



**Electronic Money Association**

Crescent House  
5 The Crescent  
Surbiton  
Surrey  
KT6 4BN

United Kingdom

Telephone: +44 (0) 20 8399 2066

Facsimile: +44 (0) 870 762 5063

[www.e-ma.org](http://www.e-ma.org)

Wopke Hoekstra  
Minister of Finance /Minister van Financiën  
Ministry of Finance/Ministerie van  
Financiën  
Korte Voorhout 7 Postbus 20201 NK-2500  
EE Den Haag Netherlands

18 December, 2020

To Whom It May Concern:

**Re: Consultation on the Financial Markets Amendments Act 2022**

The [Electronic Money Association](http://www.e-ma.org) is the trade body for electronic money issuers and innovative payment service providers. Our members include leading payments and e-commerce businesses worldwide, representing online payments, card-based products, vouchers, and those employing mobile channels of payment. Several are now authorized in – or seeking authorization in - the Netherlands. Please find a full list of our members attached to this letter.

I would be grateful for your consideration of our submission.

Kind regards

Thaer Sabri  
Chief Executive Officer  
Electronic Money Association

## **1. On the possibility to use a safeguarding account**

This bill allows payment institutions (PIs) and electronic money institutions (EMIs) to hold funds belonging to their clients in a separate account. This account is in the name of the financial institution, and the funds held in this account can only be used to settle claims from the EMI/PI's clients. This would offer an alternative to the existing safeguarding possibilities (e.g. the foundation).

The new article 3:29aa of the [Financial Supervision Act](#) provides that:

*“1. A payment institution or electronic money institution as referred to in Section 3: 29a, first paragraph, may safeguard the funds referred to in that subsection by keeping those funds in an account exclusively intended for that purpose.*

*2. The account is held at a bank with its registered office in the Netherlands that has a license to conduct the business of a bank, granted by the European Central Bank or the Nederlandsche Bank. The name of this account shows that it is held by the payment institution or electronic money institution in its own name on behalf of one or more third parties, stating the capacity of the payment institution or electronic money institution.*

*3. Contrary to article 276 of Book 3 of the Civil Code the funds held in an account as referred to in the first paragraph constitute a separate capital that serves exclusively to settle claims:*

*a. of the bank, referred to in the second paragraph, in connection with the management of the account and which, in accordance with the agreement between the bank and the payment institution or electronic money institution, can be charged to the separated assets; and*

*b. of the third parties for whom funds are administered on the account, insofar as those claims are related to entrusting the funds to the payment institution or electronic money institution.*

*4. The payment institution or electronic money institution ensures adequate administration of the separated assets.*

*5. If the funds in the account are insufficient upon settlement to settle the claims, the funds shall serve as settlement of the claims in the order of the third paragraph.*

*6. Contrary to the third paragraph, other claims are recoverable from the funds in the account if it is established that the claims referred to in the third paragraph will be met and that such claims will no longer arise in the future.*

*7. The payment institution or electronic money institution will immediately make up for a shortage in the separated assets. In the event that a deficit has not been made up, the payment institution or electronic money institution will, in the event of a request from a third party as referred to in the third paragraph, under b, pay out its share in the balance of the account to this third party only as much as in connection with the rights of other third parties referred to in that section.*

*8. Further rules may be imposed by or pursuant to an order in council with regard to the design, administration and management of the account.”*

The EMA welcomes the proposed amendments to the Financial Supervision Act, and the introduction of new article 3:29aa. The new provisions will facilitate the entry of new participants to the market, and may also resolve a number of recurrent issues that authorized EMIs and PIs encounter with the use of the foundation. However, the EMA proposes a number of amendments to the text:

### **Requirement that the bank account must be held at a Dutch credit institution (CI) – paragraph 2**

Having access to accounts with credit institutions is crucial for the operational success of EMIs and PIs authorized in the EU. However access to a bank account for any purpose, including the safeguarding of funds, is an ongoing challenge for EMIs and PIs across the EEA, including in the Netherlands. The European Banking Authority recently published a survey on de-risking, or access to bank accounts, to which it received over 300 responses, indicating the significance of this issue for banking customers including EMIs and PIs. The EMA has also recently written to the Netherlands Authority for Consumers and Markets (ACM) on this topic.

Retail credit institutions (“CI”) frequently regard non-bank PSPs as higher risk, although EMIs and PIs are regulated financial institutions, and usually regulated by the same competent authorities (“CA”) that have responsibilities over CIs. EMIs and PIs spend a great deal of time and resources obtaining and maintaining their access to bank account. They often have to apply for, and maintain, more than one bank account at different credit institutions in several different EU Member States at the same time. This is for business continuity reasons, to manage the operational risk if their main banking partner were to close the account at short notice (a common practice).

The requirement that an entity authorized in the Netherlands can open a safeguarding account only with a bank also authorized in the Netherlands is therefore unhelpful, as it severely restricts the number of banks with whom an EMI or PI authorized in the Netherlands can obtain a safeguarding account, and essentially acts as a barrier to entry.

