

Payment services in the internal market

2013/0264(COD) - 25/11/2015 - Final act

PURPOSE: to help develop further an EU-wide market for electronic payments.

LEGISLATIVE ACT: Directive (EU) 2015/2366 of the European Parliament and of the Council on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

CONTENT: the Directive **incorporates and repeals directive 2007/64/EC**, which provided the legal basis for the creation of an EU-wide single market for payment services.

Since the adoption of Directive 2007/64/EC (the original payment services directive), methods for the initiation of payments in the field of e-commerce have evolved.

The revised directive **adapts the rules to cater for emerging and innovative payment services, including internet and mobile payments**. It seeks to ensure a more secure environment for payments, in particular for those using remote channels. It is complemented [by Regulation \(EU\) 2015/751 of the European Parliament and of the Council](#) which introduces, in particular, rules on the charging of interchange fees for card-based transactions.

The main elements of the Directive are as follows:

Scope and application: this Directive aims to ensure continuity in the market, enabling existing and new service providers, regardless of the business model applied by them, to offer their services with a **clear and harmonised** regulatory framework. Equivalent operating conditions should be guaranteed, to **existing and new players on the market**, enabling new means of payment to reach a broader market, and ensuring a high level of **consumer protection** in the use of those payment services across the Union as a whole. This should generate efficiencies in the payment system as a whole and lead to more choice and more transparency of payment services while strengthening consumers' trust in a harmonised payments market.

This Directive also establishes rules concerning:

- **the transparency** of conditions and information requirements for payment services; and
- the respective **rights and obligations** of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.

The Directive shall also cover:

- **the accounts information service** which allow the payment service user to have an overall view of its financial situation immediately at any given moment;
- **payment initiation services** that enable the payment initiation service provider to reassure the payee that the payment has been initiated thus providing an incentive to the payee to release the goods or to deliver the service without undue delay.

This Directive applies to payment services provided **within the Union**. Titles III (information requirements) and IV (rights and obligations in relation to the provision and use of payments) apply to

payment transactions **in the currency of a Member State** 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 within the Union.

Exclusions: the exclusion relating to certain payment transactions by means of telecom or information technology devices shall focus specifically on **micro-payments for digital content and voice-based services**.

The Directive does not apply to cash withdrawal services offered by means of automated teller machines (ATMs) by providers, 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 those providers comply with specific transparency provisions of this Directive while ensuring clarity with regard to withdrawal charges.

Authorisation as payment institutions: the Directive does not substantially change the conditions for granting and maintaining authorisation as payment institutions. The conditions include prudential requirements proportionate to the operational and financial risks faced by such bodies in the course of their business. In that connection, there is a need for a sound regime of initial capital combined with on-going capital which could be elaborated in a more sophisticated way in due course depending on the needs of the market.

Member States shall require undertakings that apply for authorisation to provide payment services, as a condition of their authorisation, to hold a **professional indemnity insurance**, covering the territories in which they offer services, or some other comparable guarantee against liability to ensure that they can cover their liabilities.

Role of the European Banking Authority: the role of the EBA is strengthened in that it shall:

- develop, operate and maintain an **electronic, central register** that contains the information as notified by the competent authorities and make it publicly available on its website;
- assist in resolving disputes between competent authorities in the context of cross-border cooperation;
- **develop draft regulatory technical standards** specifying the framework for cooperation.

The Directive also provides for the supervision of payment institutions exercising the right of establishment and freedom to provide services as well as measures in case of non-compliance, including precautionary measures to ensure that the payment institution concerned puts an end to its irregular situation.

Access to accounts maintained with a credit institution: the Directive stipulates that Member States shall ensure that payment institutions have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis. Such access shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner. The credit institution shall provide the competent authority with duly motivated reasons for any rejection.

Transparency and consumer rights: this Directive shall provide for a right for consumers to receive relevant information **free of charge** before being bound by any payment service contract. Consumers shall 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 them both to compare the services and conditions offered by payment service providers and in the case of any dispute, to verify their contractual rights and obligations.

The consumer shall receive basic information on executed payment transactions at **no additional charge**. In order to facilitate customer mobility, it shall be possible for consumers to terminate a framework contract without incurring charges.

Rights and obligations in relation to the provision and use of payment services: the Directive concerns in particular issues such as:

- **limits on applicable fees:** for payment transactions provided within the Union, where both the payer's and the payee's payment service providers are, or the sole payment service provider in the payment transaction is, located within the Union, the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider;
- **confirmation on the availability of funds:** on the part of a claimant's payment service provider, **confirmation of the amount necessary** for the execution of a card-based payment transaction is available on the payment account of the payer, provided that certain following conditions are met;
- **rules on access to payment account in the case of payment initiation services:** where a payment order is initiated through a payment initiation service provider, it shall make available to the payer's account servicing payment service provider the reference of the payment transaction;
- **limits of the use of the payment instrument and of the access to payment accounts by payment service providers:**
 - i. if agreed in the framework contract, the payment service provider may reserve the right to **block the payment instrument** for objectively justified reasons relating to the security of the payment instrument, the suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil its liability to pay;
 - ii. an account servicing payment service provider may deny an account information service provider or a payment initiation service provider access to a payment account for **objectively justified and duly evidenced reasons** relating to unauthorised or fraudulent access to the payment account by that account information service provider or that payment initiation service provider. In such cases the account servicing payment service provider shall immediately report the incident relating to the account information service provider or the payment initiation service provider to the competent authority;
- **rules on access to and use of payment account information in the case of account information service:** limits of the use of the payment instrument and of the **access to payment accounts by payment service providers**; an account servicing payment service provider may deny an account information service provider access to a payment account for **objectively justified and duly evidenced reasons** relating to unauthorised or fraudulent access to the payment account and notified to the competent authority;
- obligations of the payment service user in relation to payment instruments and personalised security credentials;
- **payer's liability for unauthorised payment transactions:** in this case, the payment service provider should immediately refund the amount of that transaction to the payer.

Protection of data and safer payments: the Directive provides that Member States shall permit processing of personal data by payment systems and payment service providers when **necessary to safeguard the prevention, investigation and detection of payment fraud**. Payment service providers shall only access, process and retain personal data necessary for the provision of their payment services, with the **explicit consent** of the payment service user.

Payment service providers shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents. For electronic remote payment transactions, payment service providers apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.

In any event, **all payment services offered electronically should be carried out in a secure manner**, adopting technologies able to guarantee the safe authentication of the user and to reduce, to the maximum extent possible, the risk of fraud.

Obligation to inform consumers of their rights: by 13 January 2018, the Commission shall produce a user-friendly electronic leaflet, listing in a clear and easily comprehensible manner, the rights of consumers under this Directive and related Union law.

ENTRY INTO FORCE: 12.01.2016.

TRANSPOSITION: 13.01.2018. Member States shall adopt and publish the measures necessary to comply with this Directive.

DELEGATED ACTS: the Commission shall be empowered to adopt delegated acts concerning certain elements of the Directive. It shall be conferred on the Commission for an **undetermined period of time from 12 January 2016**. The European Parliament or the Council may formulate objections with regard to the delegated act within a period of three months of its notification (this period may be extended by three months). If the European Parliament and the Council object, the delegated act may not enter into force.