



Trading platform becomes payment institution?

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MARKETPLACES AND ONLINE TRADING PLATFORMS HAVE TO MAKE FUNDAMENTAL CHOICES DUE TO THE WIDE SCOPE OF PSD2.



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This white paper outlines the options and tools for establishing your marketplace or trading platform under PSD2.

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“A great amount of marketplaces and online trading platforms do not fully comply with the PSD2 regulation. This creates large risks for the platform and its users.”

Maurice Jongmans

PSD2

The Payment Service Directive 2 is the successor to the first version of the Payment Service Directive (PSD). PSD2 is a European directive that is transposed into local financial legislation by the EU member states. As a result, the implementation of this legislation varies slightly from country to country.

The PSD2 is a progressive guideline intended to stimulate innovation and renewal in the financial landscape and to provide fintech parties with the capacity to develop new products and services. Additionally, the Directive ensures that more parties will fall within the scope of the PSD2. The Directive further contributes to a stable and secure financial system with sufficient measures to prevent abuse.

PSD2 provides many new aspects. The most important are:

- 1 Widen the scope**
More institutions are covered by the new legislation;
- 2 New payment services**
Payment initiation and account information services (also referred to as 'access to the account');
- 3 Licensing**
More conditions are imposed on the permit;
- 4 Unintentional transfers**
There are more opportunities and improved means of protection for users who have inadvertently or incorrectly completed a transaction;
- 5 Strong Customer Authentication**
Access to payments requires strong customer authentication (SCA);
- 6 Transaction costs**
The calculation of costs for the payment transaction is further limited (for example: Mastercard payments are not allowed to be more expensive than iDEAL payments);

PSD2 for Marketplaces and Online Trading Platforms

An important amendment under PSD2 is the scope of application. This amendment directly impacts marketplaces and online trading platforms (for example; e-commerce platforms with many merchants). The first PSD only applied to organizations whose main activity was to offer payment services. Under PSD2, the legislation also applies if payment services are ancillary activities. You can therefore state that as soon as an online trading platform or marketplace processes 'third party funds' - or collects money from a bank account under its own management and passes it on to the beneficiaries – the online trading platform is subject to the new PSD2 legislation. This has a particular impact on marketplaces and trading platforms, which is why DNB issued a news item on 28 June 2017:

“Trading platforms that provide payment services themselves must have a license from PSD2 onwards and will no longer be exempt from a license obligation. ”

(DNB - NEWSLETTER OPEN BOOK SUPERVISION - 28-06-2017)

To comply with the legislation, marketplaces and trading platforms have a number of options.

What are the options for marketplaces and trading platforms?

1

Commercial agent exemption



2

Apply for a Payment Service Provider license



3

Outsourcing to platform-PSP





The directive includes an exemption for commercial agents. Naturally the important question is; when are you a commercial agent? As a commercial agent you have to act on behalf of one of the two parties. It is not sufficient to list this in the General Terms and Conditions. As an agent, you are more than just a channel for passing on orders. An agent is allowed to set the price or negotiate on behalf of the party. Additionally, an agent also assumes responsibility for all entrepreneurial risks, such as debtor risk, guarantees and shipping risks.

The question is whether you are willing to carry these responsibilities as a trading platform. If you have a car-sharing platform and a 'borrowed' car breaks down along the road, who is responsible for the costs incurred? The owner of the car or the platform?

PLEASE NOTE:

This exemption was already included in PSD, but was interpreted more widely in other countries within Europe and has therefore been made more accurate in PSD2. Nevertheless, we see different interpretations of 'commercial agent' per country and national regulator. If a platform operates on a European level, it may therefore be that, as an e-commerce platform in France, you fall under the exemption of the commercial agent, but still require a license in other European countries because of different interpretations.

EXAMPLE

An example of a trading platform in the Netherlands, that makes use of the trade agent exemption, is Bol.com. At Bol.com you can buy products from many different sellers, but Bol.com takes responsibility for the entire process; the debtor risk (if a buyer does not pay), the right of return, customer service, shipping risk, complaints and warranty. For example: A seller of second-hand books receives the shipping label from Bol.com and, even though the book does not arrive at the buyer, the seller receives its money.

OPINION

Nevertheless, it is quite possible that Bol.com or parent company Ahold will apply for a license as a payment service provider from DNB in order to be able to use the Payment Initiation Service Provider (PISP) role in the future. Especially when you look at the size of the Ahold group and their (European) ambitions. As soon as you order from Albert Heijn or Bol.com, they can immediately handle the payment for you themselves.



A license is the most secure and flexible way of handling payment services. This allows an organization to manage and distribute the third party funds themselves. However, there are considerable requirements when applying for a license.

