Your questions on PSD

Payment Services Directive 2007/64/EC

Questions and answers

The questions on this page have been submitted by users of this website or by correspondence directly with the Commission services.

The answers have been prepared by the Commission services with input, where appropriate, from the Member States.

The answers do not have the formal status of a Communication of the Commission. They do not bind the Commission as an institution. However, all care has been taken to ensure the answers on this page represent the considered views of the Commission services.

For more important information on the status of our answers please consult the legal notice at http://ec.europa.eu/internal_market/payments/framework/disclaimer_en.htm.

Questions with no answers are awaiting a response.

Table of contents (by Article of Directive 2007/64/EC)

Article 1(a) 190
Article 1(1) 115
Article 1(1)(c) 278
Article 1(1)(d) 316
Article 2 ..... 271, 283
Article 2 ..... 284, 299
Article 2(1) 116, 181, 228
Article 2(2) 101
Article 3, 4(3) & 10 326
Article 3(b) 324
Article 3(e) 21
Article 3(g) 87, 229
Article 3(g) 320
Article 3(g)(v) 133
Article 3(h) 7
Article 3(i) 22, 109
Article 3(j) 23
Article 3(k) 24, 135, 293
Article 3(k) 300
Article 3(m) 138, 154
Article 3(n) 17, 25
Article 3(o) 13, 26
Article 4(1) 297
Article 4(3) 313
Article 4(11) 27
Articles 4(11), 30 & 51 247
Article 4(14) 8, 28, 79, 80, 128, 218, 267
Article 4(15) 139, 214
Article 4(20) 177
Article 4(21) 29
Article 4(21) 331
Article 4(22) 30
Article 4(22) 322
Article 4(23) 31, 121, 122
Article 4(24) 32
Article 4(25) 33
Article 4(26) 34
Article 4(27) 35
Article 4(28) 330

Last updated: 22.2.2011

Article 4(30) 14
Article 8 ..... 5, 290
Article 8, methoc C 321
Article 8(1)(a) 111
Article 8(1)(c) 112
Article 9(1) 325
Article 10 329
Article 13 328
Article 16 ..... 16, 100, 131, 132
Article 16(1)(b) 120
Articles 16(2)/16(4) 15
Article 16(3) 9
Article 19 118
Article 25(1) 255
Article 28 ..... 164, 260
Article 28(1) 10, 99
Article 28(1) & Recital 130
Article 28(2) 11
Article 28(2)(a) 12, 110
Article 29 150
Article 30(1) 231
Article 32(1) 249
Article 32(3) 36
Article 34 294
Articles 34 and 53 248
Article 35 147
Article 35(2) 37
Article 36(1) 38
Article 36(2) 39, 192
Article 36(2) & 42(3)(b)–(c) 145
Article 37(1)(a) 163
Article 37(1)(b) 40
Article 38 ..... 102, 174
Article 38(a) 41
Article 39(a) 78
Article 39(e) 219, 239
Articles 42, 47 & 48 146
Article 42(1)(a) 42
Article 42(1)(b) 43
Articles 42(2)(a) and 44(1) 241
Article 42(3)(b) 124, 183, 206, 287
Article 42(7)(a) 224
Article 44 ..... 208, 296
Article 44(1) 44, 160, 242
Article 44(2) 216
Article 44(3) 45, 217, 238
Article 45 144
Article 45(3) 199, 200
Article 45(4) 243
Article 46 230
Article 47(1) 220
Article 47(1)(a) 46
Article 47(1)(c) 47, 168
Articles 47(2) and 48(2) 161
Article 47(3) 198, 289
Article 48(1)(e) 48
Article 49(1) 49
Article 49(2) 50, 91
Article 51(1) 51
Article 52 85

Article 52(1) 184
Article 52(2) 52, 92, 193, 197, 212
Article 52(2) 272
Articles 52(2) & 67(1) 153
Article 52(3) 81, 93, 105, 142, 253
Article 52(3) 310
Article 53(3) 53
Article 54(1) 54
Article 54(2) 55
Article 54(3) 56, 57, 221
Article 55(2) 266
Article 56(2) 265
Article 57(1) 58
Article 58 ..... 59, 94
Article 59 237
Article 59(1) 60
Article 59(2) 95
Article 60 295
Articles 60 & 61 215
Article 60(1) 61, 187
Article 60(1) 311
Article 62 ..... 83, 86, 96, 179, 234
Article 62(1) 170
Article 62(3) 62
Article 63 ..... 152, 182
Article 63(1) 63
Article 63(2) 64
Article 65 245
Article 64 ..... 298, 302
Article 64(1) 274
Article 64(2) 66, 140
Article 65 ..... 148, 159
Article 65 301
Article 65(1) 67
Article 66 ..... 158, 259
Articles 66 and 74 292
Article 66(2) 68, 97
Article 66(3) 69, 149
Article 66(4) 155, 281
Article 66(5) 261
Article 67 263
Article 67(1) 70, 189, 250, 268
Article 67(1) 318, 323
Article 68 246
Articles 68, 69 and 72 277
Article 68(1)(a) 254
Article 68(1)(c) 88, 213
Articles 68(1) & 69(1) 175
Article 68(2) 119, 171, 223, 270
Article 69 ..... 98, 166
Article 69(1) 65, 84, 89, 191
Articles 69(1) & 73(1) 188, 227
Article 69(2) 71
Article 69(3) 72, 141
Article 70 ..... 73, 82, 90
Article 72 291
Article 73 ..... 123, 172, 176, 204, 207, 226, 236, 240, 252, 256, 258, 269
Article 73 – Credit Val 125
Article 73 CR Val 209
Article 73(1) 4, 74, 137, 169, 196, 202, 203, 205, 244

Article 73(2) 1, 185, 222, 286
Article 73(2) 317
Article 74 143
Article 74(1) 129
Article 75 ..... 173, 178, 235
Article 75(1) 75
Article 75(2) 76, 201
Article 86(1) 106
Article 88(1) 195
Article 88(2) 3
Article 94(1) 77
General ..... 2, 6, 18, 103, 104, 107, 108, 113, 114, 117, 126, 127, 136, 151, 156, 157, 162, 167, 180, ... 186, 194, 210, 211, 225, 232, 233, 251, 257, 262, 264, 273, 275, 276, 280, 282, 285, 288, ... 312, 314, 315, 319, 327
General **(New answers)** 330, 333, 334, 335, 337
Recital 6 134
Recital 37 19
Recital 38 20
Title I, Article 1 279
Title IV, Article 52 165

Table of contents (by subject matter)

Access to payment systems – Card schemes 10, 12, 99
Access to payment systems – Payment institution 164
Access to payment systems – Technical infrastructure 130
Access to payment systems – Three-party schemes 11
Applicable law – Cross-border service 224
Application – Credit transfer 215
Application – EEA branch of non-EEA credit institution 115
Authorisation – PIN code 237
Availability of funds – Local bank holiday 244
Availability of funds – No payee's payment account 73, 82
'Business estimates' – Interpretation 321
Card transaction – Annual subscription fee 243
Card transaction – Availability of funds 125, 209
Card transaction – Credit/spending limit 160
Card transaction – Declinement and prior information 159
Card transaction – Irrevocability 68
Charges 273
Charges – ATM surcharging 81, 105
Charges – BEN and the full amount principle 153
Charges – BEN option 189
Charges – Breakdown 146
Charges – Corrective and preventive measures 184
Charges – Debiting fee from account 86
Charges – Full amount principle 70
Charges – Full harmonisation 106
Charges – Intermediary’s services 272
Charges – Intermediary's services 52, 318
Charges – Investigation 201
Charges – Provision of information 36, 230, 249
Charges – Returns 268
Charges – SHA, BEN, OUR 85
Charges – SHA, OUR 212
Charges – Share 92
Charges – Share principle 193, 197
Charges – Surcharging 93, 142, 253, 310
Clarification when the payment service might be provided through an agent 322
Competent authorities – Complaints 306

Money remittance vs credit transfer; intermediary PSP 326
Currency conversion - Card transactions **(New answer)** 335
Currency conversion – Scope of application 91
Defective execution 178
Definition – Payment account 327
Definitions – Business day (public holiday) 35
Definitions – Consumer 27, 247
Definitions - Direct debit 331
Definitions – Durable medium (web link) 33
Definitions – Funds 139, 214
Definitions – Group 14
Definitions – Means of distance communication 32, 192
Definitions – Micro-enterprise 34, 177
Definitions – Money remittance 150
Definitions – National payment transaction 122
Definitions – Payment account 218, 267
Definitions – Payment account with pass-book 156
Definitions – Payment instrument 31, 121
Definitions – Payment services (credit transfers and money remittance) 313
Definitions – Payment transaction 210, 275
Definitions – Unique identifier 29, 251
Direct debit – Authorisation 56, 221
Direct debit – Due date 166
Direct debit – Immediate refund 179
Direct debit – Irrevocability 57, 69, 155
Direct debit – Maximum execution time 72
Direct debit – Proof of authentication 60
Direct debit – Return 245
E-money – Derogation 53
Entry into force – EFTA States 108
Entry into force – EU Member States 232
Exchange rate – Calculation 45, 287
Exchange rate – Customer profile 217
Foreign cash correspondents **(New answer)** 336
Framework contract – Changes 208
Framework contract – Right of cancellation 42, 44
Full amount – Debt compensation 263
Implementation – PSD in Norway 309
Individual payment transaction – Interest rate 47
Individual payment transaction – Reference 46
Information requirements – Card benefit scheme 241
Information requirements – Charges after execution of a payment transaction 168
Information requirements – Currency conversion 194
Information requirements – Derogation 199, 200
Information requirements – Electronic money 294
Information requirements – Exchange rate 145, 163, 174
Information requirements – Framework contract 220, 225
Information requirements – Individual payment transaction 161
Information requirements – Interest rate 183
Information requirements – Notification period 242
Information requirements – Paper-based information 198, 289
Information requirements – Preferential rates 238
Information requirements – Prior notice 296
Information requirements – Single payment transaction 37, 38, 39, 40, 41, 147, 219, 239
Information requirements – Supervisory authority 43
Information requirements – Termination right 144
In-scope institution 279
Internal payment transaction 256
Internet credit platform 293
Intra-community transaction 270

Irrevocability 259, 281
Irrevocability – Charge-back 97
Irrevocability – Direct debit 149
Irrevocability – Payment card recurring transactions 158
Irrevocability – Point in time 20
Is a entry in field 23E admissible inside of a PSD-payment? 323
Liability – Allocation of responsibilities 173, 235
Liability – Error 75
Liability – Gross negligence 180
Licence **(New answer)** 333
Low-value payment instrument – Multi-functional card 248
Maximum execution time – Availability of funds 204
Maximum execution time – Bank holiday 246, 298
Maximum execution time – Card transaction 89, 90, 98
Maximum execution time – Currency 119
Maximum execution time – Currency conversion 137, 175, 213, 223, 254
Maximum execution time – Direct debit 141
Maximum execution time – Internal payment transaction 188
Maximum execution time – Intra-community transaction 171
Maximum execution time – National payment 277
Maximum execution time – National payment transactions 291
Maximum execution time – One-leg out payment transaction 227
Maximum execution time – Paper-initiated transaction 65, 84, 191
Maximum execution time – Scope 88
Maximum execution time – Value date 176
One-leg payment transaction – Currency 127
One-leg payment transaction – Intermediary bank 126
Payer – Identification 78
Payment account – Acquiring 79
Payment account – Combined services 282
Payment account – Credit balance 15, 132
Payment account – Giro account 80
Payment account – Interest 124, 206, 216
Payment account – Mortgage account 8
Payment account – Saving account 28, 128
Payment institution 278
Payment institution – Activities 297
Payment institution – Agent 30
Payment institution – Application 2
Payment institution - Authorisation 329
Payment institution – Capital 5, 111, 112
Payment institution – EU passport 255
Payment institution – Granting credit 9, 16, 100, 131
Payment institutions – Activities / e-money institutions 312, 314
Payment institutions – Calculation of own funds 290
Payment institutions - Registration 328
Payment institutions - Safeguarding requirements 325
Payment instrument – Blocking of online payment account 266
Payment instrument – Definition 264
Payment instrument – Prevention of use in case of loss or theft 58
Payment order – Refusal 19, 301
Payment services – Regular occupation 107
Payment systems – Access to designated systems 110, 260
Payment systems – Operation 120
Payment transaction – Authorisation 54, 55, 59
Payment transaction – Card transaction 94, 95, 96, 102, 113
Payment transaction – Credit reimbursement 167
Payment transaction – Currency 49, 50, 117, 162, 226, 276
Payment transaction – Defectively executed 76
Payment transaction – Field 71A OUR on Target II payment 165

Payment transaction – Immediate refund 187
Payment transaction – Initiated by a payee 170
Payment transaction – Initiation 83
Payment transaction – Liability for unauthorised transaction 61
Payment transaction – Message type 154
Payment transaction – Money remittance and full amount principle 151
Payment transaction – Paper-based 257
Payment transaction – Refusal 148
Payment transaction – Return and full amount principle 250
Payment transaction – Swift message standard 104
Payment transaction – Unique identifier 129
Payment transaction – Value date 169
Payment transaction – Value date and crediting of amount 71
Payment transactions – Unauthorised transactions 311
Personal data – Bank account 280
Point in time of receipt – Determination 274
Point in time of receipt – Direct debit 140
Point in time of receipt – Future payment 66
Pre-paid cards and debit cards **(New answer)** 334
Record keeping – Appropriate record 118
Refund – Calculation of period 63, 64
Refund – Conditions 203
Refund – Direct debit 152
Refund – Exclusion 62
Refund – Payment account 234
Refund – Pull transaction 182
Refund rights – Conditions 295
Refusal of payment order – Notification 67
Revocation – Payee's agreement 261
Role of FIN-NET - Article 83 **(New answer)** 330
Scope – ATM 13, 26
Scope – Bill collection services 324
Scope – Billing and settlement plan 103
Scope – Branch of third country credit institution 190
Scope – Branches of third country payment institutions 316
Scope – Cash correspondent outside EU 211
Scope – Cash-back 21
Scope – Cheques 87, 302
Scope – Clearing and settlement service models 7
Scope – Collective investment undertaking 109
Scope – Commercial agent 304
Scope – Corporate 51
Scope – Documentary based transaction 229
Scope – Exclusion of voucher 133, 134
Scope – Geographical 181
Scope – Geographical application 299
Scope – Geographical application (Switzerland) 288
Scope – Geographical coverage 116, 262, 271, 283, 284
Scope – Geographical scope 319
Scope – Issuing processing activities 186
Scope – Limited network 24, 114, 135, 300, 303
Scope – m-payments 307
Scope – Omnibus nostros account 138
Scope – One-leg approach 228
Scope – Paper cheques 320
Scope – Payment of tax 136
Scope – Payment services in private currencies 101
Scope – Payment transaction related to securities 22
Scope – Payment transaction within a group 17, 25
Scope – Technical service provider 23

Scope – Title III 231
Scope (New answer) 285
Security features 265
Transitional provision – Cross-border service 195
Transitional provision – Grandfather clause 3
Translation 315
Transposition 6, 18, 157, 308
Transposition – Asymmetric 77
Unauthorised payment transactions – Limit 305
Unique identifier – Incorrect details 143, 292
Unique identifiers - IBAN and BIC 332
Value date – Application 240
Value date – Availability of funds 252
Value date – Bank holiday 202
Value date – Card transaction 222
Value date – Cash withdrawal 185
Value date – Charges 317
Value date – Credit value date 4, 48, 258
Value date – Currency conversion 74, 123, 172, 196, 205, 207, 236
Value date – Debit value date 1, 233
Value date – Debit value date (New answer) 286
Value date – Nostro account 269

Relevant provisions	Article 73(2)	Question no	1
Date of question	20.11.2007	Date of answer	31.1.2008

Issue

Value date – Debit value date

Question

Article 73(2) of the PSD states: "Member States shall ensure that the debit value date for the payer's payment account is not earlier than the point in time at which the amount of the payment transaction is debited to that payment account" In the case of a SEPA direct debit collection, the payer's account is held in the books of the 'debtor bank'. According to the cross-border property of the SEPA payment instruments, the due date of a SEPA direct debit collection can be an inter-bank business day for Eurosystem and at the same time, a bank holiday or closing day in the country of the payer. Since it is an inter-bank business day for Eurosystem, the payer's bank will be debited by the Clearing and Settlement Mechanism for the amount of the transaction on the given due date. On the other hand, the payer's bank will not be able to execute the debit booking on the payer's account on the requested due date, since it is considered locally as a bank holiday. My question is consequently: is it allowed for the debtor bank to debit the payer's account on the next (local) banking business day with value date equal to the inter-bank settlement date applied by the Clearing and Settlement Mechanism for the same transaction? Please note that the same issue applies to the credit booking on the payee's account in case of local bank holiday in the payee's country. In that case, the value date applied would be earlier than the point in time at which the amount of the payment transaction is credited to the payee's account.

Answer

In case the SEPA direct debit collection happens on an inter-bank business day for the Eurosystem which is at the same time a bank holiday in the country of the debtor bank, the debtor bank can only debit the payer's account on the following business day. According to Article 73(2) of the PSD the debit value date cannot be earlier than the point in time at which the amount of the payment transaction is effectively debited to that payment account. Consequently, the debit value date has to be equal to the day on which the account is debited and cannot be an earlier inter-bank business day. As far as the credit value date is concerned, the latter can be prior to the day of the actual crediting of the account as Article 73(1) states that "the credit value date…is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account."

Relevant provisions	General	Question no	2
Date of question	20.11.2007	Date of answer	31.1.2008

Issue

Payment institution – Application

Question

Which registrars in which countries currently accept an application under the PSD to become a Payment Institution? Some countries may not be aware of the PI, so which EU country is able to accept applicants?

Answer

To date, the relevant provisions on applications for authorisation under Title II of the PSD have not yet been transposed in any of the Member States. Only the UK has announced the decision to assign responsibility for supervision of payment services in the PSD to the FSA. This information is available in our webpage concerning Member States competent authorities for the authorisation and supervision of payment institutions (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf) and national public registers of payment institutions (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/public_registers_en.pdf). Both pages will be regularly updated with the information received from Member States.

Relevant provisions	Article 88(2)	Question no	4
Date of question	14.12.2007	Date of answer	31.1.2008

Issue

Transitional provision – Grandfather clause

Question

Is the time limit for notification under Article 88(2) valid? If your answer is affirmative, please provide me the reason for establishing a derogation only for those entities.
The article establishes transitional provisions regarding the entities that have commenced payment activities before 25.12.2007, meet the requirements laid down in Article 24(1)(e) from Directive 2006/48/EC and that notified the home competent authority of these activities before 25.12.2007. It seems that the time limit established for the notification (25.12.2007) is not relevant taking into account that the obligation regarding the authorisation/notification for payment institutions has been introduced under the Directive 2007/64. The notification required under Article 88(2) isn't compatible with notification for doing business on European passport (there are additional conditions for granting this passport) or with the information obtained in the context of the consolidated supervision (it is possible that the authority responsible for consolidated supervision is not the home competent authority).

Answer

The provision of payment services has been regulated very differently in Member States. Although in more than half of the Member States the payment services that have been included in the PSD for the scope of business of the new authorisation for payment institutions have not been regulated in the past, in some other Member States some persons can provide these services (such as money remittance, payment card issuance and acquiring, mobile payment services or post-paid billing) after having met the conditions required by the current national law for registration. The grandfather provision under Article 88 of the PSD aims to make "transitional arrangements in accordance with which persons who have commenced the activities of payment institutions in accordance with the national law in force before the entry into force of this Directive (25 December 2007) may continue those activities within the Member State (that means, in accordance with the national law and without benefiting from the advantages of the European passport) concerned for a specified period" (until 30 April 2011).

Relevant provisions	Article 73(1)	Question no	6
Date of question	5.2.2008	Date of answer	19.3.2008

Issue

Value date – Credit value date

Question

In your one of your answers published on 31 Jan 2008 you state "As far as the credit value date is concerned, the latter can be prior to the day of the actual crediting of the account as Article 73(1) states that "the credit value date…is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account." My understanding of the PSD intention, as stated in Recital 45, is to outlaw the practice whereby banks gain interest through delaying giving credit to their customers. Therefore in the credit example you give Article 73(1) requires that the bank must give the customer value on the date the bank was credited via the Clearing and Settlement Mechanism (ie. to the payee's payment service provider's account) even where this is the day before the bank can actually pass the entry onto the customer's account because of a local bank holiday. In your answer you say the banks can give credit a day early whereas I believe the bank must do so.

Answer

If the payee's payment service provider decides to credit value dates the payee's account before his account has been credited this would be completely in line with Article 73(1) and Recital 45 as this practice favours the payment service user. The payee is already given interest for funds which have not been received by the payment service provider himself.
By contrast, once the payee's payment service provider's account has been credited, he is immediately obliged to make the funds available to the payee according to the second subparagraph of Article 73(1), even though this would fall on a local bank holiday. As for the credit value date, this has to be no later than the business day on which the payee's payment service provider's account has been credited. Therefore, in the case the payee's payment service provider's account was credited on a day where only interbank clearing mechanisms are operating, but which is a local bank holiday, the credit value date for the customer will be the next business day.

Relevant provisions	Article 8	Question no	7
Date of question	22.2.2008	Date of answer	11.4.2008

Issue

Payment institution – Capital

Question

Article 8 of PSD is slightly differently understandable for us regarding the calculation of own funds under Method B. It is unclear what is meant by the words 'payment volume' (PV) as it may treat at the same time a total amount of payment transactions (or number of transactions) but also a total monetary value of payments. So could you please specify this? For example own funds calculation in case of section (a) 4.0% of the slice of PV up to EUR 5 million – what is exactly meant by this? Could you please provide us also some examples of calculation of own funds under Method B.

Answer

The expression 'payment volume' used in the third subparagraph of Article 8(1) (Method B for the calculation of the own funds of a payment institution) relates to the amount of the payments (total monetary value of payment transactions) and not to their number.
The approach used in Method B is therefore based on the total value of payment transactions executed by the payment institution in the previous year, which has to be divided by 12; this result is to be used for calculating the sum of the following, using the slices until the payment institution's payment volume (PV) is reached:

PV (EUR million) – Multiple of PV (%) +			
Slice 1 – up to 5	x	4	+
Slice 2 – 5 to 10	x	2.5	+
Slice 3 – 10 to 100	x	1	+
Slice 4 – 100 to 250	x	0.5	+
Slice 5 – above 250	x	0.25	

Then, the result obtained must be multiplied by the scaling factor K defined in paragraph 2 of the same provision, as follows:
0.5 for payment services under point 6 of the Annex (money remittance)
0.8 for payment services under point 7 of the Annex (digital operators)
1.0 for any of the payment services listed in items 1 to 5 of the Annex
Example: a mobile phone payment operator has total payment transactions the previous year of EUR 2.4 billion.
Step 1: PV = EUR 2.4 billion divided by 12 = EUR 200 million
Step 2:
4% of EUR 5 m (EUR 0/EUR 5 m slice) = EUR 200 000 +
2.5% of EUR 5 m (EUR 5/EUR 10 m) = EUR 125 000 +
1% of EUR 90 m (EUR 10/EUR 100 m)= EUR 900 000 +
0.5%of EUR 100 m (EUR 100/EUR 250 m) = EUR 500 000
Total = EUR 1 725 000 x 0,8 = EUR 1 380 000
So this method would require the payment institution will have to hold ongoing capital of, at least, EUR 1 380 000.

Relevant provisions	General	Question no	9
Date of question	14.3.2008	Date of answer	11.4.2008

Issue

Transposition

Question

I have the information that in one of the Member States the transposed PSD will enter into force already in January 2009 – not in November. Which is this Member State? Have all the other 26 Member States committed to transpose by November 2009?

Answer

According to our sources, all 27 Member States intend to introduce the necessary legislation for implementing the obligations of the PSD into their respective domestic laws well before the final deadline for transposition. Five of those Member States have also indicated that they would have the required legislation formally adopted by end-2008. In addition, there is a broad consensus on a common date for the entry into force of the implementing measures. In fact, most of the Member States have already indicated that the legislation implementing the PSD into their respective domestic laws will enter into force on 1 November 2009. We are not aware of plans to apply the new rules as from 1 January 2009 in any of the Member States.

Relevant provisions	Article 3(h)	Question no	10
Date of question	26.3.2008	Date of answer	15.4.2008

Issue

Scope – Clearing and settlement service models

Question

My firm provides clearing and settlement and ancillary services to regulated financial services firms. Under one of our clearing and settlement service models, we maintain customer accounts on our system to facilitate the settlement of executed investment transactions. This will naturally include the receipt and transmission of customer funds through payment systems to support this business. We are not a credit institution or e-money issuer. We accept funds onto customer accounts in lieu of investment transactions. Such funds can be received in via direct debit or card payment. Monies held that are not required to settle investment transactions can be paid back to the customer on their instruction (either to their originating account or another account anywhere in the world) or to a third party, who again may be based anywhere. Would such activities (including the maintenance and operation of the customer accounts) fall within the definition of payment services set out in the Annex of the Payment Services Directive? If the Payment Services Directive does apply to my firm, do we need to apply to the FSA for authorisation as a payment institution or would we already be 'grandfathered' in?

Answer

Under Article 3(h) payment services provided only to other payment service providers or financial institutions fall outside the scope of the PSD. However, if such services were provided directly to the payment service user under an agreement between your firm and the payment service user, these services would fall within the scope of the PSD and you would have to seek authorisation from the designated competent authority in your home Member State. If the conditions under Article 88 are met, your firm could benefit from the transitional provisions laid down in this Article.

Relevant provisions	Article 4(14)	Question no	11
Date of question	14.4.2008	Date of answer	22.5.2008

Issue

Payment account – Mortgage account

Question

Are certain types of mortgage accounts that include payment facilities included in the scope of the PSD? Whereas initially, it seemed clear that the scope of the PSD would only cover payment accounts with an external payment function including e-money, credit cards and current accounts, the wording of this paragraph seems to clearly broaden the scope of the PSD to include, for instance mortgage accounts which include payment facilities in order to reduce the overall mortgage balance. Can you clarify exactly what the scope of the PSD is, in particular with regard to accounts that combine mortgage and payment facilities?

Answer

Mortgage accounts established by the mortgage lender (e.g. a credit institution) in conjunction with a mortgage loan on a residence, into which the borrower is required to make regular periodic payments, are not to be considered as 'payment accounts' within the meaning of the PSD as the holder of the debt is the lender: in case of early repayments, the lender (e.g. the credit institution) is to be considered as 'the payee' (and not only as a payment service provider). However, when one account combines e.g. mortgage, saving and payment facilities in order to reduce the overall mortgage balance, this should be considered as 'payment account' within the meaning of the PSD as far as it is used for making payment transactions.

Relevant provisions	**Article 16(3)**	**Question no**	**12**
Date of question	15.4.2008	**Date of answer**	22.5.2008

Issue

Payment institution – Granting credit

Question

Can a Payment Institution (PI) by sole virtue of its authorisation as PI, engage in the provision of credit related to its payment services, i.e. is there no longer a separate consumer credit authorisation required; therefore non-bank (owned) PIs could start offering a certain form of consumer credit (under the conditions laid out in Article 16(3)) across all EU Member States without legal barriers? What national rules/laws, other than conduct of business rules, will still apply to the provision of credit in relation to payment services?

Answer

A payment institution which has been authorised in accordance with Articles 5 and 10 of the PSD can grant credit in line with the requirements laid down in Article 16(3) (see also Recital 13).
As far as consumer credit is concerned, the national law implementing Directive 87/102/EEC applies. In addition, other relevant legislation regarding conditions for granting credit to consumers which have not been harmonised by the PSD also apply, as stated in Article 16(5).

