticipate a similarly positive impact at European level with the amendment of the SFD that the Instant Payments Regulation allows for, and this in terms of both reduced costs of access to accounts and of payments, but also in terms of increased access to services for businesses in Europe. We estimate the positive effects could even be greater in Europe given the efficiency of the payment infrastructure in comparison to other regimes. We believe that such access will also engender a level playing field which clearly ties to the original PSD2, and now PSR and PSD3 aims, of improving competition for PSPs.

Finally, we would like to highlight that the [Opinion of the European Banking Authority \(EBA\) on its technical advice on the review of the PSD2](#) broadly acknowledged this issue in Chapter 7, and explained that "the EBA has identified divergent practices in relation to access to payment systems by PIs and EMIs where some

Member States allow for direct participation of PIs and EMIs in payment systems with settlement finality, while others do not. In the latter cases, PIs and EMIs are dependent and reliant on banks, through which they obtain indirect participation in said payment systems, to carry out their business. This subsequently leads to competitive advantage for banks and gives rise to general level-playing field issues and regulatory arbitrage.”

While the EBA acknowledged these issues, it was of the view that these issues are more closely related to the restrictions on direct participation of PIs and EMIs stemming from the SFD than to the PSD2 and that any changes to be introduced in relation to access to payment systems, should be reflected in the SFD. We therefore welcome the amendment of the SFD rules via the Instant Payments Regulation and look forward to work together with the Dutch Authorities to allow such a direct access for EMIs to take place.

2. The Dutch Implementation Act of the Instant Payments Regulation and the amendment to the SFD

We have read the Implementation Act for the Regulation Instant Transfers in Euros, the Explanatory Memorandum to the Implementation Act for the Regulation on Instant Transfers in Euros as well as the Implementing Decree for the Regulation on Instant Transfers in Euros with great interest.

We agree with section § 5. “Financial consequences and regulatory burden” of the Explanatory Memorandum to the Implementing Decree Regulation on Instant Transfers in Euros that for non-banking payment service providers, the costs for offering instant transfers depends on access to the DNB's TARGET-NL payment system as the Eurosystem has established a harmonised policy to grant non-bank payment service providers access to TARGET-NL, provided they meet the conditions, which will take effect from April 2025.

As we understand from the consultation text that it is not yet possible to provide an estimate of the costs, as the policy will be further developed in the coming months, we would welcome a further exchange in the coming months once the policy is developed.

Also, we understand the amendments to the SFD are elaborated in the Dutch Bankruptcy Act and can be found in the Implementation Act.

As for the amendment to the PSD2 and the new obligation under the newly introduced Article 35a of the PSD2, which the Instant Payments Regulation introduces via an amendment, for payment institutions and electronic money institutions if they request to participate or participate in a system as referred to in Article 212a(b) of the Bankruptcy Act, we understand this obligation consists of several components and thus relates to the protection of users' funds, governance arrangements and business continuity arrangements. We understand these requirements are included in **Article 26ba Decree on prudential rules Wft**² which explains that “A payment institution or electronic money institution meets the requirements of Article 35a of the Payment Services Directive if it requests participation or participates in a system as referred to in Article 212a, section b, of the Bankruptcy Act”. As for **Article 212a, section b, of the Bankruptcy Act**, this does not provide any guidance on how the Netherlands will transpose the new Article 35a PSD2, paragraph 2) which explains that “Member

² <https://wetten.overheid.nl/BWBR0020420/2024-07-10>

States shall define the procedure by which compliance with paragraph 1 is assessed. That procedure may take the form of self-assessment, or of a requirement for an explicit decision by the competent authority, or of any other procedure that aims to ensure that the payment institutions and electronic money institutions concerned comply with paragraph 1.”

In addition to this bill, we understand from the consultation text that a general administrative measure is being drawn up to implement the amendments from the Regulation. We would welcome a further exchange in the coming months once the general administrative measure is developed and in particular to discuss the Article 35a PSD2, paragraph 2).

We would be happy to discuss these issues and their implications further in the near future, as required. If you need more information on any of the points raised above, please contact

Yours faithfully,