THE MOST IMPORTANT REQUIREMENTS ARE:

- 1 **Statement of no objection for directors by DNB**
- 2 **Controlled remuneration policy**
- 3 **Own funds and solvency requirements**
- 4 **Third Party Funds Foundation (Stichting Derdengelden)**
- 5 **Recovery and Exit plan**
- 6 **Controlled operations (auditor's report, compliance function, risk management function)**
- 7 **Integrity of business operations (Incidents, sanctioning law, transaction monitoring, checking all beneficiaries by means of customer due diligence (KYC))**

As a payment service provider, you must pay annually for the supervision of DNB. Both the direct supervision costs (costs that DNB charges the payment service provider on the basis of the volume you have processed) and the indirect supervision costs (costs incurred in meeting the various supervision requirements of DNB, such as reports, documentation, plans).

Based on the previous statement, the conclusion is that a platform must have a considerable size to ensure profitability of a license due to the substantial investments involved. Additionally, one must question if these investments and activities do not distract the organization from the core business.

STATUS IN THE NETHERLANDS

At present, DNB has only issued a total of 6 licenses for the new PSD2 services payment initiation and account information. This number is below expectations and is partly due to the long processing time of license applications at DNB. In addition, the market seems to be waiting for the actual possibilities of PSD2.

EXAMPLE

Uber is an example of an organization that applied for a license as an (electronic) payment service provider from DNB. Their license was issued early April 2019. Uber Payments BV intends to process the payments associated with the taxi rides offered but also for its meal delivery service Uber-eats.



In the Netherlands, webshops simply use a payment service provider (PSP) to facilitate payments via, for example, iDEAL and other payment methods. Marketplaces and trading platforms can also use a payment service provider to handle payment transactions on their platform. As a marketplace or e-commerce platform, you can thus remain outside the PSD2 legislation. It is important that you select a payment service provider that specializes in platforms and marketplaces and offers focused platform payment features. A prerequisite is that the platform cannot obtain third party funds.

THE KEY FEATURES AND BENEFITS OF A PLATFORM SOLUTION:

- 1 Marketplace or platform does not fall under PSD2**
The legislation applies to the platform-PSP (which is already PSD2 licensed);
- 2 Know Your Customer (KYC)**
Must be performed by the platform-PSP on all sellers; providing also reliable sellers in the process (controlled seller);
- 3 Multi-Split capabilities**
Instantly split one transaction into the funds for the individual seller(s) and the fee for the platform;
- 4 Escrow options**
Hold money until certain obligations have been met, like delivery of the product / service;
- 5 Payment methods**
Always up-to-date links with payment methods and easy expansion to other countries;
- 6 C2C license**
For payments between consumers with payment methods such as iDEAL, the platform-PSP must have a C2C license with the payment scheme;
- 7 Fraud reduction**
By making use of the platform-PSP's extensive experience and information, there's a higher chance fraud on a marketplace can be well mitigated and prevented;
- 8 GDPR**
Working with a platform-PSP, no identification documents or bank details are saved in your own databases or systems, you only request insight into the status of a 'controlled user'.

EXAMPLE

Marktplaats.nl, an Ebay company, is the largest marketplace in the Netherlands and since 2017 has been offering its millions of users the opportunity to pay each other via iDEAL. To enable this, Marktplaats is using the payment system of Online Payment Platform. Additionally, an escrow service is offered, Online Payment Platform holds the buyers' money until the purchased item has been delivered to the buyer. This provides confidence, safety and security for both parties involved.

“Marktplaats is a place with millions of users. Online Payment Platform makes it easy and safe to pay each other via iDEAL, increasing trust and success.”

Marcella de Rouw – Marktplaats



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Maurice Jongmans (1978) has been operating as an independent entrepreneur in the world of internet applications since 2000. Since 2011 he has been active as a payment innovator and director of Online Payment Platform located in Delft in the Netherlands. He is chairman of the Dutch Association of Payment Institutions (VBIN).

With a heart for innovation and a sense for rules and regulations, he is always personally involved in the developments of the financial and fintech market. He has a critical but open mind towards regulators and legislators.

In addition to the fintech world, he has a passion for sailing and boats and as Nautical Coordinator he contributed to the Royal shipping in 2013 and Sail Amsterdam in 2015, where he was responsible for the presence and sailing schedules of all ships on the water.

Maurice enjoys riding in a Tesla but regularly opts for other forms of electric transport such as the train, metro and share scooter.



Online Payment Platform enables payment processes on platforms; not only from business to business (B2B), but also business to consumer (B2C) and from consumer to consumer (C2C). Online Payment Platform aims to make the world of online payments easier and safer in a place we believe in: platforms and marketplaces.



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