Relevant provisions	Article 28(1)	Question no	13.1
Date of question	15.4.2008	Date of answer	22.5.2008

Issue

Access to payment systems – Card schemes

Question

Does the article imply that a payment system may not impose different requirements for access upon a Payment Institution (PI) as opposed to a credit institution (therefore a PI could not be imposed any additional capital requirements in addition to the ones specified in the PI authorisation criteria if such requirements are not explicitly required by the payment system from credit institutions)?

Answer

As stated in Recital 16, access should '...be subject to appropriate requirements in order to ensure integrity and stability of those systems. Each payment service provider applying for a participation in a payment system should furnish proof to the participants of the payment system that its internal arrangements are sufficiently robust against all kinds of risk.' However, these requirements should be applied on a non-discriminatory basis to all payment service providers. Therefore, no additional capital requirements can be imposed on the basis of the institutional status.

Relevant provisions	Article 28(2)	Question no	13.2
Date of question	15.4.2008	Date of answer	22.5.2008

Issue

Access to payment systems – Three-party schemes

Question

Does Article 28(2) imply that three-party card schemes would be exempt from the requirements of Article 28(1), whereas four-party card schemes would not?

Answer

As stated in Recital 17, '...the provisions of the access to payment systems should not apply to systems set up and operated by a single payment service provider. Those payment systems can operate either in direct competition to payment systems, or, more typically, in a market niche not adequately covered by payment systems. They typically cover three-party schemes, such as three party card schemes, payment services offered by telecommunication providers or money remittance services where the scheme operator is the payment service provider to both the payer and payee as well as internal systems of banking groups.'

Relevant provisions	Article 28(2)(a)		Question no	13.3
Date of question	15.4.2008	Date of answer	22.5.2008	

Issue

Access to payment systems – Card schemes

Question

How to apply Article 28(2)(a) in the case where a four-party card scheme (subject to Article 28(1)) would be using a payment system falling under Directive 98/26/EC as its core processor for clearing/settlement between participating payment service providers of that scheme? I.e. if certain PIs would not be granted access to the processing payment system (based on Article 28(2)(a)), they would de facto not be able to participate in the card scheme, hence there would be discrimination in access to the latter.

Answer

In accordance with Article 28(2)(a), a four-party card scheme whose payment system would be designated under Directive 98/26/EC would be excluded from the requirements under Article 28(1).

Relevant provisions	Article 3(o)	Question no	14
Date of question	15.4.2008	Date of answer	22.5.2008

Issue

Scope – ATM

Question

Why are Independent ATM Operators (IAOs) who solely provide basic cash withdrawal services (as opposed to any other payment service provider who provides ATM services next to other payment services) excluded from the provisions of the PSD, as this seems not to support the creation of a level playing field? Arguments: Banks and/or Payment Institutions (PI) operating ATMs next to other payment services (listed in the Annex) are subject to the provisions of the PSD. This would create a discrimination of these organisations vs. the IAOs, who do not fall under the same prudential regimes. Given the risk of fraud at ATMs, especially those at less secure locations (e.g. supermarkets, nightclubs, etc.), this seems to be against the spirit of consumer protection as envisaged by the conduct of business rules in the PSD. It also stifles any innovation around additional payment services on ATMs, which would make the provider to fall under the PSD and needing an authorisation as PI (hence resulting in lower service levels being given a preferential treatment). The text of the article mentions that IAOs to be excluded are 'not a party to the framework contract with the customer'. However, if the card issuer has a clause in the framework contract mentioning that any surcharges from IAOs will be passed on to the customer, then one could argue that the IAOs are implicitly part of such framework contract as their charges are explicitly mentioned to the customer – hence it would make sense that these charges are subject to the same rules on transparency etc.

Answer

This derogation was decided by the co-legislators. The intention is to exempt independent ATM service providers, e.g. typically ATMs in supermarkets, nightclubs, etc. All other ATM providers which are either the card issuer (that means, 'party to the framework contract with the customer withdrawing money from a payment account') or provide other services as listed in the annex, however, do fall under the PSD.
The exemption only covers services provided by these independent service providers (e.g., as regards information requirements in Articles 36 and 37, liability provisions; no license under Title II). It does not exclude the ATM transaction itself as the cardholder conducts the transaction under his/her framework contract with the card issuer who has to comply with PSD rules.
However, Article 50(2) contains a rule on information on additional charges which applies also to independent ATM providers as they are considered as third party within the meaning of this provision.

Relevant provisions	Article 4(30)	Question no	15
Date of question	14.5.2008	Date of answer	15.7.2008

Issue

Definitions – Group

Question

In Article 4(30) the definition of a 'group' gives a reference to Article 12(1) of Directive 83/349/EEC. Article 12(1) of Directive 83/349/EEC offers an option for the Member State: "… Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:". While transposing Directive 83/349/EEC, we have decided not to use this option (not to require consolidated accounts and a consolidated annual report in cases stated in the subparagraphs a) and b) of Article 12(1)).
As we understand, in this case, we do not have to enclose statements of Article 12(1) of Directive 83/349/EEC into the transposition of Article 4(30) of the PSD. Could you please confirm that?

Answer

This definition, as all the other definitions under Article 4, is 'for the purposes' of the Payment Services Directive, mainly for the calculation of the own funds under Article 7(2) and (3). In this context, the decision by a Member State on the option under Article 12(1) of Directive 83/349/EEC should not have any influence on the way this definition is implemented in domestic law.

Relevant provisions	Articles 16(2)/16(4)	Question no	17
Date of question	11.6.2008	Date of answer	15.7.2008

Issue

Payment account – Credit balance

Question

Credit and charge (incl. deferred debit) card accounts, due to the nature of these payment products, typically show a debit balance. However, in certain circumstances (e.g. where refunds are given or overpayments are made on the account) these accounts may show a credit balance which may continue to appear in future monthly billing cycles depending on frequency and levels of card usage. Although in the normal course of running a card business these credit balances are unavoidable, the amounts do not provide material financing to card issuers. The card terms typically do not contemplate or invite credit balances. They do not define how such balances should be repaid, nor do they provide for payment of interest on these balances. Can the Commission confirm, therefore, that such balances do not constitute deposit taking or receipt of other repayable funds for purposes of the PSD but rather constitute funds held on payment account?

Answer

The fact that the funds are maintained on a payment account for the sole purpose of making a payment transaction does not convert the payment account run by a payment institution into a deposit. In this context, handling of credit balances on card accounts by a non-bank card issuer (e.g., a payment institution under the PSD) should not be considered as constituting the business of taking deposits or other repayable funds in breach Article 16(4) PSD.

Relevant provisions	Article 16	Question no	18
Date of question	16.6.2008	Date of answer	15.7.2008

Issue

Payment institution – Granting credit

Question

As to Article 16 of the PSD, credit activities of Payment Institutions (PI) are limited (not more than 12 months reimbursement deadline). What happens for credits (e.g. revolving credit) if the repay period exceeds 12 months?

Answer

Article 16(3) and (5) do no provide for any restriction on credit duration for national rules on credit cards. Therefore, national rules may provide for a credit duration period longer or shorter than 12 months.
However, when a payment institution wishes to offer payment services in a Member State other than the home Member State in which it is authorised, credit provided through, for example, a credit card must be repaid within a short period which must not exceed 12 months. So if an authorised payment institution wishes to start marketing credit cards to users in other Member States, the maximum credit duration period is 12 months.
This situation must be clearly distinguished from the use of a national credit card in other Member States. For example, if a user is entitled to a credit duration period exceeding 12 months for national payments, this credit period will also apply to payments carried out by the same user when using the credit card in other Member States.

Relevant provisions	Article 3(n)	Question no	19
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Scope – Payment transaction within a group

Question

Regarding the out of scope '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', what examples of transactions could this definition include? What does 'intermediary intervention by a payment service provider' mean in this context? If the PSP e.g. provide cash pooling solutions or regular sweeping of subsidiary accounts to the parent account – are these payment services out of scope of the PSD? The PSP does not act as an intermediary in this case, rather facilitating the transfer of money between the company's different accounts.

Answer

Such transactions may include any kind of payment transactions that enable a company to get or to use liquidities (e.g. cash pooling solutions, clearing mechanisms…) as long as they remain within a group, ie they are made between a parent undertaking and its subsidiaries or between the subsidiaries themselves.
One of the entities of the group may happen to be a PSP, but what matters is that these transactions do not concern any third entities outside of the group. If these criteria are met, such an activity does not fall within the scope of the Directive.
This would, however, be different in the case where a PSP would provide such services to entities that do not belong to the same group as the PSP. Such payment transactions would then fall in the scope of the Directive. What must however be noted is that the Directive allows for a certain contractual flexibility for companies in their relationship with their PSP (in Titles III and IV).

Relevant provisions	General	Question no	20
Date of question	20.6.2008	Date of answer	15.7.2008

Issue

Transposition

Question

Which EU Member States have already transposed the Directive on Payment Services in the internal market? If possible, please provide a source or site where I can find further information in relation to this issue. Furthermore, can you provide or otherwise indicate a source or site where I can find short description of the transposition options of each Member State that has already transposed this Directive.

Answer

The transposition work is currently under process in the Member States so as to meet the time limit set by the Directive (1 November 2009). However, no Member State has transposed the PSD yet. You can find more information on the planned transposition date of each Member State on the Commission website at http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm.
Once the transpositions are done, you will also find information on the options chosen by each Member State on the Commission website at http://ec.europa.eu/internal_market/payments/framework/options_en.htm.

Relevant provisions	Recital 37	Question no	22
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Payment order – Refusal

Question

We believe that a precondition for a valid payment order is that the payer's account is sufficiently covered to execute the order. As long as this is not the case, the order is deemed not to be accepted. What information requirements need to be fulfilled by the payment service provider?

Answer

The payment service provider could include the availability of the funds as a condition for the execution of an order in the framework contracts with his users. It will only be in such a case that it may refuse the order (as stated in Article 65(2).

Relevant provisions	**Recital 38**	**Question no**	**23**
Date of question	18.6.2008	**Date of answer**	15.7.2008

Issue

Irrevocability – Point in time

Question

Fully automated payment systems operate in a rapid manner. Can in such a case a revocation time of 0 be agreed?

Answer

According to Article 66(1), the payment service user can not revoke a payment order after it has been received by the payment service provider.
However, a revocation point in time later than the points in time mentioned in Article 66 may be agreed between users and PSP (as stated in paragraph 5 of that article). It is therefore left to contractual freedom.

Relevant provisions	**Article 3(e)**	**Question no**	**24**
Date of question	18.6.2008	**Date of answer**	15.7.2008
Issue			
Scope – Cash-back			
Question			
Which services are meant?			
Answer			
Cash-back services provided by merchants at point of sales.			

Relevant provisions	Article 3(i)	Question no	25
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Scope – Payment transaction related to securities

Question

Does this comprise the following services: cash deposit/transfer to a securities account (the money will be used to buy securities without crediting his account and the securities will be added to his securities deposit account); payments on his savings account (savings accounts are commonly not designated to carry out payment transfers)?

Answer

Cash deposit/transfer to a securities account would fall within the scope of Article 3(i).
However, savings accounts where the holder can place and withdraw funds without any additional intervention or agreement of his payment service provider should be considered as payment accounts within the meaning of the PSD. On the contrary, fixed term deposits should fall out of this category as the funds are taken and paid back by the payment service provider and the holder of the deposit does not keep any freedom to place additional funds or withdraw funds during the term of the deposit.

Relevant provisions	Article 3(j)	Question no	26
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Scope – Technical service provider

Question

What is a technical service provider? Is a payment institution's subsidiary which carries out the services mentioned under (j) excluded from the PSD?

Answer

A technical service provider is an entity that provides technical services to payment service providers so that the payment service provider can provide payment services to their users. They themselves never enter in relationship with the users directly and are therefore not covered as such by the PSD. However, PI that would want to outsource some activities to a third party (be it a subsidiary or not) would have to comply with the obligations set in Articles 17(7) and 18.

Relevant provisions	**Article 3(k)**	**Question no**	**27**
Date of question	18.6.2008	**Date of answer**	15.7.2008

Issue

Scope – Limited network

Question

What services are meant? We believe that 'Club' solutions in the frame of client loyalty programmers offered by companies which do not fall under the PSD, fall into this category (e.g. super market chains).

Answer

The intention of this provision is to exempt instruments like, e.g., the following:
Store cards: They can only be used for payments in a specific shop or a chain of stores, e.g. by spending points collected for purchases in these shops.
Club cards: This type of cards can only be used within the holiday compound for e.g. paying drinks, tennis lessons and a new pair of flip-flops.

Relevant provisions	**Article 3(n)**	**Question no**	**28**
Date of question	18.6.2008	**Date of answer**	15.7.2008
Issue			
Scope – Payment transaction within a group			
Question			
Does this refer to payments effected between companies belonging to one group (netting)?			
Answer			
Yes.			

Relevant provisions	Article 3(o)	Question no	29
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Scope – ATM

Question

Does this apply to 'multifunctional' ATMs only? Does this mean that the Directive is of relevance to service providers which have not concluded any framework contract with the client who withdraws the money? If so, in which points?

Answer

Article 3(o) covers independent ATM service providers which only dispense funds to customers and which typically do not belong to a bank network, e.g. ATMs in supermarkets or nightclubs.
However, all other ATM providers which are either the card issuer (= 'party to the framework contract with the customer withdrawing money from a payment account') or provide also other services as listed in the annex, however, do fall under the PSD.

Relevant provisions	Article 4(11)	Question no	30
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Definitions – Consumer

Question

Does this definition replace the definition existing in national law and if so, does this definition only apply for the purposes of this Directive?

Answer

This definition is to replace any definition existing in national law, but only for matters covered by the PSD.

Relevant provisions	Article 4(14)	Question no	31
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Payment account – Saving account

Question

The term 'used for the execution of payment transactions' would mean that the following services are captured by the Directive: saving accounts, securities-saving accounts, credit accounts, short term deposits. All these contracts have in common that they may not be used for general payment services. Does any contract which is linked to a money transfer, fall under the Directive or are such contracts (deposit accounts, saving accounts, credit accounts) not regarded as a payment account?

Answer

The concept of payment account under the PSD is related to the objective of regulating payment services. As all types of accounts which can be used for payment transactions are covered, as long as they are not exempted under Article 3, the conduct of business rules in Titles III and IV apply to transactions made to and from these accounts.
Credit accounts such as mortgage accounts established by the mortgage lender in conjunction with a mortgage loan on a residence, into which the borrower is required to make regular periodic payments, are not to be considered as 'payment accounts' within the meaning of the PSD as the holder of the debt is the lender: in case of early repayments, the lender is to be considered as 'the payee' (and not only as a payment service provider). However, when one account combines mortgage, saving and payment facilities in order to reduce the overall mortgage balance, this should be considered as 'payment account' within the meaning of the PSD as far as it is used for making payment transactions.
As for the saving accounts, see answer to Question no 25.

Relevant provisions	**Article 4(21)**	**Question no**	**32**
Date of question	18.6.2008	**Date of answer**	15.7.2008

Issue

Definitions – Unique identifier

Question

Does this relate to IBAN and BIC?

Answer

Yes, IBAN and BIC are an example of unique identifiers. Unique identifiers may also include card numbers or any other identifier provided by a payment service provider to his user so that it can execute a payment transaction.

Relevant provisions	Article 4(22)	Question no	33
Date of question	18.6.2008	Date of answer	15.7.2008

Issue

Payment institution – Agent

Question

If a payment service provider outsources his payment services (or part of them) to a subsidiary, is the subsidiary an agent?

Answer

A subsidiary could be an agent, but not necessarily. It will depend on whether the subsidiary acts on behalf of the payment institution in providing payment services.

Relevant provisions	**Article 4(23)**	**Question no**	**34**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Definitions – Payment instrument

Question

Does this mean that a payment order form (e.g. a payment order form which has been filled in by the receiver) is not a payment instrument? What exactly means personalised?

Answer

This definition is meant to cover physical devices (such as cards or mobile phones) and/or set of procedures (such as PIN codes, TAN codes, digipass, login/password, etc) which a payment service user can use to give instructions to his payment service provider in order to execute a payment transaction. If the payment transaction is initiated by paper, the paper slip itself is not considered as payment instrument.

Relevant provisions	**Article 4(24)**	**Question no**	**35**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Definitions – Means of distance communication

Question

This means that also a letter is a means of distance communication?

Answer

Contracts negotiated at a distance involve the use of means of distance communication not involving the simultaneous presence of the payment service provider and the payment service user. Consequently, an exchange of letters could fall in this category.

Relevant provisions	**Article 4(25)**	**Question no**	**36**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Definitions – Durable medium (web link)

Question

Would it be sufficient to provide a link if the link enables to reconstitute the information?

Answer

It is possible to provide a link as long as this link is addressed personally to the payment service user, is accessible for future reference and allows the unchanged reproduction of the information stored for a period of time adequate for the purpose of information.

Relevant provisions	Article 4(26)	Question no	37
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Definitions – Micro-enterprise

Question

What happens if the contract was concluded a long time ago and it is not possible anymore to find out if the company was a micro-enterprise?

Answer

This will only be an issue in the Member States that will choose to assimilate micro-enterprises to Title IV of the PSD. In such cases, the payment service provider will have to carefully examine whether its client was a micro enterprise or not at the time of the conclusion of the contract.

Relevant provisions	Article 4(27)	Question no	38
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Definitions – Business day (public holiday)

Question

How does this provision have to be interpreted if different payment service providers of different countries are involved and in one country is a public holiday?

Answer

As the PSD only regulates the relation between the payment service provider and the customer and excludes the interbankspace from its scope, the focus should lie on the customer and his/her perception. The customer is not in a position to know whether a back office payment system is up and running, but rather whether a payment service provider is open for business. Accordingly, payment service providers have to adjust their systems to their opening hours and/or find the right clearing and settlement partners. Where transactions are initiated via internet it has to be made clear to the customer if the payment service provider is open for business on that day.

Relevant provisions	Article 32(3)	Question no	39
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Charges – Provision of information

Question

Does this also comprise the possibility for revenues?

Answer

This wording has to be read keeping in mind the interest of transparency in pricing, increased competition and consumer protection (see Recitals 28 and, in a different context, 45). Under these conditions, charges should correspond with the real cost of the administrative service provided. Charges not justified by real costs (which have to be calculated in line with the companies' internal approach on cost accounting) and aimed to penalise, to disincentive the request from the payment service user or to get unjustified incomes should be avoided.

Relevant provisions	**Article 35(2)**	**Question no**	**40**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Information requirements – Single payment transaction

Question

We believe that a single payment transaction is not based on a framework contract. How does this provision need to be interpreted?

Answer

Single payment transactions may occur with instruments covered by a framework contract (e.g., cash withdrawals from an independent ATM).

Relevant provisions	**Article 36(1)**	**Question no**	**41**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Information requirements – Single payment transaction

Question

How does this provision apply if only one single payment transaction is effected?

Answer

The payment service provider may make the listed information available to his payment service users through posters, leaflets or any other kinds of communication tools in his premises or on his website. The idea is that the user can access the information easily if he wants to.

Relevant provisions	**Article 36(2)**	**Question no**	**42**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Information requirements – Single payment transaction

Question

Can these conditions be fulfilled in the case of a single payment transaction?

Answer

This may happen, for example, in the case of single payment transactions initiated via a fixed phone or a mobile phone.

Relevant provisions	Article 37(1)(b)	Question no	43
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Information requirements – Single payment transaction

Question

What measures are necessary in order to fulfil these conditions in the case of a single payment service contract?

Answer

The payment service provider of the payer shall include in the set of information made available or provided to his payment service users information on the maximum time for the execution of a single payment transaction, i.e. from the point in time of receipt of the funds to reach the payment service provider of the payee and to be at the disposal of the payee.

Relevant provisions	**Article 38(a)**	**Question no**	**44**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Information requirements – Single payment transaction

Question

Is this a reference the payer has to provide or is this a reference of the payment service provider?

Answer

It is a reference that is provided or made available by the payment service provider to the payer.

Relevant provisions	**Article 42(1)(a)**	**Question no**	**47**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Framework contract – Right of cancellation

Question

Does the user have the right of cancellation if one of the indicated items changes?

Answer

The aim of this provision is to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. For example, a change in the address of the payment service provider could have a negative impact on the payment service user, e.g. the payment service provider suddenly decides to move its branch to a remote area far from the place of the payment service user.

Relevant provisions	Article 42(1)(b)	Question no	48
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Information requirements – Supervisory authority

Question

What is the relevant supervisory authority? In Austria, would this be the FMA?

Answer

The supervisory authorities refer to the authorities in charge of the supervision of the payment service provider. It is up to each Member State to designate them in accordance with the subsidiarity principle. Member States will notify the designated competent authorities to the European Commission. For further information, please consult the following website: http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf.

Relevant provisions	Article 44(1)	Question no	49
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Framework contract – Right of cancellation

Question

The right of cancellation is also granted for conditions which are not under the control of the service provider or which are not related to the contract (name change of the service provider or change of the address). Is there any possibility to waive the right of cancellation for such cases?

Answer

The aim of this provision is to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. In case the payment service provider proposes a change to an element already agreed in the framework contract, the two-month period, including the right of cancellation for the payment service user, applies. As far as a new element, such as a new payment service, is offered and the customer is ready to accept it immediately, this should be possible and the period of two months does not apply. However, the contractual provisions for the new service can later form an integral part of the former framework contract.

Relevant provisions	**Article 44(3)**	**Question no**	**50**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Exchange rate – Calculation

Question

How has this paragraph to be interpreted? Is it enough to make reference to officially published exchange rates?

Answer

It would be sufficient if reference to an officially published exchange rate was made. In case an extra margin is to be applied to this exchange rate, it has to be agreed between the parties in the framework contract.

Relevant provisions	Article 47(1)(a)	Question no	54
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Individual payment transaction – Reference

Question

What reference is meant? The one of the payment service provider (this one is already know by the user) or a reference which needs to be indicated by the payer?

Answer

It is a reference that is provided by the payment service provider to the payer.

Relevant provisions	Article 47(1)(c)	Question no	56
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Individual payment transaction – Interest rate

Question

Is it correct that reference is made to charges and interests related to the transaction and not the account as such?

Answer

Yes, this provision concerns only the charges and interests related to the individual payment transaction.

Relevant provisions	Article 48(1)(e)	Question no	60
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Value date – Credit value date

Question

A credit value date needs the entry on a payment account. What date is meant, when the money is paid out at the cash desk of the bank?

Answer

In case the funds are paid out in cash over the counter, the credit value date does not apply since 'value date' means a reference time for the calculation of interests on the funds debited or credited to a payment account (see definition under Article 4(17)).

Relevant provisions	**Article 49(1)**	**Question no**	**62**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Payment transaction – Currency

Question

What parties are meant (payer – payee) or (payment service provider – user)?

Answer

The 'parties' are the payment service user (payer or payee) and the respective payment service provider.

Relevant provisions	**Article 49(2)**	**Question no**	**63**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Payment transaction – Currency

Question

What is the right evidence for the receiver of the payment to prove that the payer has agreed on a currency conversion?

Answer

If the payee wants to have evidence about the agreement of the payer to the currency conversion, it will be up to payee to propose means of evidence, e.g. in writing or through technical means.

Relevant provisions	**Article 51(1)**	**Question no**	**64**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Scope – Corporate

Question

Is the contractual relationship between payer and service provider/payee and his service provider meant?

Answer

The 'parties' are the payment service user (payer or payee) and the respective payment service provider.

Relevant provisions	**Article 52(2)**	**Question no**	**66**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Charges – Intermediary's services

Question

How has the payment service provider of the payee to proceed if he is charged by other institutions (e.g. clearing institutions) involved in the transaction?

Answer

The payment service user and his payment service provider have to agree on all charges payable by the payment service user to the payment service provider. No extra charges can be levied on the payment service user by the payment service provider without prior agreement.

Relevant provisions	Article 53(3)	Question no	67
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

E-money – Derogation

Question

Liability provisions do not apply to electronic money if the payment service provider cannot freeze the payment account?

Answer

Article 53(3) contains a lex specialis which applies to e-money irrespective of any threshold. By law, Articles 60 and 61 do not apply when the payer's payment service provider is not able "to freeze the payment account or block the payment instrument". Member States have the option to fine-tune this mandatory rule by setting a threshold for its application. Therefore, when the payer's payment service provider can freeze the payment account or block the payment instrument, the parties have no option to agree on the disapplication of Articles 60 and 61.
A different situation is governed by Article 53(1)(b) which applies to low-value payment instruments (not exceeding EUR 30, having a spending limit of EUR 150 or allowing storage of funds not exceeding EUR 150) which are used anonymously or when authorisation can not be proved. In those cases, Article 53(1)(b) allows the parties to agree on the disapplication of Articles 60 and, partly, 61 (only Paragraphs 1 and 2).

Relevant provisions	Article 54(1)	Question no	68
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Payment transaction – Authorisation

Question

We believe that a payment transaction needs to be authorised per se. How should an authorisation 'after the execution of the payment transaction' look like?

Answer

Most of the transactions are authorised before execution. However, some direct debit transactions with creditor mandate flow are authorised by the payer to his payment service provider after the execution of the payment transaction as the mandate only contains a prior authorisation to the payee.

Relevant provisions	Article 54(2)	Question no	69
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Payment transaction – Authorisation

Question

Is the aim of this provision to define how the payer has to authorise the transaction or has this agreement to be concluded for each single transaction? How shall we proceed if no such agreement exists (if the payer gives a mandate to the payee in the case of direct debit)?

Answer

This provision deals with the form for authorising payment transactions. In general, all payment transactions have to be authorised by the payer in accordance with Article 54(1).

Relevant provisions	**Article 54(3)**	**Question no**	**70**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Direct debit – Authorisation

Question

How to deal with direct debit if the payment institution of the payer does not have any authorisation?

Answer

If the payer did not give his consent to his payment service provider before or after execution of the direct debit transactions, the transaction is considered to be unauthorised.

Relevant provisions	Article 54(3)	Question no	71
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Direct debit – Irrevocability

Question

According to Article 54(1) it can be agreed that the authorisation is given after the execution of the payment transaction. In such a case, the point in time of irrevocability is before the authorisation has taken place. What is the intention of the legislator in this context?

Answer

According to Article 66(5), the payment service provider and the payment service user can agree that the payment order may be revoked after the time limit for revocability of direct debit transactions (end of the business day preceding the day agreed for debiting the funds). In this case, the payee's agreement is also required.

Relevant provisions	**Article 57(1)**	**Question no**	**73**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Payment instrument – Prevention of use in case of loss or theft

Question

It is not possible to prevent the use of all payment instruments (e.g. the use of a stolen credit card) once the notification has been made. Only the debiting of the users account can be prevented.

Answer

The payment service provider shall prevent all use of the payment instrument once the notification has been made by the payment service user, e.g. by blocking the payment instrument or by updating the databases on stolen or lost instruments.

Relevant provisions	Article 58	Question no	74
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Payment transaction – Authorisation

Question

We believe that according to Article 54(1) each transaction needs to be authorised by the payer. Otherwise direct debits may be cancelled within a period of 13 months.

Answer

According to Article 54(1), payment transactions are only considered to be authorised, if the payer has given his consent to the payment service provider to execute the payment transaction. For authorised direct debit transactions, the payer has a right for a refund within 8 weeks after the debit date, if the conditions set out in Article 62(1) are met. Unauthorised direct debit transactions, however, shall be rectified in accordance with Article 58 (13 months after the debit date).

Relevant provisions	**Article 59(1)**	**Question no**	**75**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Direct debit – Proof of authentication

Question

How shall the authentication of a payment which was authorised after execution (Article 54(1)) take place? Is the payment service provider obliged to accept non-authorised transactions at his own risk?

Answer

Article 59 applies in cases where the payment service user denies having authorised a payment transaction.

