

Twitter Thread by Simon Lelieveldt



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The Dutch regulator and DNB as financial supervisor are a tough cookie to deal with. In essence they hyperregulate EU-rules into goldplated Dutch rules which go beyond what is prescribed in Europe.

All NL-customers at British banks may thus be kicked out on brexit.

Thread

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If we start with the capital requirements directive, it says attracting deposits is forbidden. In article 9.

<https://t.co/RYI7SXligC>

Article 9

Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public

1. Member States shall prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.

Now the translation of that rule into Dutch law is slightly expanded to not only prohibit attracting deposits, but to also prohibit, having those deposits under custody ('ter beschikking hebben').

That's not in EU law, but it is in our Dutch law.

<https://t.co/PsbWfNY3PA>

3. Deel Prudentieel Toezicht Financiële Ondernemingen

Hoofdstuk 3.2. Aantrekken van opvorderbare gelden

Artikel 3:5

1. Het is een ieder verboden in Nederland in de uitoefening van een bedrijf van het publiek opvorderbare gelden aan te trekken, ter beschikking te verkrijgen of ter beschikking te hebben.
2. Het eerste lid is niet van toepassing op:
 - a. banken die een door de Europese Centrale Bank of de Nederlandsche Bank verleende vergunning hebben als bedoeld in [artikel 2:11, eerste lid](#), of [2:20](#), en banken met zetel in een andere lidstaat die hun bedrijf uitoefenen vanuit een in Nederland gelegen bijkantoor of door middel van het verrichten van diensten naar Nederland en die hebben voldaan aan het in [artikel 2:15](#) of [2:16](#) bepaalde met betrekking tot het verrichten van de werkzaamheden, bedoeld onder 1 in bijlage I bij de richtlijn kapitaalvereisten;
 - b. banken met zetel in een andere lidstaat die een door de Europese Centrale Bank of de toezichthoudende instantie van die lidstaat verleende vergunning hebben voor het uitoefenen van hun bedrijf en die hebben voldaan aan de in die andere lidstaat geldende verplichtingen voor het verrichten van diensten naar een andere lidstaat;
 - c. de lidstaten, alsmede de regionale of lokale overheden van de lidstaten;
 - d. het aantrekken, ter beschikking verkrijgen of ter beschikking hebben van opvorderbare gelden als gevolg van het aanbieden van effecten in overeenstemming met hetgeen in [hoofdstuk 5.1](#) is bepaald; en
 - e. entiteiten voor risico-acceptatie; en
 - f. kredietunies met zetel in Nederland.
3. Bij ministeriële regeling kan vrijstelling worden geregeld van het eerste lid.
4. De Nederlandsche Bank kan op aanvraag, al dan niet voor bepaalde tijd, ontheffing verlenen van het eerste lid, indien de aanvrager aantoont dat de belangen die dit deel beoogt te beschermen voldoende worden beschermd. Bij of krachtens algemene maatregel van bestuur kunnen regels worden gesteld waaraan de houder van een ontheffing dient te voldoen en met betrekking tot het verlenen van de ontheffing.

So if you wonder how this would work out for UK banks and Payment institutions servicing Dutch customers. Have a read at the technical explanation of DNB, the financial supervisor and their summarising table.

<https://t.co/LL0fAnYkRJ>

Passive servicing of Dutch is not allowed!

Cross-border financial services provision allowed to Dutch customers by UK firms after 2020 (non-exhaustive)*

	Type of service	Cross-border services provision allowed under Dutch law	Passive servicing allowed under Dutch law **	Authority responsible in the Netherlands
UK insurers	Life insurance, general/non-life insurance	Still temporarily allowed in 2021 (see below)	Yes, in case of life insurance products, depends in case of non-life (see below)	DNB
UK reinsurers	Reinsurance	Yes	Yes	DNB
UK credit institutions (Dutch retail customers)***	Deposit taking (savings account, current account)	No	No	DNB
UK credit institutions (Dutch professional market parties)	Deposit taking (savings account, current account)	Yes (see below)	Yes (see below)	DNB
UK payment firms and electronic money institutions	Payment and electronic money services	No	No	DNB

* This table assumes that the Brexit transition period is not extended and no alternative arrangements between the EU and the UK will be in place from 2021.

** Defined here as service that was concluded by a UK firm with a customer living in the UK at that particular moment, but who has since then moved back to the Netherlands, with the provision of the service continuing (also after the Brexit transition period).

*** The Dutch Authority for Financial Markets (AFM) is the responsible authority in the Netherlands in case of cross-border services in the area of mortgage loans, credit cards, other loans and overdraft facilities.

Any bank or PSP in the UK that continues to serve Dutch customers (as in retail customers, professional players are excepted) can thus be subject to fines and policing under Dutch law.

