

Payment services in the internal market

2005/0245(COD) - 13/11/2007 - Final act

PURPOSE: to remove the legal obstacles to the creation of a single payments area in the European Union.

LEGISLATIVE ACT: Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

CONTENT: the Council adopted a directive establishing a legal framework for payment services, aimed at facilitating and reducing the cost of payments throughout the European Union. The directive is adopted in first reading, under the codecision procedure involving both the European Parliament and the Council. It complements an initiative by which the payments industry has committed itself to establishing by 2010 a "single euro payments area" (SEPA), with integrated payment infrastructures and payment products enabling money to move freely between users, regardless of where they are situated.

The directive which amends Directives 97/7/EC, 2000/12/EC and 2002/65/EC, provides for:

- enhanced competition by opening markets to all appropriate payment service providers.
- harmonised market access requirements for non-bank payment service providers, "payment institutions", ensuring a level playing field and at the same time encouraging innovation.
- introduction of a clear and simple set of harmonised information requirements for both providers and users, increasing market transparency.
- standardisation of rights and obligations for users and providers of payment services, with emphasis on a high level of consumer protection.

The member states will have until 1 November 2009 to bring into force the provisions necessary to comply with the new framework.

The main features of the Directive are as follow:

Scope: the Directive is applicable to payment services within the Community. However, with the exception of Article 73 (value date and availability of funds), titles III (Transparency of conditions and information requirements for payment services) and IV (Rights and obligations in relation to the provision and use of payment services) of the directive only apply where 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.

Exclusions: the directive applies in all Member States, whether or not they belong to the eurozone, as well as to the countries in the European Economic Area. It should be noted that it will not apply, among other things to: i) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention; ii) professional physical transport of banknotes and coins, including their collection, processing and delivery; iii) money exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account; iv) payment transactions based on paper cheques or paper-based postal money orders; v) payment transactions executed by means of any telecommunication, digital or IT device (under certain conditions); vi) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary

intervention by a payment service provider other than an undertaking belonging to the same group; vii) services by providers to withdraw cash by means of automated teller machines (ATMs) acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed in the Annex.

Initial capital/own funds/authorisation: payment institutions would be required to hold initial capital (EUR 20 000, EUR 50 000 or EUR 125 000 depending on the nature of their activities) and own funds (according to 3 calculation methods), as well as receive an authorisation. The competent authorities shall grant an authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, the payment institution has robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures. However, the Member States may derogate from these rules for institutions dealing with amounts of less than EUR 3 million/month.

Charges: the charges should, in theory, be shared between the payer and the payee, each assuming the charges levied by his service provider, but provision is made for these charges to be zero or that the payee alone assumes the charge (the case of traders who accept credit card payments, for example). In general, the rights and obligations of service providers and their customers are clearly defined.

Payment transactions: the Directive provides that payments are effective the following working day for payments in euros, those made in a national currency in a Member State or those involving conversion between the euro and the currency of a Member State outside the eurozone. Until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days. These periods may be extended by a further business day for paper-initiated payment transactions.

Member States will have to ensure that, for the payee's account, the value date of the payment is not after that of the working day on which the payment transaction amount is credited to the account of the payee's payment service provider.

The Directive also provides for the possibility for micro-businesses to benefit from the same protection as consumers as far as information is concerned, as well as the clear division of responsibilities between the various payment service providers in the event of the defective execution of a payment.

Revision: on 1 November 2012, at the latest, the Commission will submit a report on the implementation and the impact of this directive, accompanied, if appropriate, by a proposal for its revision.

ENTRY INTO FORCE: 25/12/2007

TRANSPOSITION : 01/11/2009