Relevant provisions	Article 60(1)	Question no	76
Date of question	18.6.2008	Date of answer	20.5.2009

Issue

Payment transaction – Liability for unauthorised transaction

Question

Does 'without prejudice' mean that the 13 months mentioned in Article 58 are not applicable?

Answer

Article 58 deals with the requirements the payment service user has to comply with for claims due to 'unauthorised or incorrectly executed payment transactions'. This means that the 13 months period mentioned in this provision would apply to the claims of the payment service user under both Articles 60 and 75.
For example, in case where EUR 100 are transferred instead of EUR 1 000, the payer can claim from his payment service provider the transfer of the missing EUR 900 or ask him to refund EUR 100. In any case the payment service user would have to notify his payment service provider within the 13 months period.
In the case of late payments, a right of the payer to ask for a refund seems not justified. If the amount of the payment is already at the disposal of the payee the payment service provider of the payer has no possibility to call funds back. The right of a refund would rather be a sanction for the payment service provider of the payer and would lead to an unjustified enrichment of the payer. However, Articles 75(3) and 76 grant him the right to request compensation for possible damages he might have suffered as a consequence of late payment.

Relevant provisions	Article 62(3)	Question no	77
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Refund – Exclusion

Question

We believe that 'given his consent' means 'authorisation'. In the case of direct debit the execution starts at the moment the payee instructs his payment institution to carry out the payment. At this point of time the possibility of a non-authorised payment exists, if authorisation means 'given his consent'.

Answer

The refund right can be excluded if the following conditions are met:
– the consent (= authorisation) to execute the payment transaction is given directly to the payer's PSP (direct debit with Debtor Mandate Flow) and
– the payer has received information about the amount of the transactions at least 4 weeks before the agreed due date (= debit date), by e.g. receiving the electricity bill from the electricity company (payee).

Relevant provisions	**Article 63(1)**	**Question no**	**78**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Refund – Calculation of period

Question

We assume that this period has to be calculated according to calendar days. If the last day of this period is a banking holiday or holiday, does this mean that the refund must take place on the next working day, following the holiday?

Answer

The refund period has to be calculated based on calendar days, irrespective of whether the end of the period falls on a bank holiday.

Relevant provisions	**Article 63(2)**	**Question no**	**79**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Refund – Calculation of period

Question

Does this period start to run from the moment where it is sure that the payment has been authorised?

Answer

The period starts to run from the day when the payment service provider receives the request for refund.

Relevant provisions	**Article 69(1)**	**Question no**	**80**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Maximum execution time – Paper-initiated transaction

Question

This provision can be fulfilled in the case of electronic payments. In the case of paper based payments a longer period of time is necessary. Can such a differentiation be made?

Answer

As stated in Article 69(1), the execution time may be extended for paper initiated payments by a further business day.

Relevant provisions	Article 64(2)	Question no	81
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Point in time of receipt – Future payment

Question

This provision cannot be applied to direct debit. The payment transaction is initiated by the payee's payment institution.

Answer

This provision also applies to direct debits. In such cases, the payee and his payment service provider may agree that the execution of a payment order sent in advance will only start on a certain day.

Relevant provisions	Article 65(1)	Question no	82
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Refusal of payment order – Notification

Question

How shall the notification be carried out if no contact with the payer can be established?

Answer

The notification must be carried out in the agreed manner, which may either be the manner agreed between the payment service provider of the payer, and the payer in the case of payment transactions initiated by the payer, or the manner agreed between the payment service provider of the payee and the payee in the case of payment transactions initiated by the payee.

Relevant provisions	**Article 66(2)**	**Question no**	**84**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Card transaction – Irrevocability

Question

How can the payer's payment institution verify that the payer has authorised this payment transaction?

Answer

In case of card transactions, the payment service provider may check whether the payer has entered his PIN code or signed an authorisation form.

Relevant provisions	**Article 66(3)**	**Question no**	**85**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Direct debit – Irrevocability

Question

How shall this provision be brought in line with Article 66(2)? With whom has the debit day to be agreed? How has this provision to be interpreted if no debit day was agreed – this will most probably be the case for direct debit?

Answer

The day for debiting the funds in case of direct debits is to be agreed between the payer and the payee.

Relevant provisions	Article 67(1)	Question no	86
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Charges – Full amount principle

Question

Does this mean that the payment service provider may not charge any fees or does this only mean that the amount to be transferred may not be changed?

Answer

This provision requires that the amount of the payment transaction shall be transferred in full without any charges to be deducted from it.

Relevant provisions	Article 69(2)	Question no	87
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Payment transaction – Value date and crediting of amount

Question

Does this provision (in relation to Article 73(1)) mean that the amount may not be credited before the value date?

Answer

The credit value date can be prior to the day of the actual crediting of the account as Article 73(1) states that "the credit value date…is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account." See also the last sentence of Recital 45, which states that "Specifically, the use of value dating to the disadvantage of the user should not be permitted." Senso contrario, the use of value dating to the advantage of the user is permitted.

Relevant provisions	**Article 69(3)**	**Question no**	**88**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Direct debit – Maximum execution time

Question

How can the payment service provider of the payee (he has no contractual relationship with the payer) verify the correct date?

Answer

The payment service provider of the payee will have to rely on the date given by the payee, since the due date is agreed between the payer and the payee (see Question No 85 on Article 66(3)).

Relevant provisions	**Article 70**	**Question no**	**90**
Date of question	18.6.2008	**Date of answer**	6.10.2008

Issue

Availability of funds – No payee's payment account

Question

We believe that it is sufficient to hold the amount at the disposal of the payee? How to deal with a bank's closing hours for the cash desks?

Answer

The amount will have to be made available to the payee during the opening hours of the payment service provider.

Relevant provisions	Article 73(1)	Question no	91
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Value date – Currency conversion

Question

How to deal with a transaction that involves a currency conversion (e.g. the payee's bank receives euro, but the amount needs to be credited in dollar). It may easily be the case that the bank has to buy dollar on the market. This will take some time and delay the crediting of the amount. How to deal with accounts, were the amount is not at the disposal of the payee but used to reimburse a credit tranche?

Answer

Title IV of the PSD only applies to payment services made in euro or any other currency of a Member State outside the euro area (Article 1(2)).

Relevant provisions	Article 75(1)	Question no	93
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Liability – Error

Question

Will it be possible to claim a fee for investigations which were required by the payer and which were not justified? In the case that a transaction error or delay was caused by the user (missing or wrong information) the liability is not clearly defined.

Answer

According to Article 74(2), the payment service provider shall not be liable under Article 75 if the unique identifier provided by the payment service user is incorrect. If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

Relevant provisions	Article 75(2)	Question no	95
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Payment transaction – Defectively executed

Question

Clarification of 'a defectively executed payment transaction' is necessary. Does this mean that refund needs to be done, even when the payment transaction takes longer as foreseen in the Directive?

Answer

Incorrect execution covers, among others, late execution of payment transactions (outside maximum execution time). In case of payment not executed within the maximum execution time, Article 75 has to be read in conjunction with Article 58 which allows for a rectification of such transactions. In addition, the payment service provider would have to compensate the payment service user for any charges or interests that would have occurred because of that delay.

Relevant provisions	Article 94(1)	Question no	96
Date of question	18.6.2008	Date of answer	6.10.2008

Issue

Transposition – Asymmetric

Question

How can we proceed in a correct manner, if other countries (were a payment has been sent to) are late with the transposition into national law?

Answer

In the context of the transposition workshops, the Commission services are closely following the transposition process in all the Member States. All of them have been required to provide information about their transposition plans. The information received is updated regularly, on the basis of the oral and written updates provided by Member States. On this basis, the Commission services have prepared a graph showing Member States plan for adoption and entry into force of the national measures implementing the obligations of the PSD:
http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm.
This graph shows that, according to the current plans, the PSD should be implemented on time in all Member States and the required national measures should enter into force on the same date (1 November 2009) in the absolute majority of them. This would contribute to avoid any problem related to asymmetric transposition.

Relevant provisions	Article 39(a)	Question no	97
Date of question	27.6.208	Date of answer	6.10.2008

Issue

Payer – Identification

Question

Please specify, how to interpret the phrase 'where appropriate' and what kind of payer's data should be submitted to the payee.

Answer

'Where appropriate' refers in particular to Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds which lays down rules concerning information on the payer that has to accompany funds transfers in order to ensure full traceability.

Relevant provisions	Article 4(14)	Question no	98
Date of question	1.7.2008	Date of answer	6.10.2008

Issue

Payment account – Acquiring

Question

Can an acquirer perform its regular payment services to the merchant without opening a payment account for the merchant, especially if any incoming funds are forwarded to the merchant within one business day?

Answer

In most of the cases, the payment service provider of the merchant runs payment accounts. However, even in a case where there is no payment account, the same rules for execution time, value dating and availability apply (see Article 70 which refers to Article 69 which, in turn, refers to Article 73).

Relevant provisions	Article 4(14)	Question no	99
Date of question	1.7.2008	Date of answer	6.10.2008

Issue

Payment account – Giro account

Question

What will be the regulatory difference for a user between the payment account and a traditional deposit-taking 'giro account' offered both by a bank?

Answer

Funds held on a payment account run by a credit institution can constitute a deposit and consequently be used by the credit institution for a variety of risk-taking activities, including providing credit. Under Article 3(1) of the Directive on deposit guarantee schemes (DGS, 1994/19/EEC) "…no credit institution authorised in that Member States pursuant to Article 3 of Directive 77/780/EEC [preceding the CRD] may take deposits unless it is a member of such a scheme" precisely because a credit institution is defined by taking deposits.

Relevant provisions	Article 52(3)	Question no	100
Date of question	2.7.2008	Date of answer	6.10.2008

Issue

Charges – ATM surcharging

Question

In case the national regulator does not restrict the right of surcharging, does this mean that surcharging cannot be restricted any more by the card issuer and the payment scheme?

Answer

Yes, it would be up to the payee to decide whether to ask for a charge or offer a reduction to the payer. The payment scheme cannot prevent its payment service users (payees) from doing so.

Relevant provisions	Article 70	Question no	101
Date of question	7.7.2008	Date of answer	6.10.2008

Issue

Availability of funds – No payee's payment account

Question

Does the bank have to make available payment amounts to clients who are not account holders of the bank or is this article intended to be applied only between PSPs where it has been agreed that an account is not necessary at the payees PSP?

Answer

This provision was meant to deal with situations where the payee does not have an account with the payment service provider concerned which is the case, e.g., in money remittance business.

Relevant provisions	Article 62	Question no	102
Date of question	7.7.2008	Date of answer	6.10.2008

Issue

Payment transaction – Initiation

Question

What is the meaning/difference of 'payments transaction initiated by payee' or 'payment transaction initiated through a payee'? Are some card transactions considered to be 'payments initiated by or through a payee'? E.g. card transactions where a fixed amount is reserved, and then later on an exact amount is debited from the card, but the user has not given authorisation for this exact amount (e.g. payments for car rentals etc.)?

Answer

A transaction initiated by the payee is a transaction which is initiated by the payee without interaction of the payer, such as a direct debit transaction (the utility company decides on when the payment order is sent to its PSP).
A transaction initiated through the payee is a transaction which is initiated by the payer through the payee, typically a card transaction (the cardholder authorises and initiates the payment at the point of sale through the terminal which connects the merchant with his acquirer).

Relevant provisions	**Article 69(1)**	**Question no**	**103**
Date of question	7.7.2008	**Date of answer**	6.10.2008

Issue

Maximum execution time – Paper-initiated transaction

Question

For execution time – are payments initiated via paper orders in branch offices considered to be paper-initiated transaction, and hence be allowed to have an extra business day of execution?

Answer

Payments initiated via paper orders are considered to be paper-initiated transactions. In such cases, the execution time can be extended by a further business day.

Relevant provisions	Article 52	Question no	104
Date of question	7.7.2008	Date of answer	6.10.2008

Issue

Charges – SHA, BEN, OUR

Question

Is it correct that payments in all local EU currencies (not only in euro), if there is no currency exchange involved in transaction, have to be with option SHARE only? PSD Article 52 states that payment type should be SHARE when there is not a currency conversion.
a) How to handle outgoing BEN/OUR payments? When a client of a bank sends a payment transaction of the types OUR or BEN, there will be a currency conversion if the payee's account is in another currency than that of the payment. But if the payee's account is in the same currency as the payment, there will not be a currency conversion. Hence the latter payments would be non-compliant according to the PSD(!?) However, sender's bank can not know which currency the receivers account is in. How could the PSD be followed in this matter?
b) Incoming BEN/OUR payments. If there is a BEN payment coming in for a payment which does not include a currency conversion – how to handle it? Should the receiving bank reject it with reference to non-PSD compliance?

Answer

In general, this provision introduces the 'SHARE' principle for all kind of payment transactions. However, this provision has to be interpreted from the payer's point of view, i.e. the SHARE principle applies when there is no currency conversion on the payer's side.

Relevant provisions	Article 62	Question no	105
Date of question	7.7.2008	Date of answer	6.10.2008

Issue

Charges – Debiting fee from account

Question

Are fees for payment services (and fees for individual payment transactions) which the PSP are debiting directly from the client's account considered to be payment transactions in scope of the PSD. And if so, are they considered to be payments initiated by a payee?

Answer

Such operation is not considered as a separate payment transaction since it is linked to the execution of a payment transaction.

Relevant provisions	**Article 3(g)**	**Question no**	**106**
Date of question	7.7.2008	**Date of answer**	6.10.2008

Issue

Scope – Cheques

Question

The assumption is that transactions involving cheques are out of scope, irrelevant if it is a domestic or international cheque. Does that assumption hold good (even for international cheques that are sent as an electronic transaction to the foreign bank and then printed at the foreign bank)?

Answer

The PSD does not apply to paper cheques as mentioned in Article 3(g)(i), (ii) and (vi).

Relevant provisions	**Article 68(1)(c)**	**Question no**	**107.1**
Date of question	10.7.2008	**Date of answer**	6.10.2008

Issue

Maximum execution time – Scope

Question

Scope, Article 68(1)(c): How to define where the currency conversion takes place and whether or not the cross-border transfer takes place in euro (both a clarification of the principle as applicable to card payment transactions as well as some examples would be welcomed)?

Answer

Article 68(1) does not apply to cross-border transfer in any non-euro currency. It only applies to such transfers where there is a currency exchange into euro and the cross-border transfer itself is in euro.

Relevant provisions	Article 69(1)	Question no	107.2
Date of question	10.7.2008	Date of answer	6.10.2008

Issue

Maximum execution time – Card transaction

Question

Can the Commission services confirm that Article 69(1) does not apply to card transactions (being transactions initiated through the payee), i.e. that the merchant can agree the total execution time with the acquirer (i.e. both the time between initiation of the transaction by the merchant and transmission of the payment order by the acquirer to the issuer as well as the time between receipt of the payment order by the issuer and when the acquirer makes the funds available to the merchant on a payment account)?

Answer

Paragraph 1 applies to push-transactions only. For pull-transactions, Paragraph 3 lays down more specific rules taking into account the special nature of such transactions.
Card transactions have to be executed within the time limits agreed between the payee and his payment service provider (contractual freedom).

Relevant provisions	Article 70	Question no	107.3
Date of question	10.7.2008	Date of answer	6.10.2008

Issue

Maximum execution time – Card transaction

Question

We understand from the text that in the case of card payments, an acquirer who does not hold a payment account for a certain contracted merchant is still subject to making available the funds to that merchant. What remains unclear to us is what the time frame is for making those funds available to the merchant – is it the same time frame that would apply if the merchant did have a payment account with his acquirer? The reference to Article 69 is not clear to us, as Article 69 refers to the settlement between the issuer and the acquirer; Article 69 then refers to Article 73 for the time frames to be respected by the acquirer for making available the funds to the merchant – so does Article 73 also apply in the above described case (whereby the acquirer does not hold the payment account of the merchant) without any additional time allowed for the acquirer to transfer the funds he received to the payment account of the merchant (sitting at another payment service provider)?

Answer

Yes. See Questions 98 on Article 4(14) and 107.2 on Article 69(3).

Relevant provisions	Article 49(2)	Question no	108
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Currency conversion – Scope of application

Question

Article 49(2) enshrines the principles of transparency and choice for cardholders in relation to Dynamic Currency Conversion (DCC). Could you clarify whether Article 49(2) covers both POS and ATM transactions?

Answer

Article 49 provides that, where a dynamic currency conversion (DCCI) service is offered prior to the initiation of the transaction and where that service is offered at the point of sale or by the payee, the party offering the service must provide full details of the exchange rate and charges before the initiation of the transaction.
The provision under Article 49(2) applies where two cumulative conditions are met. The second of these conditions is subjective and refers to the 'point of sale' or the payee. Therefore, DCC at ATMs is not covered by Article 49. However, payment service providers may grant more favourable terms to payment service users in accordance with Article 86(3). Therefore, nothing impedes ATM providers to supply this information voluntarily.

Relevant provisions	Article 52(2)	Question no	109
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Charges – Share

Question

We understand that Article 52(2) mandates the SHARE charging model for credit transfers and direct debits only. Indeed, the sharing of the costs and revenues to operate a four-party payment card scheme takes place mainly through an inter-bank balancing mechanism, which is not covered by the PSD, as acknowledged by Recital 41. Accordingly, could you confirm that Article 52(2) does not apply to card payments?

Answer

In general, this provision introduces the 'SHARE' principle for all kind of payment transactions. Recital 41 clarifies that the special characteristics of certain types of payments have to be taken into account, e.g. for card payments the cardholder continues to pay the annual cardholder fee to the issuer, while the merchant continues to pay the merchant fee to the acquirer. Recital 41 further states that "the provisions on the amount transferred or any charges levied have no direct impact on pricing between payment service providers or intermediaries."

Relevant provisions	Article 52(3)	Question no	110
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Charges – Surcharging

Question

Our understanding is that Article 52(3) allows surcharging in principle, unless Member States explicitly decide otherwise. It is however unclear whether Article 52(3) only applies to point-of-sale (POS) transactions, or whether it also covers ATM transactions. Accordingly, we would invite the Commission to confirm the scope and meaning of Article 52(3).

Answer

Article 52(3) only deals with POS transactions, as in the case of ATM transactions the payer and the payee are typically the same person.

Relevant provisions	Article 58	Question no	111
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Payment transaction – Card transaction

Question

At first sight, the period of 13 months granted to the cardholder to notify his service provider seems at odds with the notion of 'without undue delay' referred to in Articles 56(1)(b) and 58. Moreover, allowing the cardholder to dispute a transaction within a timeframe up to 13 months after the transaction would be unworkable from a scheme management perspective and would require significant systems changes. We understand that this 13 months' period was meant to address the situation of providers sending out yearly statements. In order to avoid any abuse of such provision, we would invite the Commission services to clarify the concept of 'without undue delay'. In this respect, it should be confirmed that a payment service provider may legitimately assume that a cardholder has become aware of an unauthorised transaction as soon as he/she receives his/her statement and, accordingly, has an obligation to notify the unauthorised use without undue delay upon such receipt. In case of monthly statements, the notification should thus occur well before the 13 months' deadline, e.g. within one month of receiving the statement.

Answer

The interpretation of 'without undue delay' will depend on the specific circumstances and has to be examined on a case-by-case basis. Existing national and/or case law could be taken into account.

The two conditions are cumulative: the payer must notify without undue delay on becoming aware of the unauthorised transactions and, in any case, within a 13 month period.
The interpretation that the payer should only have one month after the reception of his account's statement is not line with the Directive.

Relevant provisions	Article 59(2)	Question no	112
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Payment transaction – Card transaction

Question

Article 59(2) appears to suggest that the use of PIN is not, prima facie, evidence that the cardholder authorised a disputed transaction. Should the payment instrument not be reported as lost, stolen or compromised, we however believe that the use of PIN should be considered as sufficient proof? In addition, it is unclear how to prove that certain 'fast pass-through' transactions (e.g. contactless, toll ways, parking garages, etc.) were authorised by the payer. In our view, and in line with Article 54(2), the framework contract could explicitly stipulate that the use of a PIN is the agreed form of consent, and that 'fast pass-through' transactions of a low value are considered as authorised by the actual usage of the card as acknowledged by the cardholder in the contract, subject to the card not being reported stolen, lost or compromised. Could you confirm this interpretation? Should the Commission disagree, we would welcome guidance as to what type of evidence would need to be produced to successfully demonstrate that the payer has authorised the transaction.

Answer

In the case where the payment service user denies having authorised a transaction, the use of a PIN is not a sufficient proof: the PIN might have been caught at the same time as the card data in the case of a fraud.
According to Article 42(2)(a) and (c) as well as (4)(a), the payment service provider and the payment service user agree in the framework contract about the main characteristics of the payment service, the form of and procedure for authorising payment transactions and the means of communication (including technical requirements) for the transmission of information. However, the parties can not agree in the framework contract to exclude PIN based transactions from the scope of this provision.

Relevant provisions	Article 62	Question no	113
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Payment transaction – Card transaction

Question

We understand that Article 62 covers card transactions in the event of 'no shows', damages to a rented car, mini-bar charges, etc. We would welcome guidance as to 1) what other types of card transactions (if any) fall within the scope of this right of refund and 2) what constitutes an 'unreasonably high amount'.

Answer

1) Article 62 covers all 'pull' transactions for which the payer has given his consent without knowing the exact amount of the transaction beforehand, such as for hotel or car reservations even when the card has been shown.
2) This will depend on the specific circumstances and has to be examined on a case-by-case basis.

Relevant provisions	Article 66(2)	Question no	114
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Irrevocability – Charge-back

Question

Recital 39 suggests that the irrevocability principle does not affect the chargeback procedures and rules in the event of a dispute between the payer and the payee. In such a case, the reimbursement of the payer would be considered to be a new payment order. To avoid any doubt, could the Commission services confirm that the principle of irrevocability does not conflict with other legal or contractual rights such as a cooling off or chargeback rights, in line with the objectives pursued by the PSD to increase consumer protection as well as to protect the integrity of the card scheme and to promote the security of the card transactions? Could the Commission services also clarify that, in accordance with the principle of full harmonization, Member States can no longer rely on the irrevocability principle as set out in Article 66 to prohibit chargeback rights?

Answer

Recital 39 refers to cases of 'charge back', where the payment service provider reimburses the payer with the amount of the execution of the executed payment transaction in the event of a dispute between the payer and the payee. In such cases, the irrevocability provision under Article 66 does not affect chargeback rights which have to be considered as separate payment transactions.

Relevant provisions	Article 69	Question no	115
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Maximum execution time – Card transaction

Question

We understand Article 69(3) as requiring the acquirer to transmit the transaction data to the issuer within the time limits agreed with the merchant. It is however far from clear if – and if so, how – the rest of Article 69 applies to cards. We believe that Article 69 should be interpreted in the light of Recital 43 which acknowledges the principle of contractual freedom for card transactions and refers to an explicit agreement between the service provider and the payer. On that basis, the issuer is required to credit the acquirer's account within the time limits explicitly agreed with the cardholder. In view of the confusion surrounding this article due to the complexity of the cards business, we invite the Commission to confirm that:
1) the acquirer must transmit the transaction data to the issuer within the time limits agreed with the merchant; and
2) the issuer must credit the acquirer's account within the time limits explicitly agreed with the cardholder?

Answer

As for the first part of the question, please refer to the answer provided for Question No 107.2 on Article 69(1).
As for the second part, the Directive does not govern any time limit for the crediting of the payee's payment service provider's account (in case there is one) and it is therefore left up to the payment service providers to agree on the clearing and settlement procedures.

Relevant provisions	Article 28(1)	Question no	116
Date of question	11.7.2008	Date of answer	6.10.2008

Issue

Access to payment systems – Card schemes

Question

Our understanding is that Article 28(1) allows a payment scheme to continue to apply its access criteria and risk management policies and procedures to applicants, as well as make normal competitive decisions, in so far as those criteria, policies and decisions are aimed at legitimate business interests including enforcement of trademark rights and safeguarding against specific risks (settlement, operational and business) and thus at protecting the stability and integrity of the scheme, and provided that those rules apply irrespective of the status of the applicant. Could you confirm that our understanding is correct?

Answer

Yes, it is possible for payment systems to define access criteria (such as collaterals, operational quality or security standards, etc.) as long as they are objective, non discriminatory and proportionate.

Relevant provisions	Article 16	Question no	117
Date of question	15.7.2008	Date of answer	6.10.2008

Issue

Payment institution – Granting credit

Question

Article 16 provides that cross border credit 'shall be repaid within a short period which shall in no case exceed twelve months'. Could you please give some details about how this time period is calculated and how the refund could satisfy this requirement? (e.g. would a total refund of a revolving credit be sufficient even if the credit line is still ongoing?) Thank you very much in advance.

Answer

The payment service user needs to repay the full amount of the debt by the end of the twelve month period at the latest.

Relevant provisions	Article 2(2)	Question no	118
Date of question	23.7.2008	Date of answer	6.10.2008

Issue

Scope – Payment services in private currencies

Question

Article 2(2) stated that payment services of funds which are not nominated in euro or a currency of a Member State are not subject to the regulations of Titles III and IV of the PSD. So Barter schemes or Local Exchange Trade Systems (LETS), where payments are made in private currencies, are waived. But are these kinds of private currency payment providers subject to the requirements of Part II of the PSD? Do these providers need a status as payment institution if they are offering payment services mentioned in the Annex even if the requirements of Titles III and IV are not relevant? Should these questions mentioned above be answered in a different way if these private currency based payment services are made within a closed loop (not redeemable in euro) or made within a open loop system (redeemability in euro)?

Answer

Only payment service providers under Article 1 can carry out the payment services listed in the Annex. However, the Directive does not apply for carrying out any of the activities listed under Article 3.
If LETS corresponds to one of the following activities, the PSD rules would not apply:
– Article 3(d), payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity
– or Article 3(k), services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services.

Relevant provisions	Article 38	Question no	119
Date of question	30.7.2008	Date of answer	6.10.2008

Issue

Payment transaction – Card transaction

Question

Article 38(a) requires the payer's payment service provider to provide "a reference enabling the payer to identify the payment transaction" On a credit card statement, a transaction is usually identified by – date of transaction – name of merchant – city of merchant – country of merchant – sales amount and currency (plus possible applicable charges). Would these dates satisfy the information requirements as they already provide a reference to the transaction? If not, would a separate reference number have to be invented, even though this number is not known to the cardholder, does not appear on his sales slip, does not therefore aid him in balancing his account etc., merely to satisfy Article 38(a)?

Answer

Card transactions would be covered by Article 47. The main objective here is to ensure that the payer can easily identify the transactions concerned. If the transaction is usually identified by the date of transaction, the name of the merchant, the city of the merchant, the sales amount and currency, it seems in line with the directive, without having to add another new reference.

Relevant provisions	General	Question no	120
Date of question	30.7.2008	Date of answer	6.10.2008

Issue

Scope – Billing and settlement plan

Question

In the business of airline ticket distribution to clients, the International Air Transport Association (IATA) represents airline companies. IATA also accredits travel agencies and has developed in many EU countries billing and settlement plans (BSP) to collect the amounts of airline tickets sold by accredited travel agencies and to transfer these amounts to its airline company members. BSP ensure the counting and the settlement of the accounts between airline companies and the accredited agents. The BSP execute the following operations: invoicing and calculation of the amounts to be credited to travel agencies by a credit institution in charge of the settlements; repartition of these amounts for settlement between the different airline companies (executed by the credit institution). The credit institution in charge of the settlements is mandated by the BSP to execute the above functions. The BSP also mandate a data processing centre to receive and treat the sale notes sent by the travel agencies and to communicate the sums that need to be transferred to the credit institution. There are 230 airline companies that are members of IATA approximately and several hundreds of other airline companies that use BSP. On the agents' side, approximately 25 000 agencies or branches use the BSP in Europe. For Europe, BSP have handled transactions between airline companies and travel agencies for an amount of USD 89 billion in 2007. BSP are moreover paid commissions by airline companies (transaction commission) and by travel agencies (annual and monthly commissions).
1) Could you indicate whether BSP are covered by Directive 2007/64 on payment services, as a payment institution that would carry out one of the activities listed in the Annex (services enabling cash to be placed on and to be withdrawn from a payment account? money remittance?)
2) Could you confirm that BSP do not fall into the negative scope under Article 3 of the directive, in particular under Paragraphs h and j?

