

## **Directive 2007/64/EC on payment services in the internal market ([Payment Services Directive](#) – PSD)**

*Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (furthermore as “PSD”) amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Official Journal L 319 , 05/12/2007 P. 0001 – 0036)*

### **Transposition**

At the latest on November 11, 2009 the transition of the PSD into national legislative has to be adopted. The legislators in the Czech Republic shall bring into force the laws, regulations and administrative provisions necessary to comply with the PSD. Despite a full harmonisation approach retained by the PSD, as many as 23 optional provisions leave a certain margin of discretion to the Member States. It is supposed that actual Payment System Act would be replaced in extenso by the Payment Services Act, which would be focused on the payment services provided within the frame of the (European) Community (i.e. both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in the Community and payment service is made either in euro or the currency of a Member State outside the euro area).

At the beginning of this year a public consultation focused mainly on adoption of derogations to the draft of the Payment Services Act was carried out. During the last quarter of the current year a first version of the paragraphed version of the Payment Services Act proposal should be launched. Co-ordinators of this new legal framework are Czech National Bank together with Ministry of Finance.

### **Single legal framework**

It is essential for the establishment of the internal market that all internal frontiers in the Community be dismantled so as to enable the free movement of goods, persons, services and capital. The proper operation of the single market in payment services is therefore vital. In former times, however, the lack of harmonisation in this area hinders the operation of that market.

It is vital, therefore, to establish at Community level a modern and coherent legal framework for payment services, whether or not the services are compatible with the system resulting from the financial sector initiative for a **single euro payments area (SEPA)**, which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer cost, safety and efficiency, as compared with the present national systems.

That legal framework should ensure the coordination of national provisions on prudential requirements, the access of new payment service providers to the market, information requirements, and the respective rights and obligations of payment services users and providers.

However, it is not appropriate for that legal framework to be fully comprehensive. Its application should be confined to payment service providers whose main activity consists in the provision of payment services to payment service users.

It is necessary to specify the **categories of payment service providers** which may legitimately provide payment services throughout the Community, namely, credit institutions which take deposits from users that can be used to fund payment transactions and electronic money institutions which issue electronic money that can be used to fund payment transactions.

However, in order to remove legal barriers to market entry, it is necessary to establish a **single licence for all providers of payment services** which are not connected to taking deposits or issuing electronic money. It is appropriate, therefore, to introduce a new category of payment service providers, "payment institutions", by providing for the authorisation, subject to a set of strict and comprehensive conditions, of legal persons outside the existing categories to provide payment

services throughout the Community. Thus, the same conditions would apply Community-wide to such services.

### **Basic sphere of legal form**

A set of rules should be established in order to ensure **transparency of conditions and information requirements** for payment services.

This Directive should specify the **obligations on payment service providers as regards the provision of information to the payment service users** who should receive the same high level of clear information about payment services in order to make well-informed choices and be able to shop around within the EU. In the interest of transparency this Directive should lay down the harmonised requirements needed to ensure that necessary and sufficient information is given to the payment service users with regard to the payment service contract and the payment transactions. In order to promote smooth functioning of the single market in payment services, Member States should be able to adopt only those information provisions laid down in this Directive. The information required should be proportionate to the needs of users and communicated in a standard manner.

This Directive should provide for the consumer's right to receive relevant information free of charge before he is bound by any payment service contract. The consumer should also be able to request prior information as well as the framework contract, on paper, free of charge at any time during the contractual relationship, so as to enable him to compare payment service providers' services and their conditions and in case of any dispute verify his contractual rights and obligations. In addition, the consumer should receive basic information on executed payment transactions for no additional charge.

In order to facilitate customer mobility, it should be possible for consumers to terminate a framework contract after the expiry of a year without incurring charges. For consumers, the period of notice agreed should be no longer than a month, and for payment service providers no shorter than two months.

In order to provide an incentive for the payment service user to notify, without undue delay, his provider of any theft or loss of a payment instrument and thus to reduce the risk of unauthorised payment transactions, the user should be liable only for a limited amount, unless the payment service user has acted fraudulently or with gross negligence.

This Directive should lay down rules for a refund to protect the consumer when the executed payment transaction exceeds the amount which could reasonably have been expected.

For financial planning and the fulfilment of payment obligations in due time, consumers and enterprises need to have certainty on the length of time that the execution of a payment order takes. Therefore, this Directive should introduce a point in time at which rights and obligations take effect.

Users should be able to rely on the proper execution of a complete and valid payment order if the payment service provider has no contractual or statutory ground for refusal.

It is essential, for the fully integrated straight-through processing of payments and for legal certainty with respect to the fulfilment of any underlying obligation between payment service users, that the full amount transferred by the payer should be credited to the account of the payee. Accordingly, it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred.

With regard to charges, experience has shown that the sharing of charges between a payer and a payee is the most efficient system since it facilitates the straight-through processing of payments. Provision should therefore be made for charges to be levied, in the normal course, directly on the payer and the payee by their respective payment service providers.

In order to improve the efficiency of payments throughout the Community, **all payment orders initiated by the payer and denominated in euro or the currency of a Member State outside the euro area, including credit transfers and money remittances, should be subject to a maximum**

**one-day execution time.** For all other payments, such as payments initiated by or through a payee, including direct debits and card payments, in the absence of an explicit agreement between the payment service provider and the payer setting a longer execution time, the same one-day execution time should apply. The periods above could be extended by an additional business day, if a payment order is given on paper.

The smooth and efficient functioning of the payment system depends on the user being able to rely on the payment service provider executing the payment transaction correctly and within the agreed time.

In view of all those considerations, it is entirely appropriate, except under abnormal and unforeseeable circumstances, to impose liability on the payment service provider in respect of execution of a payment transaction accepted from the user, except for the payee's payment service provider's acts and omissions for whose selection solely the payee is responsible.

Whenever the payment amount has been credited to the receiving payment service provider's account, the payee should immediately have a claim against his payment service provider for credit to his account.

The payer's payment service provider should assume liability for correct payment execution, including, in particular the full amount of the payment transaction and execution time, and full responsibility for any failure by other parties in the payment chain up to the account of the payee.

It should be possible for the payment service provider to specify unambiguously the information required to execute a payment order correctly. The liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user.

Member States should determine whether the competent authorities designated for granting authorisation to payment institutions might also be the competent authorities with regard to out-of-court complaint and redress procedures.

### **Payment Services Definition**

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
  - execution of direct debits, including one-off direct debits,
  - execution of payment transactions through a payment card or a similar device,
  - execution of credit transfers, including standing orders.
- Execution of payment transactions where the funds are covered by a credit line for a payment service user:
  - execution of direct debits, including one-off direct debits,
  - execution of payment transactions through a payment card or a similar device,
  - execution of credit transfers, including standing orders.
- Issuing and/or acquiring of payment instruments.
- Money remittance.
- Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.