Meaning we not only have Accidental American issues in payments, but also Accidental Dutchies

The problem does not exist for other countries, as is apparent from this ECB-explanation. Passive servicing would be allowed, but customers should note that their deposit guarantee rules may change.

<https://t.co/zNyzPPE2vI>

Two things change. Some payment technicalities when doing payments from/to UK. And the rules for deposit guarantee. As EBA (not ECB, my mistake) outlines here..

Changes in cross-border payments between the EU and UK

After the end of the transition period, EU-based payment service providers will need to provide more information regarding the payer for cross-border payments and direct debits from the EU to the UK, compared to intra-EU transfers, which is how payments to the UK have so far been treated. In addition to the payer's payment account number or unique transaction identifier, the information will include also details on the payer's name and either the payer's address, official personal document number, customer identification number or the date/place of birth. As a result, the consumers transferring funds between the EU and UK may be asked by their payment service providers to provide these additional details.

Access to bank accounts in UK and protection of depositors

Under EU law, after the end of the transition period, consumers in the EU may maintain their existing bank accounts held with UK financial institutions, subject to the relevant UK legal requirements. However, consumers need to consider the following:

- If the consumer's bank account is held with a UK financial institution authorised in the UK, the deposit protection rules applicable in the UK will apply, and these may be different to those applicable to bank accounts held in the EU.
- If the bank account is held with an EU-based branch of a UK financial institution, it will no longer be covered by the UK deposit guarantee scheme (as explained by the [UK authorities](#)), consumers are advised to check with their financial institution (branch) or national supervisory authorities in their Member State whether such deposits will be protected by the deposit protection scheme in the relevant Member State.

If the consumer's bank account is held with a UK-based branch of an EU-authorized institution, it will be covered by the UK deposit scheme based on the information currently available. However, this could change after the end of transition period and such deposits may or may not be protected by the UK or a national deposit protection scheme in the EU.

So we can see that the result of our Ministry of Finance blindly upgrading and goldplating Dutch rules no request of DNB comes with a price. The price is that it limits freedom of services and constrain the local business environment and consumers.

But they seem to like that.

In the area of digital money, the central bank/financial supervisor DNB incorrectly interprets that PSP's and e-money operators cannot hold e-money (which does not qualify as e-money), while a statement in the WFT and EU-directives states otherwise.

<https://t.co/WzYvLdCz3o>

Artikel 3:29c

1. Een betaalinstelling of elektronischgeldinstelling met zetel in Nederland houdt alleen betaalrekeningen aan die uitsluitend voor betalingstransacties worden gebruikt.
2. Geldmiddelen die een betaalinstelling of elektronischgeldinstelling met zetel in Nederland in verband met het verlenen van betaaldiensten van betaaldienstgebruikers ontvangt, zijn, in afwijking van [artikel 1:1](#), geen [opvorderbare](#) gelden.
3. Geldmiddelen die door een elektronischgeldinstelling zijn ontvangen in ruil voor elektronisch geld, zijn, in afwijking van [artikel 1:1](#), geen [opvorderbare](#) gelden.
4. Bij of krachtens algemene maatregel van bestuur worden regels gesteld met betrekking tot het verlenen van de onder 4, 5 en 7 van de bijlage bij de richtlijn betaaldiensten bedoelde kredieten door betaalinstellingen of elektronischgeldinstellingen met zetel in Nederland.

Artikel 3:29

To make the circle round: 'Deposits' is the equivalent of 'opvorderbare gelden' in the Dutch law on financial supervision. So if UK entities were offering e-money instead of deposits, the whole accidental Dutchies problem can be solved.

What about deposit guarantee?

door herverzekering of overname van de portefeuille van de levensverzekeraar;
opvorderbare gelden: deposito's of andere terugbetaalbare gelden als bedoeld in de definitie van kredietinstelling in artikel 4 van de verordening kapitaalvereisten;
overwegende zeggenschap: het kunnen uitoefenen van ten minste 30 procent van de stemrechten in een algemene vergadering van een naamloze vennootschap;

Well, the UK leaving means that the deposit guarantee is gone anyway, so the fact that it doesn't apply to e-money products doesn't mean anything for the consumer.

Bottom line is that UK entities may want to relabel their payment accounts for Dutch citizens into e-money.

Which brings us back to square 1; Goldplating Dutch regulator/supervisor bring about extra costs for private sector, without the merit of its position being sufficiently overseen/challenged or audited.

As is clear from the way in which crypto is treated

<https://t.co/Ur1I72AgXo>

We now even have a Christmas song, last last Christmas, dedicated to this Dutch overregulation of crypto ...

Enjoy !

'LASTLASTXMAS2020.WAV' on #SoundCloud

#np <https://t.co/7jmBKkOe6c>