Answer

It will depend on whether BSP enters into possession of the funds to be transferred.
If they do not enter into possession of the funds, BSP would fall under Article 3(j) and would not need to become a payment service provider under Article 1. In cases BSP use a credit institution to handle all funds transfers (as it seems to be for BSP at present), it would benefit from this exemption.
If, however, they enter into possession of funds, BSP will have to become a payment service provider under Article 1.
It should be pointed out that Article 88 provides for transitional arrangements for entities that have commenced their activities before 25 December 2007 in order to give them some time to adapt.

Relevant provisions	General	Question no	121
Date of question	30.7.2008	Date of answer	6.10.2008

Issue

Payment transaction – Swift message standard

Question

Currently cross-border payments are handled through Swift standards (MT103/MT202) where in charge codes are SHA/BEN/OUR. PSD governs this traffic as well. Does PSD provide any guideline or introduce a new charge code to identify cross border payments within euro area and apply so that full amount is paid to the beneficiary without deducting the charges?

Answer

According to Article 52(2) of the directive, 'where a payment transaction does not involve any currency conversion, the payee shall pay the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider'. This means that the SHA option is now compulsory for the transactions that do not involve any currency conversion.
According to Article 67, 'the payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers shall moreover transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred. However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.'

Relevant provisions	Article 52(3)	Question no	122
Date of question	4.8.2008	Date of answer	6.10.2008

Issue

Charges – ATM surcharging

Question

Based on Article 52(3) the prohibition of 'surcharging' of POS transactions (additional charge of the retailer to the cardholder) will be no longer allowed. Is this article also applicable to ATM transactions where today surcharging (by the ATM provider/owner to the cardholder for providing cash) is also often not allowed?

Answer

Article 52(3) does only concern charges (or reductions) requested by the payee. As the definition of 'payee' under Article 4(8) ("a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction") does not cover the ATM provider, Article 52(3) does not apply to ATM transactions.
However, in case a charge for the use of a given payment instrument through an ATM is requested, prior information has to be provided in accordance with Article 50(2) so that the payment service user has not doubt on it prior to the payment transaction.

Relevant provisions	Article 86(1)	Question no	123
Date of question	5.8.2008	Date of answer	6.10.2008

Issue

Charges – Full harmonisation

Question

Could you please confirm whether it would be in compliance with Article 86(1) if we enclose the below indicated provision into the national legal act transposing PSD: "Payment service provider shall not charge payment service user for making a contribution in cash for the payment transaction."?

Answer

Charges form a substantial part of any contract and thus have to be accepted by the payment service user. The Directive does not interfere in the pricing policy applied by payment service providers. Therefore, payment service providers are entitled to charge for the provision of payment services listed in the Annex, but not for:
– the fulfillment of the "harmonized 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" (Recital 21);
– the corrective and preventive measures under Title IV, unless otherwise specified in this Title (see Article 53(1)).

Relevant provisions	General	Question no	125
Date of question	7.8.2008	Date of answer	6.10.2008

Issue

Payment services – Regular occupation

Question

Could you please explain the meaning of the preamble item No 6? Should it be interpreted in the way that PSD is applicable only in cases when provision of payment services corresponds not less then half/is the main activity of the entity? Could you indicate the provision(s) of the PSD corresponding to the above-mentioned preamble item?

Answer

Recital 6 has to be read in conjunction with Article 1(2). According to this provision, the Directive lays down rules for payment service providers "in relation to the provision of payment services as a regular occupation or business activity".

Relevant provisions	General	Question no	128
Date of question	28.8.2008	Date of answer	6.10.2008

Issue

Entry into force – EFTA States

Question

About the other three countries of EFTA (Iceland, Liechtenstein, Switzerland), are they going to transpose the PSD? When?

Answer

The extension of the scope to EEA EFTA Member States is for the moment still pending the decision of the EEA Joint Committee, whose preparation has already started. All new Community legislation in areas covered by the EEA is indeed integrated into the Agreement through an EEA Joint Committee decision and subsequently becomes part of the national legislation of the EEA EFTA States.

Relevant provisions	Article 3(i)	Question no	129
Date of question	10.9.2008	Date of answer	4.11.2008

Issue

Scope – Collective investment undertaking

Question

Could you please indicate what was the basis and motivation for the exclusion of the collective investment undertakings from the scope of the directive (2007/64/EC)?

Answer

As stated in Recital 6, it is not appropriate for this new 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". Article 3(i) excludes from the scope of the Directive any kind of services "related to securities assets servicing", including explicitly those carried out by collective investment undertakings as the main purpose of these transactions is to make an investment, and not to make a payment transaction as defined in Article 5(4) for the purposes of the Directive.

Relevant provisions	Article 28(2)(a)	Question no	130
Date of question	24.9.2008	Date of answer	4.11.2008

Issue

Payment systems – Access to designated systems

Question

The basis objective of the introduction of the Payment Institution license is to increase competition for Payment Services. The payment institutions should compete with the credit institutions (banks). Nevertheless, due to this Article 28(2)(a), the payment institutions do not have a guaranteed objective and non-discriminatory access to key European infrastructures as ACHs, PEACHs & Target – all under SFD (Settlement Finality Directive) Card Schemes like PIN, Bancontact/MisterCash, CB, … that clear and settle through a system under SFD. Other Card Schemes (like VISA & MasterCard) that could (and will most probably) clear and settle through systems under SFD. In the future payment institutions will thus have to get such accesses through banks, their main competitors, for any type of Payment Service they would like to provide (SCT, SDD, cards). This is clearly not a level playing field. It could be argued that small banks also use larger banks for accessing key infrastructure, but this is their choice, based on a cost/benefit analysis, and not based on a regulation.
What are the plans of the Commission services to achieve a true level playing field in this area?

Answer

As stated in Recital 16, Article 28(1) of the Payment Services Directive provides for the open access to payment systems. Payment services providers that are legal persons will then have access, on a non-discriminatory basis, to the technical infrastructure necessary to process payment transactions, as long as those payment systems are not internal systems of banking groups or designated under the Settlement Finality Directive 98/26/EC (as provided by its paragraph 2(a)).
However, it should be pointed out that the Settlement Finality Directive (SFD) is currently being revised. It is therefore up to the co-legislators to decide whether they keep this legal situation or not.

Relevant provisions	Article 8(1)(a)	Question no	131
Date of question	24.9.2008	Date of answer	4.11.2008

Issue

Payment institution – Capital

Question

Could you clarify how 'fixed overheads' are calculated, mainly in the case of a hybrid payment institution?

Answer

Fixed overheads include expenses which do not vary as a result of output volume or sales revenue, e.g. rent, insurance, office expense, etc. The evaluation of the specific expenses to be taken into account should follow general accounting standards.
For hybrid payment institutions, only the expenses that are related to payment services should be taken into account.

Relevant provisions	Article 8(1)(c)	Question no	132
Date of question	24.9.2008	Date of answer	4.11.2008

Issue

Payment institution – Capital

Question

Can you give a definition of each component of the 'relevant indicator', mainly in the case of a hybrid payment institution? In particular, is 'interest income' the interests earned by the payment institution on the users funds that it temporally owns for the duration of the payment? As a PI is not expected to pay the payee before it gets the funds from the payer, how can it bear 'interest expense' on its activity? Are 'commission and fee received' gross or net – fi, in the acquisition of card transactions, does it include the Interchange Fee (paid de facto by a merchant to the card issuer) or only the part of the commission that is kept by the payment institution? What can be 'other operating income' for a non-hybrid payment institution?

Answer

'Interest income' means the interests that are received by payment institutions from the investments they have made (be they made from the users funds or not).
'Interest expense' means the interests that payment institutions pay either to their creditors or to their users (in the case where their funds would stay on their payment accounts).
The 'commissions and fees received' should be expressed in gross (otherwise, a reference to commissions 'paid' would have been inserted into the provision).
'Other operating income' are any other kind of income, in the case of non hybrid payment institution, they may be linked to payment services or to the ancillary services in Article 16.

Relevant provisions	General	Question no	135
Date of question	2.10.2008	Date of answer	4.11.2008

Issue

Payment transaction – Card transaction

Question

Throughout the PSD the terms 'initiated/transmitted by the payer' and 'initiated/transmitted by or through a payee' is used to distinguish rules for different groups of payment services. These terms are introduced in Recital 43: "For all other payments [other than payment orders initiated by the payer], such as payments initiated by or through a payee, including direct debits and card payments…" From this it seems that the concepts 'initiated by the payer' and 'initiated by or through a payee' should be thought of as being mutually exclusive in the context of application of the PSD. And that card payments belong to the second group by definition. Is this a correct interpretation? That is, that although most card payments by nature in practice are initiated by the payer through the payee, providers of card payment services should not have to comply with both the rules for 'payments initiated by the payer' and the rules for 'payments initiated … through a payee' – only the latter? Or more specifically: Providers of card payment services should not have to comply with: 1) both the first and the second sentence in Article 67(3) – only the second sentence; 2) both Articles 75(1) and 75(2) – only with Article 75(2); 3) Article 46. Is this correct? Are articles/rules beginning with the phrase 'initiated by the payer' applicable to card payments?

Answer

The different concepts used in relation to the initiation of payments in the directive shall be understood in the following way:
'Payment transactions initiated by the payer' mean payment transactions where the orders are directly sent by the payer to its PSP, e.g. credit transfers.
'Payment transactions initiated by the payee' mean payment transactions where the orders are sent by the payee on the basis of a prior general authorisation by the payer, e.g. direct debits.
'Payment transactions initiated through the payee' mean in reality payment transactions initiated by the payer through the payee, e.g. card payments.
In the case of card payments, providers therefore have to comply with the rules concerning 'payment transactions initiated through the payee'.
In any case, where the provision does not contain any specific reference to how a payment transaction is initiated, it has to be understood as applying to any payment transaction.
With regard to the specific articles mentioned:
1) We confirm that only the second sentence in Article 67(3) applies to card payments.
2) We confirm that Article 75(1) does not apply to card payments (Article 75(2) applies).
3) Article 46 does not apply to card payments.

Relevant provisions	General	Question no	136
Date of question	7.10.2008	Date of answer	4.11.2008

Issue

Scope – Limited network

Question

In the case of a chain (e.g. retail – like Marks & Spencer) which has a closed loop/limited use Gift Card, but with no specific financial permits and which does not have the backing of a financial institution or bank, are there any specific laws in regard to cross-boarder vs. domestic limits per card (money)? If so, could you please refer to the specific law/laws?

Answer

According to Article 3(k), the Payment Services Directive does not apply to services based on instruments which can only be used in a limited way either within a limited network of service providers or for a limited range of goods or services such as store cards which can only be used for payments in a specific shop or a chain of stores. However, as no authorisation is required, the chain will not be allowed to provide such service outside its home Member State. If it wishes to do so, it would need to seek the appropriate authorisation under national law.

Relevant provisions	Article 1(1)	Question no	137
Date of question	13.10.2008	Date of answer	4.11.2008

Issue

Application – EEA branch of non-EEA credit institution

Question

Please explain how and to what extent the PSD applies to EEA branches of a non- EEA based credit institution. The PSD imports the definition of 'credit institution' from Directive 2006/48/EC which clearly includes, given the context in which it is used, both EEA established and non-EEA established credit institutions. Can we conclude that the PSD therefore permits EEA branches of non-EEA credit institutions to perform payment services under the directive without having to establish a legal entity within the EEA?

Answer

In light of the clear wording of Articles 2 and 29 of the Payment Services Directive and the fact that its Article 1(1) only refers to credit institutions and not to branches of third-country credit institutions, it has to be concluded that branches of third-country firms which are located within the EEA and want to provide payment services, can only carry out payment services if they fit into one of the categories of payment service providers set out in Article 1 of the Directive. In practical terms, this means that the Directive obliges branches of third-country credit institutions to take one of the legal forms foreseen in Article 1(1) of the Directive in order to be allowed to provide payment services in the EEA (e.g. become a payment institution within the meaning of Article 1(d), i.e. establish a company in the EEA and subsequently apply for an authorisation under Article 10 of the Directive once it has been implemented into national law).
Furthermore, it should be pointed out that Article 1(a) of the Directive refers to the definition of 'credit institutions' under Article 4(1)(a) of Directive 2006/48/EC, without making any reference to Articles 38–39 of the latter.

Relevant provisions	Article 2(1)	Question no	138
Date of question	13.10.2008	Date of answer	4.11.2008

Issue

Scope – Geographical coverage

Question

What is the test to determine where payment services are provided for the purpose of Article 2(1) ("This Directive shall apply to payment services provided within the Community.")?

Answer

The territorial scope of the Payment Services Directive is determined by Article 299 of the EC Treaty.

Relevant provisions	General	Question no	139
Date of question	21.10.2008	Date of answer	4.11.2008

Issue

Payment transaction – Currency

Question

Will relevant articles in Titles III and IV also be applicable to payment transactions in the local currency of the EEA Member State, or will they still only be applicable to payment transactions in one of the EU currencies?

Answer

Titles III and IV will also be applicable to payment transactions in the currency of the EEA Member States.

Relevant provisions	Article 19	Question no	140
Date of question	24.10.2008	Date of answer	4.11.2008

Issue

Record keeping – Appropriate record

Question

Clarity of what is meant by 'appropriate records' within Article 19 (in Title II).

Answer

The expression 'appropriate records' refers to information produced by payment institutions in accordance with the requirements laid down in the provisions of Title II.

Relevant provisions	Article 68(2)	Question no	141
Date of question	24.10.2008	Date of answer	20.11.2008

Issue

Maximum execution time – Currency

Question

Clarity requested in relation to which 'other payment transactions' are intended to be covered by this article and the implications of the phrase 'unless otherwise agreed' in this article.
Article 68(1) clearly identifies the type of payment transactions that are covered by the section on execution time and value date. Article 68(2) appears to extend this to 'other payment transactions unless otherwise agreed between the payment service user and his payment service provider'. Clarification is sought as to what is intended to be included in other payment transactions. Does this article only apply to payments in Member State currencies (refer to Article 2(2))? How should agreement between the PSU and PSP be evidenced?

Answer

According to paragraph 1, Section 2 of Title IV shall apply to the transactions mentioned in this paragraph. For all other payment transactions in an EU currency, the parties have contractual freedom within the framework of paragraph 2, i.e. for intra-Community payment transactions the maximum execution time is D+4. The maximum execution time is one of the elements being part of the framework contract (see Article 42(2)(e)).

Relevant provisions	Article 16(1)(b)	Question no	142
Date of question	3.11.2008	Date of answer	20.11.2008

Issue

Payment systems – Operation

Question

If the payment institutions can do operation of any kind of payment systems or if the Member States can restrict in the implementation law to the operation of payment systems other than those mentioned in Article 28(2).
Can a payment institution engage in the activity of operation of payment systems designated under the SFD or the reference in Articles 16(1)(b) to 28 prohibits this?

Answer

A payment institution is entitled to engage in the activity of operation of a payment system, provided that it fulfils the access criteria of the system, established in conformity with Article 28(1)(a) and the payment system is not one of those mentioned in paragraph 2 of the same provision. In this context, Member States have the right to limit access to systemically important systems in accordance with Directive 98/26/EC on settlement finality in payments and securities settlement systems, as stated in Article 28(2)(a) and Recital 16.

Relevant provisions	Article 4(23)	Question no	143
Date of question	9.11.2008	Date of answer	20.11.2008

Issue

Definitions – Payment instrument

Question

In your answer with question number 34, as published in previous FAQs, you state: 'This definition is meant to cover physical devices (such as cards or mobile phones) and/or set of procedures (such as PIN codes, TAN codes, digipass, login/password, etc) which a payment service user can use to give instructions to his payment service provider in order to execute a payment transaction...' Are internet banking solutions that use these procedures also covered under this definition?

Answer

If such procedures were used for internet banking solutions, they would be covered as well by the definition of payment instrument.

Relevant provisions	Article 4(23)	Question no	144
Date of question	9.11.2008	Date of answer	20.11.2008

Issue

Definitions – National payment transaction

Question

In several articles, the PSD states the term 'national payment transaction'. Could you clarify what type of transactions are to be seen as national payment transactions? 1) A payment transaction where both the payer's PSP and payee's PSP are located in the same Member State; 2) A payment transaction where both the payer and the payee are resident in the same Member State; 3) A payment transaction where all the participants (PSUs and PSPs) are located/resident in the same Member State. 4) Any other?

Answer

The element which is relevant for determining what constitutes a 'national payment transaction' is where the payment service has been offered to the respective payment service users. For example, a Swedish cardholder using his card issued by a Swedish bank for making a purchase from a Belgian merchant; this would be a cross-border transaction; however, if a French payment service provider offers its services, e.g. a payment card, via a branch in Belgium to Belgian residents and the Belgian customer makes a purchase from a Belgian merchant, this would be a national transaction, irrespective of where the merchant's payment service provider is located.

Relevant provisions	Article 73	Question no	145
Date of question	13.11.2008	Date of answer	20.11.2008

Issue

Value date – Currency conversion

Question

In case amount is received in euro by the beneficiary's bank in a Member State outside the euro area and the beneficiary's account is in the currency of the Member State, must the value date of crediting of the amount in the currency of the Member State to the beneficiary's account be the same as when the beneficiary's bank received the euro payment to its euro account in euro?

Answer

As stated in Article 68(2), Article 73 is not at the disposal of the parties, i.e. the rules on value dating apply to any payment transaction.

Relevant provisions	Article 42(3)(b)	Question no	146
Date of question	18.11.2008	Date of answer	18.12.2008

Issue

Payment account – Interest

Question

a) Is interest on payments account in scope of these articles?
b) If having a variable interest rate on these accounts, our understanding is that this interest rate must be based on a reference interest rate. In the definition of reference interest rate, the PSD states that the interest rate should come "from a publicly available source which can be verified by both parties to a payment service contract".
Can this reference interest rate be a rate which is supplied by the bank, as long as this rate is published 'publicly' on e.g. a website, or must the reference interest rate come from an independent source (i.e. LIBOR, ECB rate etc.)?

Answer

a) Yes
b) Article 42(3)(b), in conjuction with the definition of 'reference interest rate' under Article 4(20) can be interpreted as requiring a publicly available 'index or base'. Typically, this comes from independent sources such as LIBOR, Euribor or ECB rates.

Relevant provisions	Article 73 – Credit Val	Question no	147
Date of question	18.11.2008	Date of answer	20.1.2009

Issue

Card transaction – Availability of funds

Question

The question relates to the 'last leg' of a card transaction – when the payment has been cleared in the network, and the payment amount is transfered from networks to the payee's (mechant's) PSP and then to be transfered to the payee (merchant). When the merchant's payment service provider has received the money from the network, must the payment amount then be credited immediately to the merchant, or is this time negotiable between merchant and merchant's payment service provider ('contractual freedom')?

Answer

Article 73(1) states that "The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after the amount is credited to the payee's payment service provider's account." Therefore, in our view, the parties can not agree on another time for the availability of funds.

Relevant provisions	General	Question no	148
Date of question	18.11.2008	Date of answer	20.1.2009

Issue

One-leg payment transaction – Intermediary bank

Question

Suppose a payment transaction comes into the EU from an extra-EU (or EEA) country (e.g. US). This transaction is received by one (or more than one) PSP that acts as an intermediary (e.g. as a correspondent bank). The question is whether the PSD lays down specific requirements for the intermediary PSP(s) for these types of transactions. If yes, what articles apply?

Answer

With the exception of Article 73, Titles III and IV of the Payment Services Directive only apply where both the payer's payment service provider and the payee's payment service provider are located in the Community (Article 2(1)).
In the case of incoming payment transactions where the payer's payment service provider is located outside the EEA, the payment service provider of the payee will have to apply Article 73, provided that the transaction has been made in euro or in the currency of a Member State outside the euro area (Article 2(2)) and taking into account the national law of the Member State where the payee's payment service provider is located.
However, because the Payment Services Directive mainly governs the payment service user/payment service provider space, none of its provisions, including Article 73, would apply to the reception by an intermediary of an incoming payment from outside the EU.

Relevant provisions	General	Question no	149
Date of question	21.11.2008	Date of answer	18.12.2008

Issue

One-leg payment transaction – Currency

Question

Given that the CHF (Swiss Francs) is the currency unit of Liechtenstein (an EEA country), is it enough to consider that a payment issued in CHF is subjected to the rules of the Directive, or is it necessary, for the payer's bank, to verify whether the beneficiary's bank is in Switzerland or in Liechtenstein?

Answer

In that case, for the application of Titles III and IV of the PSD (with the exception of Article 73 which applies in any case), the payer's payment service provider will have to verify whether the payment service provider of the payee is located or not in Liechtenstein.

Relevant provisions	Article 4(14)	Question no	150
Date of question	21.11.2008	Date of answer	18.12.2008

Issue

Payment account – Saving account

Question

Question 25 quotes: "However, saving accounts where the holder can place and withdraw funds without any additional intervention or agreement of his payment service provider should be considered as payment accounts within the meaning of the PSD." My question is: What would be exactly considered as an 'additional intervention or agreement'?

Answer

A saving account where the holder can place funds whenever he wants, without having to sign a new contract for each new placement, and is also able to withdraw funds whenever he likes without any restrictions (e.g., penalties for not having respected the term agreed or administrative charges) should be considered as payment accounts for the purposes of the PSD.
In the case of the fixed term deposits, once the payment service user has made a lump sum deposit, he cannot make any withdrawals from the account until maturity without incurring in loss of interest or other penalties as agreed in the contract (e.g., closure of the account).

Relevant provisions	Article 74(1)	Question no	151
Date of question	24.11.2008	Date of answer	18.12.2008

Issue

Payment transaction – Unique identifier

Question

Where it says "If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier" can this please be clarified? We would like the industries view on this article, is it being used to drive account primacy through legislation?

Answer

The PSD does not oblige the payee's payment service provider to check the concordance between the unique identifier and the name of the payee mentioned on the payment order (see Pararagraph 3 of this provision).

Relevant provisions	Article 28(1) & Recital	Question no	152
Date of question	24.11.2008	Date of answer	18.12.2008

Issue

Access to payment systems – Technical infrastructure

Question

The main objective of the PSD is to generate more competition in payment markets by removing market entry barriers and guaranteeing fair market access so as to ensure a level playing field for all payment services, whether they emanate from credit institutions (banks) or from payment institutions (non-banks). A payment institution/non-bank that wants to establish a new European alternative payment card system, and therefore be guaranteed fair market access, necessarily requires access to the incumbent bank's OLTB (On-line To Bank) payment authorisation infrastructure under the same objective, non-discriminatory and proportionate conditions. OLTB/Real-time payment authorisation allows electronic 'access' to the bank account deposits of a customer, assuming of course the customer has first authorised such access. Without access to the banks' (owned and/or used) OLTB payment authorisation infrastructure, a new entrant payment institution seeking to set up a new payment system can not operate (without itself becoming a full-blown retail bank and taking deposits), which would seem directly to frustrate a key purpose of the PSD (i.e. promoting inter-system competition between different payment systems, including via payment institutions that do not take deposits). Access to payment systems pursuant to Article 28(1) thus includes necessarily access to the components thereof, notably the payment systems' technical infrastructure, including the OLTB payment authorisation infrastructure used by the banks under objective, non-discriminatory and proportionate conditions. In addition, access denial would impede payment institutions from providing and executing the payment services that they have been authorised to provide in accordance with Articles 4(3)–(4) and 10 of the PSD and that are set out in the Annex to the PSD. Indeed, to provide the payment services contemplated in the Annex to the PSD, a payment institution necessarily requires access to the payer's and the payee's respective bank accounts. In light of the above, does the Commission concur that the obligation to provide 'access to payment systems' within the meaning of Article 28(1), read in conjunction with Articles 4(3)–(4) and 4(6) and Recital 16 of the PSD, includes the obligation to give access at objective, non-discriminatory and proportionate conditions to the technical infrastructure of these payment systems, which in its turn includes the On-line To Bank (OLTB) payment authorisation infrastructure used by the banks?
Does the obligation to provide 'access to payment systems' within the meaning of Article 28(1) includes the obligation to give access at objective, non-discriminatory and proportionate conditions to the technical infrastructure of these payment systems, including the On-line To Bank (OLTB) payment authorisation infrastructure used by the banks?

Answer

We confirm that Article 28 of the Directive aims at opening existing payment systems to any payment service provider that are legal persons, including newcomers such as payment institutions so that they can compete effectively with other existing payment services providers on the payment market. As stated in Recital 16, "any payment service provider competing in the internal market (should thus be) able to use the services of the technical infrastructures of payment systems under the same conditions". Article 28 thus provides payment institutions with a right of access to the technical infrastructures of payment systems as long as they are legal persons and as long as this does not compromise the integrity and stability of the payment system itself. Such technical infrastructures may include authorisation networks set up by banks. Systematically important payment systems designated under the Settlement Finality Directive 98/26/EC, internal group systems and three-party systems are however excluded from the scope of this article.

Relevant provisions	Article 16	Question no	153
Date of question	27.11.2008	Date of answer	27.1.2009

Issue

Payment institution – Granting credit

Question

In what cases is a payment institution allowed to grant credit for a period exceeding 12 months? According to us, Title II of PSD establishes a single license for payment institutions regarding prudential requirements. This allows them to provide payment services throughout the Community under the same conditions, including those laid down by Article 16 as regards the granting of credits related to a payment service for a maximum duration of 12 months. However, the requirements of Article 16(3) only apply to services performed under the European passport. Firstly, this means that the limitation to a 12 month period does not apply to strictly national services (i.e. non cross-border activities). Secondly, it does not prevent payment institutions from granting cross-border credits related to a payment service for a duration exceeding 12 months if they comply with the national provisions on licensing requirements and on consumer credit of the Member State in which they are planning to offer such credits. The single european license is indeed to be understood as a suppletive legal framework.

Answer

With regard to the duration of credit granted by payment institutions, Article 16(3) states that payment institutions can not grant credit exceeding 12 months for cross-border activities under Articles 10(5) and 25.
When a payment institution only grants credit in the home Member State, this 12 months' limit will not apply. The national legislator remains free to regulate the duration of the credit, if it wishes so.
If, however, the payment institution asked for an additional licence in the host Member State, it would be able to grant credit in accordance with the conditions on duration laid down in the law of that Member State.

Relevant provisions	Article 16	Question no	155
Date of question	9.12.2008	Date of answer	20.1.2009

Issue

Payment account – Credit balance

Question

Payment accounts can only be used for payment transactions. Funds received should not constitute a deposit or e-money (Article 16). Are there any limitations for the period for holding customer's funds on a payment account run by a payment institution? Can users hold a running balance in the medium-term on these accounts like on traditional current accounts run by credit institutions? Or are these accounts more or less working accounts, with a maximum execution time (D+3 and D+1 after January 2012) which limits the period of holding the users funds on its payment account? Following this interpretation the deliverance of the funds to the payee should be made by a transfer to an account of the user usually run by a credit institution (for storage) or to another payment service provider (for payment). So positive balances (if any) on these payment accounts are allways very short-term. Which interpretation regarding the limitations of holding positive balances on payment accounts run by payment institutions is correct?

Answer

The maximum execution time provisions in Section 2 of Chapter 3 of Title IV limit the period for holding customer's funds; consequently, payment institutions can only accept customer's funds on a payment account with an order for executing a payment transaction or a series of payment transactions to be executed on a given date (e.g., direct debits or standing orders where it is necessary to place funds on a payment account in advance of the execution of the payment transaction). In principle, the funds should not remain under the control of the payment institution longer than is necessary due to operational and technical reasons which should be determined in accordance with the main characteristics of each payment service.