It also increases the operational and business continuity risk of the firm wishing to open such an account, as they will need to have contingency measures in place in case that CI decides to withdraw their services. Such contingency measures might consist of a bank account held at another credit institution. However the number of CIs authorised in the Netherlands is limited, and if none – or even a small number - of them are willing to offer safeguarding accounts, EMIs and PIs will not be able to benefit from this new method of safeguarding, regardless of the change to the law.

We note that the justification for restricting the accounts to those held with Dutch CIs is that the local property and solvency laws in other EU Member States may not be the same as those in the Netherlands. However, we suggest that the status of the safeguarding account that is provided for by statute under Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (EMD2) and Directive (EU) 2015/2366 on payment services in the internal market (PSD2), which is harmonized across the EU, is sufficient to protect EMI/PI customer funds in a properly safeguarded account with any CI in the EEA. We are not aware of significant variations in insolvency law, so we would expect local courts to enforce in a familiar way.

We therefore urge the Ministry of Finance to take into consideration our comments, and review our proposed amendment to Article 3:29aa below:

Proposed amendment of article 3:29aa

2. *The account is held at a bank with its registered office in ~~the Netherlands~~ the European Union that has a license to conduct the business of a bank, granted by the European Central Bank or ~~the Nederlandsche Bank~~ the national competent authority. From the ascription of this account it appears that it has been issued by the payment institution or electronic money institution is maintained in its own name on behalf of one or more third parties, stating the quality of the payment institution or electronic money institution.*

2. *De rekening wordt aangehouden bij een bank met zetel in ~~Nederland~~ **de Europese Unie** die een vergunning heeft voor de uitoefening van het bedrijf van bank, verleend door de Europese Centrale Bank of ~~de Nederlandsche Bank~~ **een nationale bevoegde autoriteit van de EU**. Uit de tenaamstelling van deze rekening blijkt dat deze door de betaalinstelling of elektronischgeldinstelling wordt aangehouden in eigen naam ten behoeve van een of meer derden, met vermelding van de hoedanigheid van de betaalinstelling of elektronischgeldinstelling.*

## **2.Changes to the DNB supervision budget**

Changes to the Financial Supervision Funding Act 2019 will lead the DNB to add to its budget a portion of the penalties imposed on supervised entities, and the DNB will also be allowed to constitute a financial reserve with these proceeds.

This would allow the supervisory burden of the supervised entities to be more predictable from one year to the next, and therefore it will provide stability. The EMA supports this change.

## List of EMA members as of December 2020

- [AAVE LIMITED](#)
- [Account Technologies](#)
- [Airbnb Inc](#)
- [Airwallex \(UK\) Limited](#)
- [Allegro Group](#)
- [American Express](#)
- [Azimo Limited](#)
- [Bitstamp](#)
- [BlaBla Connect UK Ltd](#)
- [Blackhawk Network Ltd](#)
- [Boku Inc](#)
- [CashFlows](#)
- [Circle](#)
- [Citadel Commerce UK Ltd](#)
- [Coinbase](#)
- [Contis](#)
- [Corner Banca SA](#)
- [Crypto.com](#)
- [Curve](#)
- [eBay Sarl](#)
- [ECOMMPAY Limited](#)
- [Em@ney Plc](#)
- [ePayments Systems Limited](#)
- [Euronet Worldwide Inc](#)
- [Facebook Payments International Ltd](#)
- [Financial House Limited](#)
- [First Rate Exchange Services](#)
- [FIS](#)
- [Flex-e-card](#)
- [Flywire](#)
- [Gemini](#)
- [Globepay Limited](#)
- [GoCardless Ltd](#)
- [Google Payment Ltd](#)
- [IDT Financial Services Limited](#)
- [Imagor SA](#)
- [Ixaris Systems Ltd](#)
- [Modulr FS Europe Limited](#)
- [MONAVATE](#)
- [Moneyhub Financial Technology Ltd](#)
- [MuchBetter](#)
- [myPOS Europe Limited](#)
- [Nvayo Limited](#)
- [OFX](#)
- [OKTO](#)
- [One Money Mail Ltd](#)
- [OpenPayd](#)
- [Optal](#)
- [Own.Solutions](#)
- [Park Card Services Limited](#)
- [Paydoo Payments UAB](#)
- [Paymentsense Limited](#)
- [Payoneer](#)
- [PayPal Europe Ltd](#)
- [Paysafe Group](#)
- [Plaid](#)
- [PPRO Financial Ltd](#)
- [PPS](#)
- [Remitly](#)
- [Revolut](#)
- [SafeCharge UK Limited](#)
- [Securiclick Limited](#)
- [Skrill Limited](#)
- [Soldo Financial Services Ireland DAC](#)
- [Stripe](#)
- [SumUp Limited](#)
- [Syspay Ltd](#)
- [Token.io](#)
- [Transact Payments Limited](#)
- [TransferMate Global Payments](#)
- [TransferWise Ltd](#)
- [TrueLayer Limited](#)
- [Trustly Group AB](#)
- [Uber BV](#)
- [Vitesse PSP Ltd](#)
- [Viva Payments SA](#)
- [WEX Europe UK Limited](#)
- [Wirex Limited](#)
- [WorldFirst](#)
- [WorldRemit LTD](#)