

Payment services in the internal market

2005/0245(COD) - 24/04/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Jean-Paul **GAUZÉS** (PPE-DE), on the proposal regarding the payment services directive, for which the Council had agreed a general approach. (Please refer to the document of 27/03/2007.) One of the main points at issue had been the extent to which capital requirements and other supervisory instruments imposed on banks should also apply to non-bank payment institutions.

Parliament approved, without further amendments, the compromise text worked out between the rapporteur and Council representatives. This already has the political support of the Council, so the legislative process will be completed at this first reading stage.

The directive establishes the legal basis for the Single European Payments Area (SEPA) and will allow non-cash payments, such as direct debits, bank transfers and card payments, across EU borders to be made as quickly, easily and cheaply as those within a single Member State. It will also allow institutions other than banks, known as 'payment institutions', to provide payment services, thus opening the market to competition and to technological innovations. To protect consumers, these bodies will have to meet minimum capital level requirements. The time limit for a payment to arrive will be one working day after it is made. The deadline for transposition by the Member States is 01/11/2009.

The directive will reinforce the rights and protection of all the users of payment services (consumers, retailers, large and small companies and public authorities). This particular point was resolved in the compromise text. Among the other points set out in the compromise text are:

- the creation in European law of a new class of service provider, "payment institutions". These essentially process payments and do not take deposits in the way banks do. They are defined as legal persons who have been granted authorisation in accordance with the Directive to provide and execute payment services throughout the Community. The competent authorities will grant authorisation only if 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 processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.
- payments should arrive at the latest the next working day, where these are made in euro, or are domestic payments made in the national currency of a Member State not in the euro area, or payments involving a single conversion between the euro and the national currency of a Member State not in the euro area;
- charges, where these are levied, will normally be on a shared basis with the payer and payee each paying the charge levied by their own service provider, but it is made clear that charges can be set at zero, or that all charges could be levied on the payee (as is often the case with merchants accepting card payments);
- capital requirements and registration conditions to be imposed on these payment institutions are set out, with the provision that Member States may waive most of these for smaller-scale service providers (those dealing with transactions worth less than 3 million euro per month);
- payment institutions must hold, at the time of authorisation, initial capital of EUR 20,000, EUR 50,000 or EUR 125, 000 depending on the activities in which they are engaged. They must also hold at all times own funds calculated in accordance with one of three prescribed methods, as determined by the competent authorities in accordance with national legislation.

- the Directive will apply to payment services within the Community. However, with the exception of Article 64a (Value date and availability of funds), Titles III and IV of the Directive shall 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

- Member States must prevent the multiple use of elements eligible for own funds where the payment institution belongs to a same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking. This applies accordingly where a payment institution has a hybrid character and carries out activities other than those of the Annex;

- the Directive regulates granting of credit only if it is closely linked to payment services, i.e. credit lines and issuing credit cards. Only in this context, where credit is granted in order to facilitate payment services and is of short term nature and not granted by the payment service provider for a period exceeding twelve months, including on a revolving basis, is it appropriate to permit it with regard to cross border activities of payment institutions where it is refinanced mainly using the payment institution's own funds, as well as other funds from the capital markets , but not the funds held on behalf of clients for payment services.

It was noted that, as consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee consumers' rights by provisions which cannot be derogated from by contract, it is reasonable to let enterprises and organisations agree otherwise. However, Member States should have the ability to provide that micro-enterprises should be treated in the same way as consumers. In any case, some core provisions of the Directive will always be applicable irrespective of the status of the user.