Relevant provisions	Article 3(g)(v)	Question no	156
Date of question	9.12.2008	Date of answer	20.1.2009

Issue

Scope – Exclusion of voucher

Question

Article 3(g)(v) states that the PSD does not apply to transactions based on paper-based vouchers. Given the clarity of this provision, can a Member State decide to include anyway in the scope of the PSD paper-based vouchers?

Answer

As stated in Recital 6, it is not appropriate to apply this legal framework to paper-based vouchers, which are explicitely mentioned by Article 3(g)(v). Therefore, while the PSD shall not apply to them, Member States remain free to decide about the legal framework.

Relevant provisions	Recital 6	Question no	157
Date of question	9.12.2008	Date of answer	20.1.2009

Issue

Scope – Exclusion of voucher

Question

Recital 6 of the PSD states that the directive does not apply to vouchers, be they 'paper-based vouchers or cards'. Can we conclude that the intention of the legislator was to exclude vouchers (such as meal vouchers, gift checks or Chèques Emploi Service Universels) from the scope of the PSD, whatever their format (added effect of Articles 3 g) v) and 3 k))?

Answer

Specific purpose payment instruments, which only have a limited usage, such as store cards, petrol cards, membership cards, public transport cards and meal vouchers do not fall within the scope of the PSD, whatever their format (paper-based vouchers, cards or other instruments), in accordance with Article 3(k). If these specific purpose payment instruments were to develop and do not longer fulfil the criteria set out in Article 3(k), they would fall under the relevant provisions of the Directive. Furthermore, instruments which can be used for purchases in stores of listed merchants should not be exempted as such instruments are typically designed for a network of service providers which is continuously growing.

Relevant provisions	Article 3(k)	Question no	158
Date of question	9.12.2008	Date of answer	20.1.2009

Issue

Scope – Limited network

Question

Article 3(k) states that the PSD does not apply to "services based on instruments that can be used to acquire goods or services only (…) under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services". The concepts of 'limited network of service providers' or 'limited range of goods or services' are not defined in the PSD. Can Member States set quantitative thresholds to determine what will be considered as a 'limited network of service providers' and a 'limited range of goods or services'?
In particular, can Member States interpret the concept of 'limited network of service providers' with the sole criterion of a certain number of points of sale accepting the vouchers and/or interpret the concept of 'limited range of goods or services' with the sole criterion of the volume of transactions executed, when the PSD refers to qualitative criteria relating to the specialisation of the network and/or the goods and services covered? If yes, can Member States set thresholds so low that they could empty the possibilities of exclusions granted by the legislator?

Answer

Article 3(k) can not be interpreted as requiring a limited range of products and services and a limited network of services providers: these criteria are not cumulative. Taking into account the full harmonisation approach of the directive, Member States should refrain from setting quantitative thresholds (such as the number of merchants rendering the same kind of services or any monetary threshold) to determine the scope of the limited network in the domestic law implementing this provision. Such interpretation would go beyond what was intended by the legislators.
Therefore, as Article 3(k) does not specify any conditions or criteria for the determination of what 'limited' means, this will have to be determined on a case by case basis.

Relevant provisions	General	Question no	159
Date of question	10.12.2008	Date of answer	20.1.2009

Issue

Scope – Payment of tax

Question

In Italy it is possible to pay some taxes trough a bank. The type of payment it is called F23 or F24 (the name of the form used). The citizen goes to the bank, fills the form with the code of the tax, the date of the payment, the amount etc. and give it to the bank paying with cash or authorizing a debit on his own checking account. The bank gives him the receipt of the payment.
The bank at the end of the due date, send a file to the Italian authority of taxes (Agenzia delle entrate) with the details of the payments received (per each payer), and simultaneously send a wire transfer with the total of all the payment of that day to the Italian Central Bank where the authority has an account (with a SWIFT message, formally known as MT 103 with the settlement made thanks to TARGET).
This kind of payment is in the scope of the PSD? For example the citizen has to receive all the information of Title III before and after the payment, and he/she has all the rights and duties of Title IV, e.g. for refund, revoke etc.

Answer

Yes, this kind of payments falls into the scope of the PSD. Therefore, Titles III and IV apply to them.

Relevant provisions	Article 73(1)	Question no	160
Date of question	10.12.2008	Date of answer	20.1.2009

Issue

Maximum execution time – Currency conversion

Question

How to deal with a transaction that involves a currency conversion (e.g. the payee's bank receives euro, but the amount needs to be credited in Swedish crown – SEK)? As you know, if the bank of the payee wants to apply a spot rate, avoiding to get the risk of the fluctuation of the currency rate, it may buy SEK on the Foreign Market, where the settlement of the transaction needs 2 working days. In which way the bank can be compliant with the need to ensure that amount of the payment transaction is at the payee's disposal immediately after that amount in euro is credited on the Settlement Account of the bank. In fact the amount in SEK is available to the bank after 2 working days, when the Foreign Market transaction is settled.

Answer

When the currency of the transaction is euro and the currency conversion is carried out in a Member State outside the euro area into the currency of that Member State, Article 68(1)(c) applies. Consequently, the rules on maximum execution time laid down in Article 69, which refers to Article 73, applies.

Relevant provisions	Article 3(m)	Question no	163
Date of question	15.12.2008	Date of answer	20.1.2009

Issue

Scope – Omnibus nostros account

Question

The PSD and framework contracts appear to be intended to protect consumers/PSUs. We will be applying the PSD to our relationships with our client base. However, we have a model whereby we open an omnibus account with other PSPs in other countries.
We are a PSP, and hold omnibus nostros (held in our name) at other PSPs; does the PSD apply to this type of relationship?

Answer

According to Article 3(m), the Payment Services Directive does not apply to payment transactions carried out between payment service providers, their agents or branches when they are executed 'for their own account'.

Relevant provisions	Article 4(15)	Question no	164
Date of question	18.12.2008	Date of answer	27.1.2009

Issue

Definitions – Funds

Question

Funds are defined as banknotes, coins, scriptural money and e-money. Are private issued currencies (denomination not in euro or in a national state issued currency) issued as notes, scriptural money or e-money included into the definition of 'funds'?

Answer

Private currencies can be included in the definition of funds if they take the form of banknotes, coins, scriptural money or e-money. Whether they are denominated in euro or a currency of a Member State outside the euro area does not matter since the definition does not refer to specific currencies. However, Titles III and IV of the directive will not apply to them if they are not denominated in euro or in the currency of a Member State outside the euro area, as stated in Article 2(2).

Relevant provisions	Article 64(2)	Question no	165
Date of question	18.12.2008	Date of answer	27.1.2009

Issue

Point in time of receipt – Direct debit

Question

In your answer to Question no 81 you state that Article 64(2) applies also to direct debits. In that case, could the due date be the point in time of receipt for the purposes of Article 69(3) and the agreed date for the purposes of Article 66(4)?

Answer

Yes, the due date is the agreed day referred to in both Article 64(2) and Article 69(3).

Relevant provisions	Article 69(3)	Question no	166
Date of question	18.12.2008	Date of answer	20.5.2009

Issue

Maximum execution time – Direct debit

Question

Can the Commission confirm that applying Articles 69(3), 73(1) and 73(2) to direct debits means a 'same day' execution on the due date for all participants (payee, payee's PSP, payer, payer's PSP)?

Answer

The transmission of the payment order to the payment service provider of the payer must enable, the execution of the payment transaction (the direct debit) on the agreed due date.
Article 69(3) sets rules on the transmission of a payment order to the extent that they must be executed on a given date. It provides that, for a direct debit, the payee and his payment service provider have to agree on time limits for transmission of the payment order, so that the settlement has to occur at the date which has been agreed between the payer and the payee.
As stated above, the period for transmission of the payment order by the payment service provider of the payee to the payment service provider of the payer is the one agreed between the payee and his payment service provider. This means that the point in time of receipt of the payment order is deemed to be the agreed due date (Article 64). On that date, the account of the payer is normally debited, but nothing impedes the payment service provider of the payer to grant more favourable terms for the debit of his account pursuant to the last subparagraph of Article 86(3).
According to Article 69(1), after the point in time of receipt (i.e on the due date), the payment service provider of the payer must ensure that the amount of the payment transaction is credited to the payee's payment service provider by the end of the next business day (D+1) (or D+3 until 2012). The amount must be at the payee's disposal immediately after it is credited to the payee's payment service provider's account (Article 73(1)).

Relevant provisions	Article 52(3)	Question no	167
Date of question	19.12.2008	Date of answer	27.1.2009

Issue

Charges – Surcharging

Question

The so-called non-discrimination rule is currently included in the scheme rules of credit card companies. It prevents users, i.e. retailers from charging different fees for the use of different credit cards at the point of sale. This means, for instance, that a retailer cannot charge more for a payment with an Amex card than for a payment with a VISA card. In view of the possibility for retailers to surcharge (as forseen in Article 52(3)) it is still unclear to us, in how far the scheme rules of credit card providers are compatible with this possibility to surcharge (in case it is implemented into national law). Will the scheme rules be illegal under the new legislation or will credit card providers continue to be allowed to impose such a rule also in the future? This question is of utmost importance to retailers who would like to be able to inform their customers which price differences exist for the various payment methods. In addition it is crucial for retailers to have legal certainty on this point, as the terminals at the point of sale would have to be programmed accordingly. This process would at least take a year.

Answer

The non-discrimination rule prohibits merchants who accept credit cards from imposing a surcharge on customers who pay by credit card or allowing a discount in return for payment in cash.
Allowing surcharging or rebates for the use of a specific payment instrument is a way to promote transparency and competition.
However, Article 52(3) provides that Member States can decide to forbid or to limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments. This restriction by a Member State may be warranted in view of abusive pricing or pricing which may have a negative impact on the use of a certain payment instrument.
Conseqently, the non-discrimination rule can only continue to apply in those countries that chose the above mentioned option. For all other Member States, however, the card scheme rules have to be changed.
Finally, it should be stressed that this provision does not give to Member States the possibility to ban rebates.

Relevant provisions	Article 74	Question no	168
Date of question	19.12.2008	Date of answer	27.1.2009

Issue

Unique identifier – Incorrect details

Question

In the PSD it mentions that we must inform customers when altering the details on the instruction and can not do so without their permission. Can we put a clause in the Terms and Conditions in regards to payments that need repairing, we have a lot of payments that come to us with incorrect details and we repair these for the customer and put in the correct details. Is this possible? Or will we have to send the payment straight back?

Answer

According to Article 74, "if the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction. However, the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction." Payment service providers may moreover grant more favorable terms to payment service users, according to Article 86(3).
This means that nothing impedes payment service providers to repair payments which have incorrect details and offer this as a service to their clients. Payment service providers do not necessarily have to send the payments back.

Relevant provisions	Article 45	Question no	173
Date of question	6.1.2009	Date of answer	27.1.2009

Issue

Information requirements – Termination right

Question

The termination rights granted to PSPs under the article appear to require a minimum of two months notice to the user regardless of whether the user is in breach of the framework contract or the PSP is simply terminating as of right. For instance, a user could be nine months delinquent with payments under the contract but still be entitled to an extra two months notice under this article before the contract could be terminated. The article seems to partially address this difficulty in 45(5) which allows parties to use provisions of national law to declare the framework contract 'unenforceable or void'. However, rendering a contract unenforceable or voiding it is legally somewhat different from termination, is it the intention of the clause to broadly define what is meant by 'unenforceable' or 'void' so as to include such provisions as Article 54 of the Irish Consumer Credit Act, which allows a creditor under a consumer contract to 'determine' (terminate) it in the event of breach provided a proper notice period has been followed, or must the terms 'void and unenforceable' or their exact legal equivalent be used?

Answer

Article 45 sets out the terms under which payment service users and payment service providers may terminate contracts. Its fifth paragraph has to be read along the lines of Recital 29, the second sentence of which prescribes that "this Directive should be without prejudice to the payment service provider's obligation to terminate the payment service contract in exceptional circumstances under other relevant Community or national legislation, such as legislation on money laundering and terrorist financing, any action targeting the freezing of funds, or any specific measure linked to the prevention and investigation of crimes".

Relevant provisions	Article 36(2) & 42(3)(b)–(c)	Question no	174
Date of question	15.1.2009	Date of answer	27.1.2009

Issue

Information requirements – Exchange rate

Question

There are conflicting statements surrounding notification of foreign exchange rates and/or reference rate (e.g. from Reuters), and/or calculation of said rate (e.g. 1% margin from prevailing Reuters rate at time of payment authorisation) for transactions.
Do PSPs have to deliver the actual foreign exchange rate for the payment before the payer commits to making that payment? Or is it acceptable to provide either an approximate, or provide the actual rate after the payment has been transacted? How does the requirement change if the transaction is submitted as a 'Single Payment Transaction' or via a 'Framework Contract'?

Answer

For single payment transactions payment service providers have to provide (or make available):
– before the payment transactions: the actual or reference exchange rate to be applied, Article 37(1)(a)
– after the payment transactions: the exchange rate used or a reference to it, when different from the rate already provided, as stated in Articles 38(d) and 39(d).
For framework contracts payment service providers have to provide:
– before the payment transactions: the exchange rate to be applied to or, if reference rate is to be used, the method of calculating the actual interest and the relevant date and index or base for determining such exchange rate, Article 42(3)(b)
– after the payment transactions: the exchange rate used in the payment transaction, Articles 47(1)(d) and 48(1)(d).

Relevant provisions	Articles 42, 47 & 48	Question no	175
Date of question	20.1.2009	Date of answer	12.5.2009

Issue

Charges – Breakdown

Question

It is a common practice to offer bundled prices to merchants. To what extend is it required to show the amounts of the charges in the contract, in the transaction overview? Is it sufficient, f.e. to split off the interchange (it is a common practice to offer bundled prices (%) to the merchant).

Answer

Article 42(3)(a) provides that the payment service user has the right to receive prior information on "all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of any charges". A similar provision can be found in Articles 47(1)(c) – information to the payer after execution of the payment transaction – and 48(1)(c) – information to the payee after execution. The terms 'where applicable' seems to only cover the situation where, e.g. the payment service user pays an annual or monthly fee for a package of payment services linked, e.g. to a payment account, provided that any payment service user can obtain the different payment services separately. This provision aims to facilitate maximum transparency through the largest breakdown possible so that the payment service user can compare prices of the payment services offered.

Relevant provisions	Article 35	Question no	176
Date of question	20.1.2009	Date of answer	15.4.2009

Issue

Information requirements – Single payment transaction

Question

Do information requirements in Articles 36, 37 and 39 also apply to a cash withdrawal from a non-own bank ATM? In this case, do these articles apply only to information which is not already given to the cardholder in the framework contract by his card issuer?

Answer

According to Article 35(1), the provisions on single payment transactions (Chapter 2 of Title III) only apply to payment transactions which are not covered by a framework contract.
Cash withdrawals from an ATM which does not belong to the network of the payment service provider, would fall under Article 35(2). According to this provision, the payment service provider of the ATM which does not belong to the network is not obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider (= card issuer).

Relevant provisions	Article 65	Question no	177
Date of question	20.1.2009	Date of answer	15.4.2009

Issue

Payment transaction – Refusal

Question

Do credit transfer exceptions fall under the PSD scope? In that case, which are the relevant provisions for reject and return transactions? For example: 1) before settlement, should the reject transaction be considered a a refusal under Article 65 by the payer's PSP? 2) after settlement, should the payee's PSP charge the payer's PSP, which in turn charges the payer, if the return reason is the payee's account number not existing?

Answer

Yes, credit transfer exceptions fall under the PSD.
1) Before settlement, a reject could be considered as a refusal under Article 65 if it comes from the originator bank.
2) The answer will depend whether the error comes from the user or from one of the payment service providers (PSP). If the error comes from the user that has provided an incorrect unique identifier, then the PSP will not be liable for non execution or defective execution of the payment transaction, in accordance with Article 74(2). In such a case, "the payment service provider may charge the payment service user for recovery if agreed in the framework contract". However, if the error comes from the payment service providers involved in the transaction, they will be liable in accordance with Article 75 and will not be allowed to charge their users for it. With regard to the question asked, whether the payee's payment service provider may charge in such case the payer's payment service provider, the PSD does not cover it as it is a matter for the interbank space.

Relevant provisions	Article 66(3)	Question no	178
Date of question	21.1.2009	Date of answer	15.4.2009

Issue

Irrevocability – Direct debit

Question

In a direct debit agreement, how can the payer revoke the payment order at the latest by the end of the business day preceeding the day agreed for debiting the funds if the payment order given by the payee is, according to Article 64(2), received by the bank on the agreed day? Considering that consent for direct debit is usually given by the payer through a mandate, does the cancelation of the payment order referred to above mean the revocation of the mandate or just the revocation of a one-time payment under the mandate?

Answer

Article 64(2) clearly states that the point in time of receipt is deemed to be the agreed date for the purposes of Article 69, i.e. for the provisions on execution time.
As for the revocability, Article 66(3) lays down specific rules on how a payer may revoke the payment order in case of a direct debit. This revocation concerns a direct debit transaction which is covered by a mandate, be it a recurrent direct debit transaction or a one-off payment, and does not affect the mandate itself.

Relevant provisions	Article 29	Question no	179
Date of question	21.1.2009	Date of answer	15.4.2009

Issue

Definitions – Money remittance

Question

A client of ours is not currently required to be FSA regulated. His business is Money Transferance (so for example clients wanting to send money to relations overseas deposit £ with him and he deposits the local currency with their relations).
Will he need to be FSA regulated post 1.11.2009 the PSD coming into force?

Answer

The PSD guarantees fair market access to new players. Among the six categories of payment service providers recognised by this directive, a new category (namely, the 'payment institutions') has been created for all providers which are not connected to taking deposits (credit institutions) or issuing electronic money (electronic money institutions). Getting authorisation as a 'payment institution' is subject to a set of strict and comprehensive conditions, including sound and proportionate prudential requirements under Title II of the PSD. This licensing regime is valid for the entire EU territory so the fully licensed payment institution gets the right to passport its services, including, where applicable, those of money remittance; see Point 7 of the Annex, Article 4(13) and Recital 7.
In addition, Article 26 of PSD provides for a waiver regime whereby natural or legal persons unable to meet all those strict conditions may nevertheless carry out payment services in the Member State where they have their head office or legal residence (so no passport activities), after having been duly registered. This waiver regime aims to "bring all persons providing remittance service within the ambit of certain minimum legal and regulatory requirements" (Recital 15 of the PSD). Furthermore, Article 88 provides for some transitional provisions for legal persons and financial institutions having started their payment activities before 25 December 2007.
Last but not least, Article 29 of the PSD bans carrying out payment services (including 'money remittance', see point 6 of the Annex) without an appropriate licence or registration. Therefore, only the six categories of payment services providers listed in Article 1(1) of the PSD, waived natural or legal persons under its Article 26 and persons explicitly excluded from the scope of the directive can carry out payment services, including money remittances.

Relevant provisions	General	Question no	180
Date of question	28.1.2009	Date of answer	15.4.2009

Issue

Payment transaction – Money remittance and full amount principle

Question

If a payment is sent through a payments system, paid through an accounting system and handed to the customer in cash. Is this in scope?
We receive a swift payment from our customer, cancel out of our payments system and a copy is sent to another department to debit manually through an accounting system. The customer who is not one of ours walks into a branch is verified against their passport and receives their funds in cash in the currency they were sent. The questions I have surrounding this scenario are: 1) Is this in scope? 2) If so, then can the charge be deducted from the amount before handing to the customer or does the full amount need to be given and then the charge requested from the customer? 3) Presumably, there is no need to produce a credit advice as no account is being credited?

Answer

1) Yes, this is in the scope, as it is a money remittance service, covered by Point 6 of the Annex of the PSD.
2) According to Article 67(2), the user and the payment service provider may agree that the payment service provider deducts its charges from the amount transferred before crediting it to the payee.
3) In such a case, in accordance with this provision, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

Relevant provisions	Article 63	Question no	182
Date of question	29.1.2009	Date of answer	15.4.2009

Issue

Refund – Direct debit

Question

From reading some articles on newspapers, it would seem that this new law should help me as a consumer but it will cause huge problems as enterpreneur with regards to the use of Direct Debits.Various persons and bank clerks said to me that this law will oblige banks to give immediate availability of funds for direct debits, even though debtor has 8 weeks for requiring a refund. The problem (if I have understood correctly) is that banks will not sell some kind of direct debits to small/medium corporates as they do not want to run the risk to give money to a creditor and then receive a refund from the debtor bank that the bank might not re-debit to the creditor, because, for example, the creditor has no availability of funds (someone talked to me about sepa direct debit, but I am not sure of the name, where the creditor bank can not oppose to a refund claim). Do you think that the law will lead to such issues, that is that some/all kind of direct debits instruments will not be sold to small medium corporates because of credit risk issues? Is correct what I described or I misunderstood something?.

Answer

According the second subparagraph of Article 73(1), the payment services provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after the amount is credited to the payee's payment service provider's account.
However, as stated in Recital 36, the PSD lays down "rules for a refund to protect the consumer when the executed payment transaction exceeds the amount which could reasonably have been expected. Payment service providers should be able to provide even more favourable terms to their customers and, for example, refund any disputed payment transactions".
In accordance with Article 62, debtors (= payers) will have a right of refunds for direct debits within a 8-week period, in the event where the authorisation given by the payer did not specify the exact amount of the payment transaction and where the amount of the transaction at the end exceeds the amount the payer could reasonably have expected. Debtor's bank will then be allowed to recover the amount of the refund from the creditor's bank which will also be allowed to recover this amount from the creditor, in accordance with the terms and conditions concluded with him.

Relevant provisions	Articles 52(2) & 67(1)	Question no	183
Date of question	29.1.2009	Date of answer	15.4.2009

Issue

Charges – BEN and the full amount principle

Question

In the answer to Question 104 it was clearly established that the compulsory use of Share charging is determined by the absence of a currency conversion on the the sending side. This indicates that a customer transferring euro from a pound sterling account can be permitted to choose the 'BEN' or 'OUR' charging option. Article 67(1) prohibits an intermediary bank from deducting a charge from a payment. In the event that an intermediary bank receives a payment with 'BEN' indicated can it assume that a currency conversion occured on the sending side and that it is permitted to deduct its charge from the payment before transmission to the next bank in accordance with current banking practice.

Answer

No, as clearly stated in Recital 40, "it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred".

Relevant provisions	Article 3(m)	Question no	184
Date of question	29.1.2009	Date of answer	15.4.2009

Issue

Payment transaction – Message type

Question

In the article, it states that 'payment transactions carried out between payment service providers, their agents or branches for their own account' are not in scope. Does this mean that MT 200/202 message types are excluded from the whole of PSD or only where the transaction is sent for their own account? Does the PSD only apply to MT 103 type messages?

Answer

The PSD deliberately does not consider the format of payment transactions for the application or non-application of any of its provision.
The only relevant criteria for the interpretation of Article 3(m) is whether payment service providers, their agents or branches exchange payment transactions for their own account (which would be excluded from the scope) or whether the payment transactions are covered by a contract with a payment service user, in which case they would fall within the scope of the PSD.

Relevant provisions	Article 66(4)	Question no	185
Date of question	2.2.2009	Date of answer	15.4.2009

Issue

Direct debit – Irrevocability

Question

In your answer to Question 165 you state that the direct debit due date is the agreed day referred to in Article 64(2). Can the Commission confirm that, in case of direct debits the payee, as payment service user, under Article 66(4), may revoke a payment order at the latest by the end of the business day preceding the due date?

Answer

Yes: Article 66(4) refers to the 'payment service user' which, in accordance with the definition under Article 4(10), includes both the payer and the payee.

Relevant provisions	General	Question no	187
Date of question	9.2.2009	Date of answer	15.4.2009

Issue

Definitions – Payment account with pass-book

Question

Many building societies in the United Kingdom operate savings accounts with a pass-book. The pass-book is always presented before a cash withdrawal or a credit transfer is permitted although the account can be funded at any time by D/Ds and standing orders. The pass-book is made up-to-date when the customer visits a branch. No statements are issued. For the purposes of the PSD should this type of savings account be treated as a payment account?

Answer

As far as the holder of the saving account is able to place or withdraw funds whenever he/she likes, this is to be considered as a payment account for the purposes of the PSD, independently of whether the saving account is operated with a pass-book/bank-book or not.

Relevant provisions	General	Question no	188
Date of question	10.2.2009	Date of answer	15.4.2009

Issue

Transposition

Question

The transposition website of the Commission indicates the progress of the implementation of the PSD in 29 countries (including the 27 EU Member States). To my information the PSD is also applicable to Iceland and Switzerland. Does the fact that both countries are not included in the table mean that they still haven't started with the implementation procedure?

Answer

Switzerland is not an EEA country; therefore, it has no legal obligation to implement the PSD.
We would kindly invite you to consult the document 'More detailed information of the transposition plans of the Member States' which has been recently added to our website (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/plans_en.pdf). Page 5 of this document contains information about the state of play in Iceland.

Relevant provisions	Article 66	Question no	189
Date of question	11.2.2009	Date of answer	15.4.2009

Issue

Irrevocability – Payment card recurring transactions

Question

In our view, payment card recurring transactions do not amount to 'direct debits', mainly for the following reasons: they do not fully operate like direct debits, they will not follow the SEPA direct debit rules, they use a card number and the card transaction process, as any other card transactions. Accordingly, card recurring transactions will be subject to Article 66(2), which applies to 'payment transactions initiated by or through the payee', rather than Article 66(3), which contains an exception applicable to direct debits only. Could the Commission confirm that the above interpretation is correct?

Answer

We can confirm the interpretation that the revocability of card transactions falls under Article 66(2), while Article 66(3) constitutes a lex specialis for direct debit transactions.

Relevant provisions	Article 65	Question no	190
Date of question	16.2.2009	Date of answer	15.4.2009

Issue

Card transaction – Declinement and prior information

Question

It is common practice for credit card issuers to accept or decline individual transactions (purchases/cash advances) based on real-time assessments of the customer's credit risk and the risk that the transaction may be fraudulent. Thus customers may have transactions declined even if they are not in breach of their Terms and Conditions. Is it sufficient to inform customers at a POS terminal or ATM that their transaction is declined, giving as the reason just the standard MasterCard or Visa response code displayed on the terminal's screen?

Answer

According to Article 65 the payment service provider shall inform the payment service user "in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 69", i.e., the maximum execution time, when they refuse a payment order. In addition, the payment service provider should give the reasons for the refusal, if possible. Therefore, informing the payment service user in the way described in the question seems to be sufficient from the PSD perspective.

Relevant provisions	Article 44(1)	Question no	191
Date of question	16.2.2009	Date of answer	15.4.2009

Issue

Card transaction – Credit/spending limit

Question

Are changes to a credit card's credit limit/spending limit regarded as changes to the framework contract, and if so, are they subject to the 2 month notification period in 44(1)?
Credit card issuers generally reserve the right to vary a customer's credit limit, either upwards for temporary or permanent credit limit increases, or downwards if the issuer suspects the customer has an increased risk of default. Especially for credit limit decreases, the credit limit may have to be decreased before informing the customer. Can framework contracts be worded so that such credit limit changes can take place without requiring a two month notification period?

Answer

Article 42(2)(f) provides that the framework contract governing the relations between the payment service user and his payment service provider can include a provision on whether there is a possibility to agree on the spending limits for the use of a given payment instrument. Then, Article 55(1) provides for the possibility to agree on the actual spending limits. Consequently, a two months notice would only be necessary when the possibility to have spending limits has not been foreseen in the framework contract.

Relevant provisions	Articles 47(2) and 48(2)	Question no	192
Date of question	17.2.2009	Date of answer	15.4.2009

Issue

Information requirements – Individual payment transaction

Question

Are monthly statements with details showing payments excluding charges covered by this Article? The charges are only calculated and applied quarterly. This affects business accounts within our area e.g. regular CHAPS payments. Althought charges are accrued, these are not known until the quarterly statement with the charges is produced.

Answer

The aim of the information requirements laid down in Articles 47(1) and 48(1) is to ensure that, respectively, the payer and the payee receive information on individual payment transactions without undue delay.
Articles 47(2) and 48(2) state that a framework contract may include a condition that, among other information, the information mentioned in the question (on charges) to be given respectively to the payer and to the payee after each payment transaction is to be provided or made available periodically at least once a month. It would not be in line with the PSD to make this information available only on a quarterly basis.
Furthermore, Member States have the option to require payment service providers to provide information on paper once a month free of charge.

Relevant provisions	General	Question no	193
Date of question	18.2.2009	Date of answer	24.6.2009

Issue

Payment transaction – Currency

Question

As the CHF (Swiss Francs) should be considered a PSD-compliant currency, is a transfer of CHF between banks within an EU country subjected to the rules of the PSD? Is a transfer of CHF between 2 banks both located in EU countries subjected to the rules of the directive?

Answer

Titles III and IV of the PSD also apply to payment transactions made in CHF within the EU/EEA countries, in the same way they apply in relation to any other currency of a Member State outside the euro area covering, among others, a transfer made in Swiss Francs between two payment service providers both located in one Member State (e.g., France).

Relevant provisions	Article 37(1)(a)	Question no	194
Date of question	19.2.2009	Date of answer	24.4.2009

Issue

Information requirements – Exchange rate

Question

The earlier response to question on Articles 36(2) & 42(3)(b)–(c) doesn't appear to provide the clarity sought on exactly what level of detail is required to support the provision of foreign exchange rates. Perhaps examples of proposed Customer advice (amongst other elements of detail that would be provided in relation to the transaction) will help clarify the Directive's requirement on detail:
Option 1: Before the transaction (at 9.45): 'The EUR/GBP rate is 0.9000'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9000'.
Option 2: Before the transaction (at 9.45): 'The EUR/GBP rate is 0.9300 as provided by Reuters'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9007'. (Since the market has moved by 0.0200 between the customer asking what the rate was and committed to making the payment transaction, and the bank has applied a 1 % spread).
Option 3: Before the transaction (at 9.45): 'The EUR/GBP rate is 1% below that provided by Reuters at the time you commit to the transaction'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9007'. (Since the market has moved by 0.0200 between the customer asking what the rate was and committed to making the payment transaction, and the bank has applied a 1 % spread).
Option 4: Before the transaction (at 9.45): 'The EUR/GBP rate is derived from Reuters'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9007'. Of the above, which are considered correct PSD approaches?

Answer

As a general rule, if the payment service provider announces a rate to the payment service user (Options 1 and 2), it has to apply the announced exchange rate to the payment transaction.
Option 1 is therefore possible, but not Option 2 where a rate is announced and a different one is finally applied.
Now, if a conversion needs to be made between currencies with continuously changing rates, it might be easier for the payment service provider to indicate to its client that it will use the rate provided by X (plus a possible commission) as indicated in Options 3 and 4. Furthermore, the payment service provider has to inform the payment service user of the actual rate that has been applied after the execution of the payment transaction.

Relevant provisions	Article 28	Question no	195
Date of question	20.2.2009	Date of answer	15.4.2009

Issue

Access to payment systems – Payment institution

Question

I want to confirm that:
a) the non-discrimination and access right applies equally to PIs authorised in the Member State where the payment scheme is based, as they would to PIs authorised in other Member States. If for example, a PI in one (home) Member State wished to become a member of a payment scheme in another (host) Member State, the host Member State payment scheme could not discriminate and treat the PI in a different manner to the way it treats local host Member State authorised PIs.
b) It would also be useful to know if this would require passporting into the host Member State by either freedom to provide services or right of establishment.

Answer

a) Yes.
b) Yes.

Relevant provisions	Title IV, Article 52	Question no	196
Date of question	20.2.2009	Date of answer	15.4.2009

Issue

Payment transaction – Field 71A OUR on Target II payment

Question

Under PSD (Title IV, Article 52) it refers to charging practices. It states that "Where a payment transaction does not involve any currency conversion, Member States shall require that the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider." We need to understand if this applies to Target II payments. In other words, today there is a high volume of Target II traffic in Europe where instructions contain Field 71A:OUR on the MT103. This allows beneficiary banks to claim charges back from the remitting banks. Is the directive ruling that going forward banks will not be allowed to use Field 71A:OUR on Target II payments?

Answer

According to Article 3, the PSD does not apply to payment transactions carried out between payment service providers for their own account, as well as payment transactions carried out within a payment system. However, payments processed for customers are covered by the directive. This means that it will not be possible to indicate the OUR option any longer for payment transactions covered under the directive, which do not involve any currency conversion. For these transactions, the SHARE principle applies in accordance with Article 52(2).

Relevant provisions	Article 69	Question no	197
Date of question	2.3.2009	Date of answer	15.4.2009

Issue

Direct debit – Due date

Question

Article 69 of the PSD makes reference to the agreed due date of Direct debits through a Payment account. Bearing mind that a Direct Debit file would not contain details of a due date, does the responsibility for ensuring payments are made on an agreed date lie with the Direct Debit originator or the payers Payment Service Provider?

Answer

Article 69(3) provides that, for a direct debit, the payee and his payment service provider have to agree on time limits for transmission of the payment order, so that the settlement can occur at the due date indicated in the message.

Relevant provisions	General	Question no	199
Date of question	10.3.2009	Date of answer	15.4.2009

Issue

Payment transaction – Credit reimbursement

Question

The agreement between the Bank and a Client is based on the fact, that the Client is obliged to keep sufficient balance on his/her current account maintained by the Bank as of the due date of each loan installment in order to enable the set-off. There is no separate agreement on execution on direct debit(s). From the technical point of view, the loan's installments in this form do not reflect the relationship between the Bank and the Client in accordance with PSD, but rather reflects the relationship based on the Loan Agreement, hence between the creditor and debtor.
The Bank provides the loans to its Clients. Based on the Loan Agreement, the outstanding balance of the Bank's Loan Receivable is paid in regular installments in the form of the set-off against the outstanding balance at the current account of the Client maintained by the Bank. Shall such set-off be considered as a payment service/payment transaction in accordance with the annex to the PSD?

Answer

Yes, from the sending side, the regular payments of a loan are to be considered as payment transactions under the PSD. Therefore, Titles III and IV would apply.

Relevant provisions	Article 47(1)(c)	Question no	200
Date of question	12.3.2009	Date of answer	15.4.2009

Issue

Information requirements – Charges after execution of a payment transaction

Question

With reference to Article 47(c) where a payment instrument is used at an ATM which charges an additional fee for the transaction. Does the Payment Service Provider have to break down this charge on the information provided to the payer? Or is it sufficient that the total debit amount equals the value of the transaction plus the fee charged by the ATM provider (as the ATM provider should notify the payer of the charge prior to executing the transaction)? Furthermore, if a fee is added to a Foreign Exchange Transaction does this need to be shown separately for each transaction? Or is it sufficient that the mark-up is included in the exchange rate shown after the transaction and that the framework contract references that the Scheme rate will be used adjusted by the mark-up percentage?

Answer

According to Article 47(1)(c), the payment service provider will have to break down the amount of any additional fee, including for conversion purposes, requested for using a payment instrument at a given ATM.

Relevant provisions	Article 73(1)	Question no	201
Date of question	15.3.2009	Date of answer	15.4.2009

Issue

Payment transaction – Value date

Question

How should the service provider of the beneficiary handle incoming payments (MT103) in EEA currencies received on 04-03-09 before cut-off and with value date 05-03-09: Are they allowed to credit the beneficiaries account on 04-03-09 with value date 05-03-09 or should they wait till 05-03-09 and credit the beneficiaries account on 05-03-09 with value 05-03-09. Please notice that they will not credit beneficiaries account before they get the funds themselves otherwise they will lose money. On the other hand I prefer to be informed as soon as possible.

Answer

Assuming that your question refers to future payment transactions, Article 64(2) states that if the payment service user initiating a payment order and his payment service provider agree that the execution of the payment order shall start on a specific day, the point in time of receipt for the purpose of Article 69 is deemed to be the agreed date.
In your example, this would mean that if it has been agreed between the payment service user and his provider that the execution of the payment order shall start on 05-03-09, then this has to be the starting point of the execution.
If, however, such an agreement does not exist, the execution of the payment transaction has to start on 04-03-09.
In any case, the second subparagraph of Article 73(1) clearly states that the amount of the payment transaction has to be at the payee's disposal immediately after the amount is credited to the payee's payment service provider's account. In this context, Recital 45 in fine also states that "specifically, the use of value dating to the disadvantage of the user should not be permitted".

Relevant provisions	Article 62(1)	Question no	202
Date of question	18.3.2009	Date of answer	24.4.2009

Issue

Payment transaction – Initiated by a payee

Question

In your answer to Question 102, you mention a direct debit transaction as an example of transaction initiated by the payee. What is the difference which characterises the direct debit in relation to a transaction initiated by the payee and why this article gives different legal treatment to these two types of transactions? We would appreciate another example (except direct debit) of payment initiated by the payee.

Answer

Article 62 covers situations where the authorisation to execute a payment transaction given by the payer did not specify the exact amount of the payment transaction and where the amount of the transaction at the end exceeds the amount the payer could reasonably have expected. In such cases, the payer is granted a right of refund in order to protect the payer.
Since this article only applies to the cases mentioned above, the payer is not granted a refund right for all transactions initiated by or through the payee.

Relevant provisions	Article 68(2)	Question no	203
Date of question	19.3.2009	Date of answer	24.4.2009

Issue

Maximum execution time – Intra-community transaction

Question

Can you confirm that for intra-community transactions even after 1.1.2012 the execution time can be maximum 4 days with agreement of the user and his provider (regardless of paper-initiated or electronic transactions)?

Answer

Rapid payment is essential for a modern and properly functioning economy. Today, several Member States' legislations already provide that national payments must be made by the end of the next business day (the so-called 'D+1' rule) and some even make payments the same day. If some payment service providers in those Member States can already provide such rapid payments profitably, there is no good reason why other payment service providers should not also be able to provide such rapid payment.
However, the PSD recognises that some payment service providers need time to upgrade existing products and systems. Therefore, up to 1 January 2012, the PSD allows parties to agree on a maximum execution time of 'D+3' for credit transfers. Furthermore, the PSD allows the parties to agree on an extra business day for paper-initiated payment transactions.
According to Article 68(1), Section 2 of Title IV shall apply to the transactions mentioned in this paragraph (D+1 from 1 January 2012):
– euro currency payment transactions, both national and cross-border within the EU/EEA;
– national payment transactions in the currency of the Member State concerned;
– certain payment transactions involving currency conversion between the euro and the currency of a non-euro Member State.
Before 1 January 2012, a payer and his/her payment service provider may agree on a maximum period of 3 business days.
For all other payment transactions in an EU currency within the EU/EEA, the parties have contractual freedom within the framework of Paragraph 2 of the same provision, i.e., for intra-Community payment transactions the maximum execution time would be D+4.

Relevant provisions	Article 73	Question no	204
Date of question	20.3.2009	Date of answer	12.5.2009

Issue

Value date – Currency conversion

Question

Article 2 states Titles III and IV shall apply to payment services made in euro or the currency of a Member State outside the euro area. So in the context of Article 2, how should the currency of the transaction be understood in relation to Article 73? If for example, a payment from the US involves a USD: EUR conversion and this takes place in US, is the currency of the transaction deemed to be USD or EUR? Similarly, if the USD: EUR conversion takes place in say, France, what is the currency of the transaction then – EUR or USD?

Answer

In relation to Article 73, when the conversion takes place outside the EEA and the transfer of this transaction is executed in EUR, the transaction would be deemed to be a EUR transaction for which Article 73 would apply.
In the second case, where the currency conversion from USD to EUR takes place on the recipient side within the EEA, the payment transaction is deemed to be executed in USD and therefore does not fall within the scope of the PSD, in accordance with Article 2(2).

Relevant provisions	Article 75	Question no	205
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Liability – Allocation of responsibilities

Question

Article 75: "Where a payment order is initiated by the payer, his payment service provider shall (…) be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 69(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction."
Article 47: "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."
Is the liability of payer's payment service provider up to the account of the payee according to Article 47 or up to the payee's payment service provider according to Article 75? Which of the statements is wrong?

Answer

Article 75(1) allocates the responsibilities between the payment service provider of the payer and that of the payee for push transactions (initiated by the payer).
The payer's payment service provider is responsible for the execution of the whole payment transaction "...unless he can prove to the payer..." that the payee's payment service provider has received the amount of the payment transaction. Only in such case, the payment service provider of the payee becomes liable to the payee for the correct execution of the payment transaction.
A similar principle applies to pull transactions (initiated by or through the payee) under Article 75(2).

Relevant provisions	Article 38	Question no	206
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Information requirements – Exchange rate

Question

Article 38: Information for the payer after receipt of the payment order "Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in Article 36(1), the following information: (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with Article 37(1)(d), and the amount of the payment transaction after that currency conversion."
a) Is it possible for the payer's payment service provider to make available to the payer the exchange rate after the execution of the payment in the case when the exchange is made at payee's premises?
b) Is it possible to provide as information 'at National Bank's exchange rate' or 'at Bank's daily exchange rate'?

Answer

a) Article 38 governs the relation between the payer and his payment service provider. By contrast, Article 39 applies to the relation between the payee and his payment service provider. Therefore, the payment service provider of the payer is not obliged to provide him with information on the exchange rate applied on the side of the payee.
b) Under Article 37(1)(d), information on the actual or reference exchange rate to be applied to a single payment transaction which is not covered by a framework contract has to be provided or made available to the payment service user. Therefore, it would be sufficient to provide as information 'at National Bank's exchange rate' or 'at Bank's daily exchange rate' as long as it comes from a publicly available source (see Article 4(18)).

Relevant provisions	Articles 68(1) & 69(1)	Question no	207
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Maximum execution time – Currency conversion

Question

Example from EBA's guide 'Banks preparing for PSD': Possible scenarios of execution time for EU/EEA currencies (page 12, Scenario B): We have 2 payments:
• Denmark→Italy (DKK→EUR)
• Italy→Denmark (EUR→DKK)
The execution time will be D+1 (until 2012: D+3 and + 1 day if initiated on paper) if the conversion takes place in Denmark.
What execution time will be applied if the conversion will take place in Italy? Why not the same execution time?

Answer

When the currency conversion is carried out in the Member State inside the euro-area and the cross-border transfer does not take place in euro, Article 68(2) applies.
The reason why there is a possible longer maximum execution time for the abovementionned non-euro cross-border payments is that euro cross-border payment infrastructures are more developed thanks to the SEPA initiative.

Relevant provisions	Article 73	Question no	208
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Maximum execution time – Value date

Question

Article 73: "The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account."
What is the interval of time that defines the word 'immediately'? As long as the word is subjective and relative we would like to clarify the meaning and understanding which will be used in out-of court and in court resolution.

Answer

Immediately means, in the context of Article 73, the point in time when the payee's payment service provider has all the information necessary to credit the amount on the payee's account.

Relevant provisions	Article 4(20)	Question no	209
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Definitions – Micro-enterprise

Question

"Member States should have the possibility to provide that micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, should be treated in the same way as consumers."
Can Member States refer to the definition within national legislation (in our case Law no. 346/2004) or are they obliged to refer to the definition of Commission's Recommendation 2003/361/EC of 6 May 2003?

Answer

Member States are obliged to refer to the definition of microenterprise under Commission's Recommendation 2003/361/EC of 6 May 2003.

Relevant provisions	Article 75	Question no	210
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Defective execution

Question

Please provide all possible examples of 'defective execution' according to Article 75.

Answer

Defective execution covers, among others, the following examples:
– transfer not executed at all;
– instead of requested transfer of EUR 1 000, only EUR 100 transferred;
– wrong recipient;
– late execution of payment transaction (outside maximum execution time).

Relevant provisions	Article 62	Question no	211
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Direct debit – Immediate refund

Question

Article 62(b): "The amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case."
Please provide the mathematic explanation including calculation method of the statement: 'the amount the payer could reasonably have expected'.

Answer

This will depend on the specific circumstances and has to be examined on a case-by-case basis.

Relevant provisions	General	Question no	212
Date of question	23.3.2009	Date of answer	15.4.2009

Issue

Liability – Gross negligence

Question

Recital 32: "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."
Please provide concrete examples of 'gross negligence'. Why the 'loss' is not within the definition of 'gross negligence'?

Answer

The effect the legal provisions may have on the incentives of the contractual parties has to be taken into consideration. For instance, legislation should not through distorted incentives increase the likelihood of fraudulent behaviour of the legitimate payment service user, i.e., so-called first-party fraud. In this context, as stated in Recital 33, "in order to assess possible negligence by the payment service user, account should be taken of all the circumstances. The evidence and degree of alleged negligence should be evaluated according to national law".

Relevant provisions	Article 2(1)	Question no	213
Date of question	24.3.2009	Date of answer	24.4.2009

Issue

Scope – Geographical

Question

Will a payment institution be able to offer money remittance as payment service towards country outside the community? I mean, the payment services must be proposed within the community, but could the funds be sent abroad? Towards Africa for instance.

Answer

Yes, payment institutions authorised in accordance with Title II may send funds outside of the EEA when providing money remittance services. However, these payment transactions will not be covered by Titles III and IV of the PSD (with the exception of Article 73). Member States however have the possibility to choose to extend the scope of the PSD at national level if they wish.

Relevant provisions	Article 63	Question no	215
Date of question	31.3.2009	Date of answer	20.5.2009

Issue

Refund – Pull transaction

Question

The article grants the right of reimbursement within 8 weeks from the date the amount was debited. Does this right have to be granted also in case of national means of payment, considering also that many contracts signed so far by consumers do not contemplate a right of cancellation?

Answer

The PSD, once transposed into national law, will apply for all payment services listed in the Annex. These payment services include also existing products. In particular regarding the refund rules laid down in Articles 62 and 63, the European legislator took the decision to apply them to both exising national and future SEPA direct debits (SDD) in order to promote the rapid migration to SDD.

Relevant provisions	Article 42(3)(b)	Question no	216
Date of question	1.4.2009	Date of answer	20.5.2009

Issue

Information requirements – Interest rate

Question

Interest rate on customer credits Article 42(3)(b) states the conditions for how to describe the interest rate in the framework agreement, and – as all framework agreement conditions – this is subject to the rules in Article 44 when it comes to changes. This is also the topic of Question 146, where your answer provides further explanation on how to interpret this. However, further explanation is needed as to which kind of interest rates this applies. There are two major types of interest rates: A. Rates for the interest paid by the bank to the customer on the customer's funds held by the bank; B. Rates for the interest paid by the customer to the bank for using a credit facility, such as a credit card or a account credit facility. For some payment accounts types only one type of interest is possible, such as most credit cards which only have interest of type B. For some both types are possible, .i.e. both negative and positive balances are possible and subject to interest, e.g. bank accounts with a credit facility. Article 30(3) states that the PSD shall be without prejudice to national measures implementing Directive 87/102/EEC – the Consumer Credit Directive – and to other relevant Community or national legislation regarding conditions for granting credit to consumers not harmonised by this Directive that are in conformity with Community law. The CCD and the corresponding national regulations mentioned, also states rules for how the interest rates of type B above should be updated with the customer.
We ask you to confirm that Article 30(3) should be interpreted so that the rules always take precedence over the PSD and the national implementations of it, so that the interest rates of type B are exempt from the PSD. In short, the PSD rules on interest rate and reference interest rate in Article 42(3)(b) and the answer to Question 146, are only applicable for interest paid by the bank to the customer, and not for interest paid by the customer to the bank?

Answer

Article 42(3)(b) concerns all kind of interests linked to a payment account and/or a payment transaction. With regard to payment accounts, this provision covers both interest granted to the payment service user or interest to be paid to the payment service provider

Relevant provisions	Article 52(1)	Question no	217
Date of question	8.4.2009	Date of answer	20.5.2009

Issue

Charges – Corrective and preventive measures

Question

Free corrective and preventive measures are only those mentioned in Article 55 (payment instruments blocked on PSP initiative) or also those mentioned in Article 56 (payment instruments blocked on payer initiative)?

Answer

Payment service providers are entitled to charge for the provision of payment services listed in the Annex, but not for the fulfillment of the information obligations or corrective and preventive measures under Title IV, unless otherwise specified in this Title.
Apart from some legal descriptions such as those in Articles 51, 53 or 64, the other provisions in Title IV are to be considered either preventive (e.g. Articles 55(2), 57(1), 58 and 79) or corrective (e.g. Articles 59–63, the liability provisions under Section 3 and the complaint provisions under Chapter 5).
On the two specific provisions cited in the question, neither Article 55, nor Article 56 is mentioned in the first sentence of Article 52(1). Therefore, it is not possible to provide for any charge in conjuction with those provisions.

Relevant provisions	Article 73(2)	Question no	220
Date of question	20.4.2009	Date of answer	20.5.2009

Issue

Value date – Cash withdrawal

Question

In case of cash withdrawal from a bank ATM in a closing day, the cardholder's account will be booked by his bank for the amount of the transaction on the next banking business day. Is cardholder's bank allowed to debit with value date equal to the transaction date? This use of value dating should not be considered as a disadvantage of the user.

Answer

According to Article 73(2) of the PSD the debit value date cannot be earlier than the point in time at which the amount of the payment transaction is effectively debited to that payment account. Consequently, the debit value date has to be the day on which the account is debited and cannot be an earlier point in time (including bank holidays). Recital 45 clearly states that 'the use of value dating to the disadvantage of the user should not be permitted'.

Relevant provisions	General	Question no	221
Date of question	21.4.2009	Date of answer	8.6.2009

Issue

Scope – Issuing processing activities

Question

Could you confirm if and on what grounds issuing-processing activities with acces to the funds would fall within the scope of the PSD?

Answer

Issuing of payment instruments is a payment service listed in the annex and as such covered by the directive. Processing activities are also covered by the directive if the provider enters into possession of the funds to be transferred. Only services provided by technical service providers without them entering at any time into possession of the funds to be transferred are excluded of the scope of the directive in accordance with Article 3(j).

Relevant provisions	Article 60(1)	Question no	223
Date of question	23.4.2009	Date of answer	8.6.2009

Issue

Payment transaction – Immediate refund

Question

Our understanding is that the meaning of Paragraph 1, when read in conjunction with Article 59 (which provides for an obligation for a PSP to prove the authenticity of a disputed transaction), is that the requirement for an immediate refund to the payer applies only once an investigation into the disputed transaction has been conducted and the PSP has been unable to prove that payment was authorised. We would appreciate that you confirm this reading. Do you have any suggestion on how long an investigation should last?

Answer

This provision aims to achieve a fair balance between the liabilities of the payment service provider and the payer. When interpreting this provision, one has to consider the effects it may have on the incentives of the contractual parties. For instance, legislation should not through distorted incentives increase the likelihood of fraudulent behaviour of the legitimate payment service user i.e. so-called first-party fraud. Therefore, this provision has to be interpreted in such a way that it prevents highly unjustified claims:
(1) If the payment service provider of the payer can exclude on a prima facie basis that the payer has acted fraudulently, it should refund the user immediately. If it does not refund the amount claimed, it would do so at its own risk.
(2) In case of high suspicion of fraud, the payment service provider might take reasonable time to conduct an investigation. When the investigation shows that the payer acted fraudulently, the payer would bear all the losses relating the unauthorised transaction (in accordance with Article 61(2)). However, the payment service provider would risk a sanction if it does not act promptly and the investigation does not show that the transaction was unauthorised. The adequateness of the length of the investigation needs to be calibrated on a case by case basis, taking into account all the circumstances of the case.
(3) As for the cases in the 'grey area' (e.g. the payer claims that he has not failed to keep the personalised security features of the payment instrument safe), Article 60(1) would grant an immediate refund right to the payer once the notification has been made in accordance with Article 58. Once the payer has been reimbursed, the payment service provider will then have the time necessary to look for evidence, in accordance with Article 59 (e.g. if after its search for proof, the payment service provider finds evidence showing that the payer failed to keep the personalised security features of the payment instrument safe, the payment service provider would be able to debit the amount mentioned in Article 61(1) from the payer's account).

Relevant provisions	Articles 69(1) & 73(1)	Question no	224
Date of question	24.4.2009	Date of answer	12.8.2009

Issue

Maximum execution time – Internal payment transaction

Question

Article 73(1): "The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account." Article 69(1): "Member States shall require the payer's payment service provider to ensure that, after the point in time of receipt in accordance with Article 64, the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day."
A bank is both the Payment Service Provider of the payer and the payee. The payer arranges a money transfer on a certain business day (for example 25/05/2009 at 09:30 a.m., before the cut-off time); within how many days the bank must credit the payee's account?
Being the payer's bank the same one of the payee, should the payee's account be credited the day itself (25/05/2009)? In the case described above, if I understood well, the Article 69(1) no longer applies because of Article 73(1). Am I right or have I misunderstood something?

Answer

Almost all payment service providers will have to adapt their systems to take into account the new maximum execution times. The perception of the payment service by the payment service user has also to be taken into account. However, this should not be used to circumvent the obligations under Articles 69 and 73 so competent authorities will have to keep an eye on it.

Relevant provisions	Article 67(1)	Question no	225
Date of question	28.4.2009	Date of answer	8.6.2009

Issue

Charges – BEN option

Question

BEN option instructed by payer to their payment services provider vs. stipulations of this Article
If the only Article imposing specific costs division is 52(2), it would mean that when there is a conversion between currency of payer's account and transfer's currency, payer may instruct to their PSP any other instruction related to charges for execution of such instruction. When BEN option is requested how can PSP execute transfer to be compliant with payer's instruction and 67(1) of PSD and, in the same time, be able to get fee due to them?

Answer

Only in the case where a payment transaction does involve a currency conversion, Article 52(2) leaves up to the parties to decide about the distribution of cost rule.
However, whatever the rule mandatory applied (SHA) or chosen (SHA, OUR or BEN) when there is this possibility, the full amount principle under Article 67 implies that the payment service provider of the payer, the payment service provider of the payee and any intermediary provider must transfer the full amount and refrain from deducting charges. In particular, as far as intermediary providers are concerned, Recital 40 clearly states that "it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred".
However, the provisions in Title IV of the PSD outline the rights and obligations of payment service providers and payment service users and, therefore, apply to the relationship between them. Therefore, these provisions do not govern the payment service provider-to-payment service provider space.

Relevant provisions	Article 1(a)	Question no	226
Date of question	29.4.2009	Date of answer	12.8.2009

Issue

Scope – Branch of third country credit institution

Question

We are the London Branch of a Japanese Bank authorised by the FSA in the UK. We execute and receive payments for large corporate companies only. We have drawn the following assumptions:
(1) We are already authorised by the FSA and do not need to apply for separate permission under the Payment Services Directive (Regulations in UK).
(2) We are entitled to waive all of the section on Information Requirements and certain sections of the Obligation Requirements if we have the consent of our clients/customers to do so.
Are we correct in these assumptions, or like some of our other contemporary organisations are saying 'None of the PSD/PSR applies to us'?
Do you feel we need to take any action on the PSD bearing in mind our current FSA Authorised status and the nature of our Customer Base?

Answer

(1) Third-country branches of credit institutions have no legal entity as they are part of the credit institution in the third country. They are not allowed to passport their services and specific rules are applied to them, including analysis of equivalence of supervision in the third country. However, the PSD appeared to require them to establish specific legal entities within the EU if they wanted to continue to carry out payment services within the EU (see answer to Question 137). In order to align the treatment of branches from a non-EU credit institution, the EU legislators have decided to change the text of Article 1(1)(a) of the PSD as follows: "(a) credit institution within the meaning of Article 4(1)(a) of Directive 2006/48/EC, including branches within the meaning of Article 4(3) of that Directive located in the Community of credit institutions having their head offices inside or, in accordance with Article 38 of that Directive, outside the Community".
The proposal for amendment of the CRD whose Article 2a includes this amendment of the PSD have been endorsed by the EP during the May 2009 Plenary session, paving the way to a first reading agreement. Currently (July 2009), it is under legal revision before formal adoption and publication.
(2) As it is stated in Recital 20, "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". Therefore, it would be in line with Article 30(1) that a payment service provider and a large corporate agree that the information requirements under Title III shall not apply in whole or in part. The same goes, in accordance with Article 51(1), for Article 52(1), the second subparagraph of Article 54(2), Articles 59, 61, 62, 63, 66 and 75, as well as for the possibility to set up a time period different from that laid down in Article 58. However, all the rest of the provisions in Title IV (with the exception of Article 83 when the option under Article 51(2) has been taken by a Member State) as well as, where applicable, the rest of the provisions of the PSD are considered 'core provisions' and, therefore, 'applicable irrespective of the status of the user' (see Recital 20 in fine). Consequently, action will have to be taken to ensure PSD compliance.

Relevant provisions	Article 69(1)	Question no	227
Date of question	4.5.2009	Date of answer	8.6.2009

Issue

Maximum execution time – Paper-initiated transaction

Question

In this article it is stated, that "periods may be extended by a further business day for paper-initiated payment transactions". What are considered paper-initiated payment transactions? What about payment orders transmitted via email or fax?

Answer

Paper-initiated payment transactions are e.g. credit transfers for which the payment order has been established using a paper slip which is either directly handed over by the payer to his payment service provider during opening hours or put in a box provided by the payer's payment service provider (could also be outside opening hours). They could also include payment orders transmistted via email or fax when they require a paper handling action on the side of the payment service provider, e.g. a print-out.

Relevant provisions	Article 36(2)	Question no	228
Date of question	5.5.2009	Date of answer	5.8.2009

Issue

Definitions – Means of distance communication

Question

Is internet banking considered a means of distance communication? Are instructions given by customers for payments through the internet considered as given by means of distance communication, and thus the requirements of Article 36(1) can be fulliled after the transaction has been executed?

Answer

According to Article 4(24) of the Payment Services Directive, 'means of distance communication' refers to any means which, whithout the simultaneous physical precence of the payment service provider and the payment service user, may be used for the conclusion of a payment service contract. Internet banking could fall under this definition as long as the payment service contract has been concluded without the two parties being present at the same time. In such a case, Article 36(2) would apply.

Relevant provisions	Article 52(2)	Question no	229
Date of question	5.5.2009	Date of answer	8.6.2009

Issue

Charges – Share principle

Question

Cost sharing for payments involving a currency conversion. Was there any particular reason why Article 52(2) did not also capture payments involving a currency conversion? It would have been rational to impose the SHA principle on the cost of the payment as such and, of course, leave the conversion cost with the payer or the payee, as the case may be. Is any action foreseen in this respect, e.g. guidelines issued by the competent authorities to regulate incoming and outgoing payments involving a currency conversion?

Answer

This provision aims to facilitate the straight-through processing of payment transactions. Only in the cases where a payment transaction does involve a currency conversion, Article 52(2) would leave up to the parties to decide about the distribution of costs' rule which should apply. In those cases, the legislator has preferred to leave certain room of manoeuvre because of the conversion procedure which implies further costs for one or both of the parties involved in the payment transaction.
However, the legislation of the Member State where the payment transaction has been initiated may dispose the application of the SHA principle by default, which would mean that, subject to the contracting parties' agreement to the contrary, the SHA principle would apply even in the case of payment transactions involving currency conversion.
On the other hand, Member States would not be able to impose OUR or BEN for payment transactions involving currency conversion.

Relevant provisions	General	Question no	230
Date of question	11.5.2009	Date of answer	5.8.2009

Issue

Information requirements – Currency conversion

Question

What kind of information does a bank have to provide to clients in case of the following: buy and sell of non-euro currency calculated from holdings to a base currency (euro i.e.). How does the bank provide the info to the client?

Answer

Money exchange business, cash-to-cash operations where the funds are not held on a payment account are excluded from the scope of the directive according to Article 3(f). However, if such conversion services are provided from a payment account, they will then be associated with some payment services, such as withdrawals or any types of payment transactions and will therefore have to comply with the information requirements set in Articles 47 and 48. Payment services providers will thus have to provide to their respective users the exchange rate used in the payment transaction and the amount of the payment transaction after/before that currency conversion.

Relevant provisions	Article 88(1)	Question no	231
Date of question	14.5.2009	Date of answer	5.8.2009

Issue

Transitional provision – Cross-border service

Question

According to Article 88(1) "Member States shall allow legal persons who have commenced before 25 December 2007 the activities of payment institutions within the meaning of this Directive, in accordance with the national law in force to continue those activities within the Member State concerned until 30 April 2011, without authorisation under Article 10." Would this provision allow a payment services provider to continue providing crossborder services (until 2011) without authorisation whether such services were provided in the other Member States that the Home Member State before 25 December 2007? Does the Article 88(1) grand father provision allows for cross-border services?

Answer

No. Both Article 88(1) and Recital 59 explicitly state that existing institutions may continue their activities 'within the Member State concerned' for a certain period of time. This is fully consistent with the general logic underlying the 'single licence principle', notably the idea that institutions may only provide their services cross-border or establish branches in other Member States if they are duly authorised in their home Member State, in accordance with a procedure established in harmonised Community legislation.

Relevant provisions	Article 73(1)	Question no	232
Date of question	14.5.2009	Date of answer	5.8.2009

Issue

Value date – Currency conversion

Question

Does the Article 73(1) apply to the cross border payments transactions in euro involving currency conversion between the euro and any other currency of a Member State outside the euro area, provided that the required currency conversion is carried out in a Member State in the euro area (i.e. the currency of the transaction is in euro, the payee's bank is located in Italy and the currency of the payee's account is in SEK)?

Answer

As set out in Article 68(2), Article 73, 'which is not at the disposal of the parties', applies to all payment transactions made in euro or the currency of a Member State outside the euro area, with or without currency conversion.

Relevant provisions	Article 52(2)	Question no	233
Date of question	14.5.2009	Date of answer	5.8.2009

Issue

Charges – Share principle

Question

According to the 'Definition of straight through processing for euro transactions' the sending bank is responsible for releasing an STP or a non-STP payment depending on whether it has obtained from its customer (ordering party) adequate, standardized information. At the other end, if the receiving bank is not supplied with adequate information, it will be entitled to treat the payment order as a non-STP and to ask the sending bank for the reimbursement of its charges for a non-STP transaction. Furthermore, according to the Recital 41, 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. So with the provision of Article 52(2) where a payment transaction does not involve any currency conversion, Member States shall require that the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider. After the implementation of the Directive, will be the receiving bank allowed to request its non-STP charges from the sending bank or these charges should be paid by the payee according to the Article 52(2)?

Answer

Article 52(2) states that Member States shall require that the payee pays the charges levied by his payment service provider and the payer pays the charges levied by his payment service provider. What happens between payment services providers in the event of a non-STP transaction is a matter of contractual relationship between those PSPs and is not covered by the Directive. Recital 41 clearly states that "the provisions on (…) any charges levied have no direct impact on pricing between payment services providers or any intermediaries".
On the payee side, the charges to be paid by the payee are determined by the framework contract, according to Article 42(3)(a): whether the payment transaction is STP or not, e.g. because the payer did not provide the adequate information for it, this should not have any consequences for the payee.

Relevant provisions	Article 47(3)	Question no	234
Date of question	19.5.2009	Date of answer	5.8.2009

Issue

Information requirements – Paper-based information

Question

Is this optional provision referring:
– to the transmission of a monthly statement of account by post, or
– to put the information regarding payment transactions at the disposal of customers, on paper, no matter the method (i.e. a statement of account or debit/credit advice, available at the bank's counters or to be printed at ATM/Internet Banking etc)?

Answer

In order to take into account different national practices, as stated in Recital 28 in fine, "Member States should be allowed to set rules requiring that monthly paper-based statements of payment accounts are always to be given free of charge". When a Member State uses the option in Article 47(3), the information referred to in Paragraph 1 will have to be provided on paper, once a month and free of charge, that means, "actively communicated (emphasis added) by the payment service provider at the appropriate time ... without further prompting (emphasis added) by the payment service user" (Recital 27). Therefore, transmitting monthly statement of account by post would comply with this rule. However, putting the information regarding payment transactions at the disposal of customers, on paper, no matter the method (i.e. a statement of account or debit/credit advice, available at the bank's counters or to be printed at ATM/Internet Banking etc) would not qualify as providing information (see the last two sentences of Recital 28).

Relevant provisions	Article 45(3)	Question no	236
Date of question	28.5.2009	Date of answer	5.8.2009

Issue

Information requirements – Derogation

Question

Can the PSP derogate from the obligation to notify the PSU 2 months before the expiring date of the contract when the framework contract is for a fixed period and specifies that it will be automatically prolonged?

Answer

Article 45(3) only allows payment service providers to terminate a framework contract when it is agreed in the framework contract and when the contract is concluded for an indefinite period. In such cases, payment service providers have to respect at least two months' notice. This does not correspond to the situation outlined in the question, in which case the payment service provider does not have to make any notification to the payment service user. Consequently, the contract will be automatically prolonged.

Relevant provisions	Article 45(3)	Question no	237
Date of question	28.5.2009	Date of answer	5.8.2009

Issue

Information requirements – Derogation

Question

Can the PSP derogate from the obligation to notify the PSU 2 months before the closing of an inactive account when the framework specifies the definition (eg. inactive = 6 months without operations) and when the parties agree, that such an account will be closed if it will be not used?

Answer

Article 45(3) only allows payment service providers to terminate a framework contract when it is agreed in the framework contract itself and when the contract is concluded for an indefinite period. In such cases, payment service providers have to respect at least two months' notice. Whatever the reasons for which a payment service providers wants to terminate the framework contract, this period has to be respected.

Relevant provisions	Article 75(2)	Question no	240
Date of question	28.5.2009	Date of answer	5.8.2009

Issue

Charges – Investigation

Question

Is the Article 75(2) subparagraph 4 (reference is made to direct debits and card transactions) correlated with the Article 52(1), i.e. have the PSPs no right to charge PSUs for investigations related to the efforts to trace the payment? In this case should PSPs treat the investigations for identification of a payment distinctly vs. any other investigation? Have the PSPs the right to charge for investigations in case of push-transactions?

Answer

If the user has provided all the information necessary for the payment order to be processed by his payment service provider correctly, the latter can not charge its user for the investigations that it would have to undertake in accordance with the fourth subparagraph of Article 75(2) in the event of an incorrect execution given that this incorrect execution would be due to the payment service provider. The same is true for push transaction as indicated in the fourth subparagraph of Article 75(1).

Relevant provisions	Article 73(1)	Question no	241
Date of question	28.5.2009	Date of answer	5.8.2009

Issue

Value date – Bank holiday

Question

According to your answer to Question no 6, when it is a bank holiday in one Member State and, in the same time, the clearing mechanisms are open, the payee's PSP should credit the payee's account with value date next business day. On the other hand, the Recital 45 specifies that "the use of value dating to the disadvantage of the user should not be permitted". Please consider the following example: 01.12.2009 is a bank holiday in one Member State; the European clearing mechanisms are open; the payee's PSD credit the payee's account on 02.12.2009 with the value date 01.12.2009. This approach does not respect the word 'immediately' but is, in the end, in favour of PSU: he gets interest for an additional day because of value date. Is the example in line with the Directive?

Answer

Yes, your example is in line with the provisions and the spirit of the Payment Services Directive. Article 86(3) allows payment service providers to 'grant more favourable terms to payment service users'. This applies to the credit value date.

Relevant provisions	Article 73(1)	Question no	242
Date of question	28.5.2009	Date of answer	5.8.2009

Issue

Refund – Conditions

Question

Article 73(1), subparagraph 2 states: "The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account." Questions: In the context of your answer to Question no 6, where it is mentioned that "the payee"s PSP is obliged to make the funds available to the payee even though this would fall on a local bank holiday", do we understand correctly that from operational point of view the word 'immediately' is synonym with 'Straight Through Processing'?

Answer

The word 'immediately' in the second subparagraph of Article 73(1) is not necessarily to be considered as synonym for 'Straight Through Processing' (e.g. manual handling of the payment transaction could also ensure immediate crediting of the payee's account).

Relevant provisions	Article 73	Question no	244
Date of question	29.5.2009	Date of answer	5.8.2009

Issue

Maximum execution time – Availability of funds

Question

In answer to Question 208 "Immediately means, in the context of Article 73, the point in time when the payee's payement service provider has all the information necessary to credit the amount on the payee's account." In the case of our organisation, when receiving a Faster Payment for a customer, the funds are transmitted to Barclays, our clearing bank (we are effectively an agency bank) using the faster payment service, however we do not receive the information of the payment until the following day, when a payment file is provided to us by Barclays.
As we do not have the information from Barclays until the following day, does this mean we do not have to give the customer access to the funds until we have received the file from Barclays, or do we need to get the payment information from Barclays when the payment is received into the clearing bank account, i.e. move towards a more real-time process?

Answer

The PSD provisions impact the practical organisation of payment service providers. In the case raised by this question, it is clear that the payment service provider will have to modify its arrangements for receiving information from its clearing services' provider and/or its IT systems, in order to ensure that shortened execution time requirements can be met within the timeline foreseen in Articles 68–73.

Relevant provisions	Article 73(1)	Question no	245
Date of question	2.6.2009	Date of answer	5.8.2009

Issue

Value date – Currency conversion

Question

Q: How to deal with a transaction that involves a currency conversion (e.g. the payee's bank receives euro, but the amount needs to be credited in dollar). It may easily be the case that the bank has to buy dollar on the market. This will take some time and delay the crediting of the amount. How to deal with accounts, were the amount is not at the disposal of the payee but used to reimburse a credit tranche?
A: Title IV of the PSD only applies to payment services made in euro or any other currency of a Member State outside the euro area (Article 1(2)).
New Q: How to deal with a transaction that involves a currency conversion on the payee's side (e.g. the payee's bank in the euro area receives EUR, but the amount needs to be credited in GBP as the account linked to the unique identifier is in GBP? The PSP has to buy GBP on the market and it will take some time and delay the crediting of the amount as it's not the national currency of the country where the conversion takes place. Should such a transaction be handled in maximum 4 business days?

Answer

The D+4 maximum execution time mentioned in Article 68(2) for payment transactions involving currency conversion at one or both ends of the payment transaction comprises the currency conversion itself.
On the payee's side, as soon as the payee's payment service provider account is credited, the conversion should take place in order to credit the payee’s account on the same business day, as stated in Article 73 of the PSD, as this provision is not at the disposal of the parties in any case.

Relevant provisions	Article 42(3)(b)	Question no	246
Date of question	2.6.2009	Date of answer	5.8.2009

Issue

Payment account – Interest

Question

Q: a) Is interest on payments account in scope of these articles? b) If having a variable interest rate on these accounts, our understanding is that this interest rate must be based on a reference interest rate. In the definition of reference interest rate, the PSD states that the interest rate should come "from a publicly available source which can be verified by both parties to a payment service contract". Can this reference interest rate be a rate which is supplied by the bank, as long as this rate is published 'publicly' on e.g. a website, or must the reference interest rate come from an independent source (i.e. LIBOR, ECB rate etc.)?
A: a) Yes b) Article 42(3)(b), in conjuction with the definition of 'reference interest rate' under Article 4(20) can be interpreted as requiring a publicly available 'index or base'. Typically, this comes from independent sources such as LIBOR, Euribor or ECB rates.
New Q: Answer to question no 146 quotes "Article 42(3)(b), in conjunction with the definition of 'reference interest rate' under Article 4(20) can be interpreted as requiring a publicly available 'index or base'." Does the 'can be' mean that the 'reference interest rate' should come from a publicly available 'index or base' such as LIBOR, Euribor or ECB rates, or can the PSP make publicly available his own 'index or base' on his webpage?

Answer

The wording of the definition of 'reference interest rate' indicates that it should come from a publicly available 'index or base' such as LIBOR, Euribor or ECB rates, which 'can be verified by both parties to a payment service contract' rather than 'determined' or 'imposed' by one of those parties and 'verified' by the other.

Relevant provisions	Article 73	Question no	247
Date of question	5.6.2009	Date of answer	5.8.2009

Issue

Value date – Currency conversion

Question

Does the same day credit value date and availability princple of Article 73 apply also to transactions where the account is kept in a currency different (either member state currency or third country (e.g. USD) or should the amount be credited on the day the credit amount is converted in the interbank market (which can be up to 2 days after the crediting of the beneficiary bank's account)?

Answer

Article 73 does not apply to payment transactions in currencies of third countries, as stated in Article 2(2).
See also answer to Question 245.

Relevant provisions	Article 44	Question no	248
Date of question	5.6.2009	Date of answer	5.8.2009

Issue

Framework contract – Changes

Question

Does the 2 month notice imposed by this article apply to revisions of bank charges either (a) relating to the account or (b) relating to the indivual payment transactions? If yes, how may a bank inform the customer of the change (e.g. on statement, or by letter or by press announcement)? Please bear in mind that our bank (as many others) currently publicises all charges on a price list which cannot be sent to all customers every time there is a revision of charges.

Answer

The two month notice period mentioned in Article 44(1) applies to "any changes in the framework contract", whether they are related to a payment account or to individual payment transactions. The payment service provider has to inform the payment service user "in the same way as provided for in Article 41(1)", i.e. the payment service provider has to provide this information on paper or another durable medium. According to Recital 27, 'provide' means "actively communicated by the payment service provider at the appropriate time (…) without further prompting by the payment service user". A press announcement or a statement which has not been sent to the payment service user would not be sufficient.

Relevant provisions	Article 73 CR Val	Question no	249
Date of question	10.6.2009	Date of answer	5.8.2009

Issue

Card transaction – Availability of funds

Question

The response to Question 147 indicates that it is not possible for a payment service provider to agree with a merchant (contractual freedom) to credit funds later than 'immediately' after the amount is credited to the merchants payment service provider's account. Yet in a presentation made in May by an EC representative advised that this was not the case. That payment service providers could negotiate terms, for risk, etc, longer (Dx) than immediately but that the funds had to be in the merchants account on Dx+1. Can you please clarify?

Answer

Both Articles 69(2) and 73(1) require the merchant acquirer to value date and make available the funds to the merchant's payment account held with the acquirer immediately. Whether these funds remain with the account of the user with the acquirer or are immediately transferred to another account with another payment service provider (i.e. with a bank) belongs to the commercial freedom of the parties. However, the transfer of the funds from the merchant payment account with the merchant acquirer to any other account has to be considered as a separate payment transaction for which the maximum execution times specified in Article 69(1) apply.

Relevant provisions	General	Question no	250
Date of question	11.6.2009	Date of answer	5.8.2009

Issue

Definitions – Payment transaction

Question

Is the definition of a payment transaction on an end-to-end basis i.e. does it include the payer's account debit and beneficiary's account credit, or is it just the interbank transfer of funds element? If on an end-to-end basis, this implies that both the payer and beneficiary account must be held in an EEA currency for the transaction to be in scope of the PSD. Is this correct? For example: 1) Payer holds a non EEA currency account with an EEA PSP and instructs a EUR payment to a payee's EUR account also held with an EEA PSP. Is this out of scope? 2) Payer holds a non EEA currency account with an EEA PSP and instructs a EUR payment to a payee's USD account also with held an EEA PSP. Is this out of scope?

Answer

The definition of the payment transaction covers payments from their initiation by the payment service user to their end (i.e, availability of the funds to the payee).
In accordance with Article 2, payment transactions will however only fall into the scope of the PSD when they fulfil two conditions:
1) Both payment service providers of the payer and of the payee are located in the Community. This is the case in your examples.
2) They are made in a currency of a Member State (for Titles III and IV). In the event of accounts denominated in a third country currency, the PSD will therefore not apply to the part of the transaction dealing with the debit/credit of those payment accounts, but will apply to the rest of the transaction if it is denominated in a currency of a Member State.

Relevant provisions	General	Question no	252
Date of question	11.6.2009	Date of answer	5.8.2009

Issue

Scope – Cash correspondent outside EU

Question

Our cash correspondent for some of the PSD currencies is located in Switzerland. As we are a PSP located in an EU Member State, if a payment is made between us and another PSP located also in EU, should our cash correspondent also respect the PSD?

Answer

We understand from the situation described in the question that the payment transaction is not executed on behalf of any payment service user. In such a case, the service would not fall within the scope of the PSD because payment services carried out between payment service providers, their agents or branches for their own account are excluded from the scope of the PSD (Article 3(m)).
In the case the payment transaction was initiated by a payment service user, it would fall within the scope of the PSD as both payer's and payee's payment service providers are located within the EU. Therefore, they should manage their relation with the intermediary payment service provider in such a way as to ensure that the provisions of the PSD are fully respected, independently of the location of the intermediary payment service provider.

Relevant provisions	Article 52(2)	Question no	253
Date of question	15.6.2009	Date of answer	5.8.2009

Issue

Charges – SHA, OUR

Question

The PSD does not mention charging codes for payments but stipulate the sharing of charges between the payer and the payee, Recital 41 and Article 52(2). As OUR payments are used frequently in some countries, would it be possible for a PSP to continue to offer OUR payments if full transparency of charges can be provided to the payer prior to his/her placing of the payment order?

Answer

Article 52(2) of the PSD mandates the sharing of charges between the payer and the payee for all payment transactions (pure national or cross-border transactions) without currency conversion within the EU.
Therefore, as from 1 November 2009, the principle of sharing of costs will be mandatory for those payment transactions. Charges will have to be levied, in the absence of currency conversion, directly on the payer and on the payee by their respective payment service providers. Accordingly, the only possible charging code for those payments will be SHARE: it will not be possible to indicate the charging code OUR (all charges to the originator of a payment transaction) any longer for payment transactions covered under the directive, which do not involve any currency conversion.

Relevant provisions	Article 68(1)(c)	Question no	254
Date of question	15.6.2009	Date of answer	5.8.2009

Issue

Maximum execution time – Currency conversion

Question

From the wording 'payment transactions involving only one currency conversion' in Article 68(1)(c), one could deduce that according to the PSD currency conversions are to be considered as an integral part of the payment transaction they are related to. 1) Does this mean that all currency conversions have to be carried out within the respective maximum execution times applicable to the different payment transactions falling under Article 68(1) and (2) or could they be regarded as distinct and separate transactions taking place outside of the actual payment transaction and of the related execution time?
2) As some countries in the euro area will not transpose Article 68(1)(c) into their national legislation (because it covers scenarios involving payments where the national currency is not in euro and is therefore not relevant in these countries), there might be no indication in the national law of these countries that a currency conversion related to a payment should be considered as an integral part of this payment transaction. Would it be possible for PSPs in such a country to handle currency conversions as separate transactions and that the execution time only start once the required currency has been obtained?

Answer

1) The maximum execution time for payment transactions involving currency conversion at one or both ends of the payment transaction comprises the currency conversion itself.
On the payee's side, as soon as the payee's payment service provider account is credited, the conversion should take place in order to credit the payee's account on the same business day, in accordance with Article 73 of the PSD which is not at the disposal of the parties.
2) Currency conversion should not be seen or used as a way to circumvent the mandatory maximum execution time rules under Section 2 of Chapter 3 of Title IV of the Directive.

Relevant provisions	Article 4(15)	Question no	255
Date of question	17.6.2009	Date of answer	5.8.2009

Issue

Definitions – Funds

Question

Article 4(15) includes scriptural money in the definition of funds. I have been unable to find a definitive explanation of what scriptural money is apart from some definitions contained in ECB documentation. For example it is described as all money in book-entry form and therefore not circulating in the form of banknotes and coins. Unfortunately this is not very helpful and we would ask for a clearer definition and for some examples.Please provide a clear definition of what is meant by 'scriptural money' in the context of Article 4(15). If possible can you please provide examples?

Answer

Scriptural money could be defined as the funds that are held on any kind of accounts held by banks or by other payment service providers. These funds can be transfered from one account to another or be withdrawn in cash, through different payment methods such as cards transactions, credit transfers or direct debits. In this sense, scriptural money would be the opposite of fiduciary money (i.e. coins and banknotes).

Relevant provisions	Articles 60 & 61	Question no	256
Date of question	19.6.2009	Date of answer	12.8.2009

Issue

Application – Credit transfer

Question

Do Articles 60 and 61 apply to credit transfers or only to cards?

Answer

One of the main objectives of the PSD is to provide a simplified and fully harmonised set of rules with regard to the information requirements and the rights and obligations linked to the provision and use of payment services. As stated in its Recital 4, this legal framework is technically neutral "so as to ensure a level playing field for all payment systems, in order to maintain consumer choice". Therefore, the PSD provides the same level of protection to all users making use of payment services listed in its annex, including any kind of electronic payments such as, among others, credit transfers, direct debits, card payments or m-payments.
Article 60(1) provides for the general principle of liability which applies to any unauthorised payment transaction, as defined by Article 4(5), while Article 61(1) provides for derogation in the specific cases mentioned in this provision. For example, the misappropriation of a payment instrument when the payer has not failed to keep the personalised security features safe does fall in the scope of the general principle under Article 60(1) and not under that of the derogation in Article 61(1).

Relevant provisions	Article 44(2)	Question no	258
Date of question	24.6.2009	Date of answer	12.8.2009

Issue

Payment account – Interest

Question

If payment account bears a 'numeric' interest rate (not based on a reference rate), in case of changing interest are we obliged to two months prior notice of our customer before the new interest is applied?

Answer

The aim of Article 44 is to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. In case the payment service provider proposes a change to an element already agreed in the framework contract, the two-month period applies.

Relevant provisions	Article 44(3)	Question no	259
Date of question	25.6.2009	Date of answer	12.8.2009

Issue

Exchange rate – Customer profile

Question

Article 44(3) mentions that the exchange rate used in payments transactions shall be calculated in a neutral manner that does not discriminate against payment service users. In practice usually the exchange rate is depending on the amount to be converted and on the customer profile as well. E.g. for amount over a threshold or for customers with a large volume of transactions the bank may negotiate the exchange rate. Does this prevision impose that the same exchange rate to be provided to all the customers, irrespective of the transaction amount or of the customer profile?

Answer

The PSD does not interfere in the pricing policy applied by the payment service providers. Therefore, they are able to apply, e.g. risk-based pricing to card-holders, including application of a change in a particular cardholder's interest rate if triggered by a risk-related event specific to that cardholder, or better exchange conditions for amounts over a threshold or for custormers with a large volume of transactions, provided that these criteria (e.g. risk-based pricing, thresholds, volume of transactions…) are objective, justifiable and neutrally applied. The payment service user has the right to receive the information on such criteria in accordance with Article 42(2)(b).

Relevant provisions	Article 4(14)	Question no	262
Date of question	26.6.2009	Date of answer	12.8.2009

Issue

Definitions – Payment account

Question

I have read Questions 25 and 31 but I am still not clear on whether the term 'payment account' includes current accounts (with credit limit) or loans.

Answer

As stated in the answers to Questions 150 and 187, this definition covers all accounts where the holder can place and withdraw funds without any additional intervention or agreement of his payment service provider such as current accounts or saving accounts. Fixed-term deposits and pure mortgage accounts would fall out of this definition.

Relevant provisions	Article 39(e)	Question no	264
Date of question	1.7.2009	Date of answer	7.9.2009

Issue

Information requirements – Single payment transaction

Question

According to Article 39(e), which refers to the information for the payee after execution of single payment transaction, the bank must provide 'the credit value date', i.e. our interpretation is that in this case the payee has an account. As long as we defined Single Payment Transactions as payments for non-customers (money remittance etc.), please provide examples of products within this category, where customers have accounts.

Answer

As stated in our reply to Question 60, the credit value date does not apply in case funds are paid out in cash over the counter. The credit value date in Article 39(e) should therefore be understood as the date when the funds are made available to the payee.

Relevant provisions	Article 47(1)	Question no	265
Date of question	1.7.2009	Date of answer	7.9.2009

Issue

Information requirements – Framework contract

Question

Article 47(1): 'the payer does not use a payment account'. Please provide examples of products with non-customers within framework contracts.

Answer

Article 47 deals with single payment transactions within a framework contract, i.e. the payment service user is a customer of the payment service provider. This does not prevent the payer from initiating a payment transaction in cash, not using his payment account.

Relevant provisions	Article 54(3)	Question no	266
Date of question	3.7.2009	Date of answer	24.9.2009

Issue

Direct debit – Authorisation

Question

With reference to Question 70:
1) Please confirm that if the payer's bank decides to process direct debits only if the transactions are authorised prior the execution and do not accept transactions with consent after the execution, it has the right to refuse these transactions with the reason 'unauthorised'.
2) Please confirm that a clause in the framework contract with the customer with his consent to execute all direct debits received on his account is sufficient to consider all transactions authorised prior execution.

Answer

1) Yes, as long as the payment service provider of the payer agreed with the payer to only process direct debits authorised before their execution. Indeed, according to Article 54(2) and (4), "consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider" and "the procedure for giving consent shall be agreed between the payer and the payment service provider".
2) Article 54(2) refers to 'a' serie of payment transactions which has to be interpreted as covering a specific direct debit with one particular contract with a given payee. Therefore, framework contracts can not contain a clause with the payer's consent for any direct debit transaction.

Relevant provisions	Article 73(2)	Question no	270
Date of question	3.7.2009	Date of answer	7.9.2009

Issue

Value date – Card transaction

Question

(a) In a POS (card) transaction on e.g. 1.6.2009 the card holder's bank confirms the availability of funds at the time of sale but receives the request to pay the transaction amount at a later stage, e.g. on 3.6.2009. When charging the holder's account can it use as value date the transaction date when in effect the payment order from the holder was received by the bank?
(b) In case where a holder of a card issued by bank A withdraws money from an ATM of bank B, can bank A use as value date the date of withdrawal even though it will normally not be requested to remit the amount to bank B until e.g. 2 days later?

Answer

a) No. According to Article 73(2), "the debit value date for the payer's payment account (cannot be) earlier than the point in time at which the amount of the payment transaction is debited to that payment account". See also the reply to Question 87.
b) No. See answer above.

Relevant provisions	Article 68(2)	Question no	271
Date of question	3.7.2009	Date of answer	12.8.2009

Issue

Maximum execution time – Currency conversion

Question

What if the payment involves two currency conversions? E.g., from HUF → EUR at payer's bank and from EUR → RON at payee's bank. What is the maximum execution time in this case?

Answer

A payment transaction involving several currency conversions between EUR and the currencies of other Member States outside the euro area are subject to a D+1 maximum execution time by default, but a longer execution time not exceeding four business days following the point in time of receipt of the payment order by the payer's payment service provider would apply in accordance with Article 68(2).

Relevant provisions	Article 42(7)(a)	Question no	272
Date of question	3.7.2009	Date of answer	12.8.2009

Issue

Applicable law – Cross-border service

Question

Which PSD implementation law will be applicable in cross-border and/or central acquiring, especially considering surcharging? (E.g. as defined in the General Terms & Conditions of the acquirer, or the law of the place of the acquirer, or the law of the place of the central merchant, or the law of the place of the POS terminal?)

Answer

Articles 37(2) and 42(7)(a) of the PSD recognise the ability of the parties to agree on the law applicable respectively to the single payment transaction or to the framework contract and/or the competent courts. These provisions have to be read together with Recital 51 which refers to Article 5(2) of the Rome Convention whose text is almost identical to that of Article 6(1) of the Rome I Regulation 593/2008 (according to Article 24(2) of the Rome I Regulation, all the references to the Rome Convention are to be interpreted as references to the new Regulation)).
In comparison with the previous text of the Rome Convention, the new text does not refer to 'conclusion of contract preceded by publicity or a specific proposal' but to the activity carried out by the professional in the Member State where the consumer has his habitual residence.
As for the definition of consumer under Article 6 of the Regulation, it is in line with the definition under Article 4 of the PSD. However, Article 6 of the Rome Regulation does not provide for the application of its provisions to micro-enterprises, which are free to agree on the applicable law. Only in the absence of an agreement, Article 4(1)(b) of the Regulation contains rules to determine the applicable law. The law which would be then applicable would be the law of the habitual residence of the payment service provider.
With regard to the competent authorities for complaints (Article 82 of the PSD), it should be pointed out that the Rome I Regulation rules can be invoked before a national court.

Relevant provisions	General	Question no	274
Date of question	6.7.2009	Date of answer	7.9.2009

Issue

Information requirements – Framework contract

Question

Regarding to information on individual payment transactions covered by a framework contract does the Directive make an exeption on situations which framework contract includes the conditions on necessary information. For example the framework contract includes that an internet branch will be available to respective customers (with unique identifiers provided in process of account opening) at all times with necessary informations, is this situation covers 'made available' condition? And if framework contract includes that the interest rate changes e.g. will be informed to PSU by internet site and the parties agreed on this, do you think that this is sufficient. And as for the current customers, the new conditions and obligations on framework contact. As far as I understood from this Directive it will be sufficient to provide each customer a web link (for new framework contract). Can you confirm this?

Answer

Payment service providers may provide information to their users via Internet, provided that it is done in such a way as to respect the conditions put forward in the definition of durable medium ("any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored", according to Article 4(25)). See also Recital 24.

Relevant provisions	Article 73	Question no	275
Date of question	13.7.2009	Date of answer	12.8.2009

Issue

Payment transaction – Currency

Question

On the basis of Reply 148 of 20.1.2009: In the case of an incoming payment transactions issued in CHF (currency unit of the non-PSD state Switzerland and the PSD state Liechtenstein in the same time), where the payer and the payer's payment service provider are located in Switzerland and the payment service provider of the payee is located in the Community, will the latter have to apply Article 73 or not?

Answer

As far as the scope of application of the PSD with regard to transfers in CHF, see the answers to Questions 149 and 193. Once the Directive has been incorporated into the EEA-Agreement, the notion 'currency of a Member State outside the euro area' used in Article 2(2) shall be read as including the currencies of the three EEA-EFTA States, counting therefore CHF as well. Consequently, in the example put forward by the author of the question, the payment service provider of the payee (both located within a Member State) will have to apply, in accordance with Article 2(1), the national provision implementing Article 73 to any incoming payment transaction in CHF (independently of where the payment service provider of the payer and/or the payer are located).

Relevant provisions	Articles 69(1) & 73(1)	Question no	276
Date of question	13.7.2009	Date of answer	12.8.2009

Issue

Maximum execution time – One-leg out payment transaction

Question

Given that currently the maximum execution time of an SCT is 3 days (2 days for payer's payment provider + 1 day for the payee's payment service provider). Furthermore given that according to the PSD a payer and his payment service provider may agree on a period up to a maximum of three business days for paperless payment transactions (3 days for payer's PSP + 0 days for payee's PSP) until 1 January 2012. Is it correct to assume that, according to Article 73(1) of the PSD and the different distribution of 'days' between payer's PSP and payee's PSP (2/1 vs. 3/0), paperless SCT have to be executed in maximum 2 days (2/0) after 1 November 2009? If it's so, is this valid only for payment orders within the EU/EEA countries or even for SCT (EUR) outgoing to Switzerland when the payee and the payee's payment service provider are located in Switzerland? Idem for incoming swiss SCT where the payer's payment service provider is located in Switzerland?

Answer

The maximum execution time provisions under Article 69 do only apply where both the payer's payment service provider and the payee's payment service provider are located in the Community, in accordance with Article 2(1). Accordingly, they do not apply to a SCT (EUR or CHF) outgoing to Switzerland. With regard to the application of Article 73 to SCT outgoing to Switzerland, see answers to Questions 149, 193 and 275.

Relevant provisions	Article 2(1)	Question no	277
Date of question	13.7.2009	Date of answer	12.8.2009

Issue

Scope – One-leg approach

Question

If the information in our possession is correct, the scope of the Directive could probably be expanded to include payments received from payer outside the PSD area (EU & EEA) or payments made to recipients outside the PSD area (the so-called 'one-leg payment transactions'). Is it true, that some Articles of the PSD (e.g. Articles 32, 42, 44, 47, 48) already have to be applied on 'one-leg-payment transactions'? If it so, where can official information about the 'one-leg-approach' be downloaded? Otherwise, if it's not true, does there already exist some information about the intention on this types of payments?

Answer

With the exception of one provision (Article 73 – Value date and availability of funds), the obligations under the provisions of Titles III and IV of the PSD need to be transposed by national legislators only with regard to 'two-leg' transactions, meaning transactions where both (or the sole) payment service provider in the payment transaction are located within the EEA. In addition, Recital 44 of the PSD states that "the provisions on execution for the full amount and execution time should constitute good practice" for one-leg transactions. However, Member States remain completely free to regulate 'one-leg' transactions in which at least one of the payment service providers is located in the EEA. Some of them have considered that the implementation of the PSD would be a good opportunity to apply some of its provisions to one-leg transactions. This information is available at: http://ec.europa.eu/internal_market/payments/framework/options_en.htm. Furthermore, the reporting obligation under Article 87 makes a particular reference to "the possible need to extend the scope of the Directive to payment transactions where only one of the payment service providers is located in the Community".

Relevant provisions	Article 3(g)	Question no	278
Date of question	13.7.2009	Date of answer	12.8.2009

Issue

Scope – Documentary based transaction

Question

The Dutch Ministry of Finance received an email from the Commission services which says, that in principle, it is not the intention of the PSD to bring documentary based transactions in its scope. Could you please confirm that documentary based transactions are in principle not in scope of the PSD?

Answer

While Article 3(g) provides an 'exhaustive list' of paper based transactions which fall out of the scope of the PSD since "they cannot be processed as efficiently as other means of payment" (Recital 19), it does not seem that the legislators might have had the intention to bring documentary based transactions in its scope.

Relevant provisions	Article 46	Question no	280
Date of question	16.7.2009	Date of answer	12.8.2009

Issue

Charges – Provision of information

Question

As per Article 32(2), the payment service provider and the payment service user may agree on charges for additional or more frequent information, (...) provided at the payment service user's request. Is it possible to charge the USP for information provided as per Article 46, at the payer's request?

Answer

As stated in Recital 21, "in the interest of transparency this Directive should lay down the harmonized 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." Article 46 contains an explicit provision on free information allowing the payer to request "explicit information on the maximum execution time and the charges payable" by him "and, where applicable, a breakdown of the amounts of any charges" for a specific payment transaction under a framework contract. Therefore, this can not be assimilated to 'additional or more frequent information' under Article 32(2) since it falls within the category of information to be provided by free under Title III (see also answer to Question 39).

Relevant provisions	Article 30(1)	Question no	281
Date of question	20.7.2009	Date of answer	12.8.2009

Issue

Scope – Title III

Question

In order to apply the provisions of Article 30(1), is it necessary to include within the contracts with customers, other than consumers?

Answer

Recital 20 states 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". In the case that a payment service provider and a large corporate agree that the information requirements under Title III shall not apply in whole or in part, Article 30(1) does not set up the form or the content of such an agreement. As for micro-enterprises, Member States may provide that the provisions of Title III apply to them in the same way as to consumers (Article 30(2)).

Relevant provisions	General	Question no	282
Date of question	20.7.2009	Date of answer	7.9.2009

Issue

Entry into force – EU Member States

Question

Part of the reasons that the implementation of the SEPA DD was postponed from beginning 2008 to Nov 2009 was the delay in the PSD. In the Payments info-letter of June 2009 it was published that the PSD would not be transposed in due course in Sweden. What I cannot find any information about is what effect this has on the rollout of the SEPA Direct Debit in Sweden. Can I as a Swedish consumer be a debtor with my Swedish account for a SEPA DD Collection (provided in EUR etc) benefitting a French Creditor, and do I have the necessary legal cover (eg refund rights period) that the PSD should have implemented. Or alternatively can a Swedish company as creditor issue a collection via SEPA DD to my french bank account (provided in EUR etc). So basically what is the impact of the PSD delay in Sweden on the launch of SEPA DD? Or is the answer simply, in the absense of a PSD transposition the SEPA DD in Sweden is not launched, not for Creditors nor consumers?

Answer

Swedish payment service providers will still be able to adhere to the SEPA direct debit scheme if they wish to do so, as long as the scheme rules do not conflict with existing laws in Sweden. SDD may therefore be offered in Sweden and cross-border on a temporary contractual basis, before the directive is implemented.

Relevant provisions	General	Question no	284
Date of question	27.7.2009	Date of answer	29.10.2009

Issue

Value date – Debit value date

Question

If a bank have credited the payee's account on the very same day of receiving the funds from payer's bank, how will it handle the scenario where on T+2 or subsequently the payment instruction is returned unpaid by the payer's bank. Example (direct debit):
1) A's bank has pulled the money from B's bank on T. The funds were credited to A's bank account on T+1.
2) A's bank has credited the A's account on T+1 (as per Article 73).
3) B's bank has returned the instructions unpaid to A's bank as there was no availability of sufficient funds on T+2 (by this time A could have withdrawn the funds).
As per general market practice, banks are putting hold on funds for 2–5 days after crediting it to customer account and customer can not use this fund for these days. Banks are informing for any refusal or return of instructions only above EUR 3 000 by fax on the same day to the collecting bank and rest of the return processing time is 48 hours.

Answer

See answer to Question 297. However, the practice described in the question does not seem to be compatible with Article 73.

Relevant provisions	Article 62	Question no	286
Date of question	30.7.2009	Date of answer	12.8.2009

Issue

Refund – Payment account

Question

Is Article 62 applicable to all the debit fees, agio or interest operated by the bank in the normal course of business with its customer? Some of them are not determined at the moment of the consent, the exact amount depending on use. For example, monthly agio depending on use of facility granted?

Answer

Crediting or debiting fees, agio or interests on a payment account do not seem to be a payment service on itself. Therefore, the rules under Article 62 of the PSD would not apply to such transactions. However, the transparency rules under Article 42(3) would apply to the framework contract for the operation of the payment account itself.

Relevant provisions	Article 75	Question no	287
Date of question	4.8.2009	Date of answer	7.9.2009

Issue

Liability – Allocation of responsibilities

Question

In Article 75 it states that the Payer's Payment Service Provider will be liable until they can prove that the funds have been received by the Payee's Payment Service Provider. The question is, what is considered as 'proof'?

Answer

This will depend on the civil law of each Member State. However, as an example, the payment service provider of the payer could for instance show confirmation of the receipt of the payment order by the payment service provider of the payee.

Relevant provisions	Article 73	Question no	288
Date of question	6.8.2009	Date of answer	29.10.2009

Issue

Value date – Currency conversion

Question

We would like a clarification on curency conversion and credit value of payee's account. Attached a table with various examples. If we have in any case to credit with same day value that means (especially for great amounts) we have to find in foreign exchane market a worse rate for currency conversion rather than making the conversion with spot value . Finally this has a negative impact on our customer.
Ordering/currency/Receiving Bank/Receiv./payee'saccount/ 73art Bank /Currency/ in
In EEA EUR GR EUR GBP Y or No
In EEA GBP* GR GBP GBP Y or No
In EEA SEK* GR SEK EUR Y or NO
In EEA SEK* GR SEK GBP Y or NO
Out EEA EUR GR EUR EUR Y or NO
Out EEA EUR GR EUR NOK Y or NO

Answer

Article 73 applies to all the transactions mentioned in the question. It applies to any transactions denominated in the currency of a Member State (EU) or EEA State, where both the payer's payment service provider and the payee's payment service provider are located in the Community, as well as where only one of the two is located in the Community, in accordance with Article 2 of the directive. It is moreover not possible to agree otherwise contractually in accordance with Article 68(2) which states that Article 73 is not at the disposal of the parties.

Relevant provisions	Article 59	Question no	289
Date of question	6.8.2009	Date of answer	29.10.2009

Issue

Authorisation – PIN code

Question

The use of a PIN code can be used as a verification of the authorisation. Is it sufficient evidence to proof the transcation?
Your answer to Question 84 is that a payer's payment service provider can verify the authorisation of a payment transaction by means of checking whether the payer has entered his PIN code. In the Answer to Question 112 it is stated that the use of a PIN code is not sufficient proof of the use by the payment service user. How must these two answerd be read in connection to each other?

Answer

The use of a PIN code is one of the elements that can be used to check whether a transaction has been authorised or not, but it is not sufficient given that it can also be used by another person than the legitimate holder of the card in the event of a fraud (at ATMs or non attended terminals for instance) where the number of the card as well as the PIN code can be stolen at the same time and then used to make payments or withdraw money by the fraudster, as explained in our answer to Question 112.

Relevant provisions	Article 44(3)	Question no	290
Date of question	12.8.2009	Date of answer	29.10.2009

Issue

Information requirements – Preferential rates

Question

What is the meaning of this Article: "Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users."? Are preferential rates no longer permitted for some customers, based on the volume and level of their transactions?

Answer

Article 44(3) lays down rules for the calculation of interest or exchange rates. However, this does not prevent payment service providers to grant more favourable conditions to the payment service user according to Article 86(3). See also Article 44(2) which states that "…, changes in interest or exchange rates which are more favourable to the payment service user, may be applied without notice."

Relevant provisions	Article 39(e)	Question no	291
Date of question	12.8.2009	Date of answer	29.10.2009

Issue

Information requirements – Single payment transaction

Question

In case of money remittance, is it correct to consider that the transaction date (i.e. the date when the payee comes to the bank and takes the money) is identical with the credit value date? The situation in money remittance business is different, because the clearing between PSP – money remittance takes place ulterior the transaction date.

Answer

A strict interpretation of the wording of Article 73(1) leads to its application without any exception (see answer to Question 244).

Relevant provisions	Article 73	Question no	292
Date of question	13.8.2009	Date of answer	29.10.2009

Issue

Value date – Application

Question

Please could you specify if the present directive, that foresees, starting from 2.11.2009, the straight credit on value date of all 'incassi' has to be also applied for those 'Ri.Ba' that were issued before that date or just for those issued after the above mentioned date.

Answer

As of the date of entry into force of the national law transposing the PSD, these rules apply to all payment transactions. In the case described, this would mean that the provision on value date (Article 73) applies on the receiving side.

Relevant provisions	Articles 42(2)(a) and 44(1)	Question no	293
Date of question	14.8.2009	Date of answer	29.10.2009

Issue

Information requirements – Card benefit scheme

Question

Are the terms of card benefit schemes which have no extra charge to the card holder (for example the granting of a number of points with each transaction which can then be used for participation in a draw or to obtain goods) considered to be main characteristics of the payment service? Therefore, are the terms of the benefits scheme subject to the two months notice period of Article 44(1)?

Answer

No, they are not considered to be part of the 'main characteristics' of the payment service offered and therefore not subject to the two months notice period under Article 44(1).

Relevant provisions	Article 44(1)	Question no	294
Date of question	19.8.2009	Date of answer	29.10.2009

Issue

Information requirements – Notification period

Question

The entry into force of the national law implementing the PSD will entail modifications of existing contracts as well as terms & conditions. According to Article 44(1) PSD, "Any changes in the framework contract as well as the information and conditions specified in Article 42, shall be proposed by the payment service provider in the same way as provided for in Article 41(1) and no later than two months before their proposed date of application." Will the two months period apply to existing contractual provisions? If this Article would apply to existing contracts this would have two possible consequences as the requirements Title III will be immediately applicable. On the one hand, payment services providers may have to notify the modification of contracts before the entry into force of the national law implementing the PSD (e.g. notification at the latest on 1 September to comply with the PSD on the 1 November). On the other hand, a two month notification after the entry into force of the national law would imply a late enforcement of the Title III requirements (notification on 1 November and modification on 1 January).

Answer

As of the date of entry into force of the national law transposing the PSD, the new rules apply to existing contracts. In the case described, this would mean that the notification period established in Article 44(1) would not apply to existing contracts before that date and that these contracts would still be governed by existing national law.

Relevant provisions	Article 45(4)	Question no	295
Date of question	26.8.2009	Date of answer	29.10.2009

Issue

Card transaction – Annual subscription fee

Question

Annual subscription fees in relation to cards, which are paid in advance, represent the benefit costs of the benefits provided in relation to the various cards such as free travel insurance, free subscription to Priority Pass, etc. Therefore, this subscription fee is not charged for the provision of payment services as defined in Article 4 of the Directive but for the provision of the aforementioned benefits. Thus, our position is that upon termination of the card agreement, such fee is not proportionally reimbursable. Is this correct?

Answer

Article 45(4) refers only to the charges for payment services wich are levied on a regular basis which "...shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally." Fees for other services (e.g. travel insurance) are not covered by the PSD. Therefore, the payment service user should be able to identify the part of the cost which relates to the provision of the payment service and the part of the cost which relates to other non-payment services.

Relevant provisions	Article 73(1)	Question no	296
Date of question	27.8.2009	Date of answer	29.10.2009

Issue

Availability of funds – Local bank holiday

Question

Your answers to Questions 6 and 241, related to availability of funds to the payee, seem to be unclear. In your Answer 6 you state: 'once the payee's payment service provider's account has been credited, he is immediately obliged to make the funds available to the payee according to the second subparagraph of Article 73(1), even though this would fall on a local bank holiday'. However, in your Answer 241, you agree with the proposed example, where the amount is credited and funds made available to the payee's account on the next working day, following the local bank holiday. In the case the payee's payment service provider's account is credited on the day where interbank clearing mechanisms are operating, but which is a local bank holiday, is the PSP immediately obliged to make the funds available to the payee or may he postpone the availability of funds to the following business day?

Answer

If the payee's payment service provider's account is credited on the day where interbank clearing mechanisms are operating, the payment service provider is obliged to make the funds immediately available to the payee.

Relevant provisions	Article 65	Question no	297
Date of question	28.8.2009	Date of answer	29.10.2009

Issue

Direct debit – Return

Question

Should direct debit return transaction due to payer's insufficient funds fall under the scope of Article 65(1) and considered as a refusal by the payer's PSP?

Answer

Yes.

Relevant provisions	Article 68	Question no	298
Date of question	28.8.2009	Date of answer	14.12.2009

Issue

Maximum execution time – Bank holiday

Question

In case the receiving/nostro bank is not open for business on a day due to local bank holiday in the country, should that day be included within the payment transaction execution time under Articles 69 and 75 by the sending bank?

Answer

In accordance with Article 69(1), "the payment service provider of the payer has to ensure that, after the point in time of receipt, the amount of the payment transaction is credited to the account of the payment service provider of the payee at the latest by the end of the next business day." As this obligation lies on the payment service provider of the payer, a local bank holiday on the side of the payment service provider of the payee should have no influence in the calculation of the execution time. The payment service provider of the payer should thus process payments within the timelimit mentioned, irrespective of any possible local bank holidays on the side of the payment service provider of the payee.

Relevant provisions	Articles 4(11), 30 & 51	Question no	300
Date of question	1.9.2009	Date of answer	29.10.2009

Issue

Definitions – Consumer

Question

When does the quality of 'consumer' in the meaning of Articles 4(11), 30(1) and 51(1) PSD have to be appraised? For example, if a credit card holder agreed to use the credit card only for commercial purposes (i.e. 'corporate card holder') but in fact uses the credit card for personal purposes, does this qualify him as a consumer in the meaning of Article 4(11) and therefore prohibit application of Articles 30(1) and 51(1)?

Answer

The quality of 'consumer' for the purposes of Articles 30(1) and 51(1) has to be appraised at the moment of passing the framework contract. In your example, this would mean that such credit card should be used exclusively for commercial purposes.

Relevant provisions	Articles 34 and 53	Question no	301
Date of question	1.9.2009	Date of answer	29.10.2009

Issue

Low-value payment instrument – Multi-functional card

Question

We believe that the provisions for low-value payment (LVP) instruments apply to the contactless function of a payment card where it can be used without a cardholder verification method (CVM) – e.g. PIN, signature – to make individual transactions not exceeding EUR 30. Such contactless feature could co-reside on a payment card with other applications, such as credit, debit or prepaid. Where the card would be used to make individual transactions exceeding EUR 30 (with contact or contactless), a CVM would always be required and the normal rules would apply to the card transaction, regardless of the payment application. Could the Commission confirm that such contactless card transactions without CVM (always below EUR 30) are entitled to benefit from the 'light regime' provided for in Articles 34 and 53 of the PSD, irrespective of the fact that the multi-functional card can also be used to make high value payments?

Answer

In case of multifunctional cards, different regimes can apply. In the case described, payment transactions executed with the contactless function would benefit from the derogations under Articles 34 and 53, whereas for the credit or debit card function the 'normal' set of provisions applies.

Relevant provisions	Article 32(1)	Question no	302
Date of question	2.9.2009	Date of answer	29.10.2009

Issue

Charges – Provision of information

Question

The payment service provider has to provide free of charge to the payment service user all mandatory information under Title III. Therefore, the payment service provider can not charge the payment service user postal charges, ordinary charges and any other charges for providing information.

Answer

According to Article 32, "...the payment service provider shall not charge the payment service user for providing information under this Title." However, "...the payment service provider and the payment service user may agree on charges for additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request." "Where the payment service provider may impose charges for information, they shall be appropriate and in line with the payment service provider's actual costs."

Relevant provisions	Article 67(1)	Question no	303
Date of question	2.9.2009	Date of answer	29.10.2009

Issue

Payment transaction – Return and full amount principle

Question

May charges referred to returned credit transfer be deducted from the returned payment? Do returned credit transfers fall under Article 67(1)?

Answer

As a general rule, Article 67 establishes the 'full amount principle' which forbids any deduction from the amount transferred. This principle also applies to returned transactions.

Relevant provisions	General	Question no	304
Date of question	8.9.2009	Date of answer	29.10.2009

Issue

Definitions – Unique identifier

Question

a) PSD does not define that the unique identifier has to be common for all Member States and it also mentions that the Member States should not be allowed to require a particular identifier to be used for payment transactions. Does this mean that each payment services provider can produce its own unique identifiers? Will each Member State specify a specific format that has to be applied? b) The unique identifier is a combination of letters, numbers or symbols that is produced by the provider and linked with each account of each user? Does this mean that when a user gives an order, he has to provide to the provider only his own unique identifier in order for the provider to recognise the user, or he needs to provide both his own and the one of the recipient of the payment in order for the payment to be processed? In such a case, the unique identifier replaces the IBAN? And, since no specified form of unique identifiers has been provided for in the directive, how can a service provider ensure that an identifier of the recipient is coherent?

Answer

a) The concept of the PSD is that industry was considered best placed to develop unique identifiers which allow for straight-through-processing for payment transactions within the EU. Recital 48 says that "...it should be possible for the payment service provider to specify unambiguously the information required to execute a payment order correctly. On the other hand, however, in order to avoid fragmentation and jeopardising the setting-up of integrated payment systems in the Community, Member States should not be allowed to require a particular identifier to be used for payment transactions."
b) According to Article 42(2)(b), the payment service provider is required to inform the payment service user in the framework contract about the "...specification of the information or unique identifier that has to be provided by the payment service user in order for the payment order to be properly executed." Such information or unique identifier could be the IBAN, but also, for example, a card number (for card payments) or e-mail address (for payments via the internet). The PSD does not oblige the payee's payment service provider to check the coherence between the unique identifier and the name of the payee mentioned on the payment order. The liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the correct unique identifier according to Article 74.

Relevant provisions	Article 73	Question no	305
Date of question	10.9.2009	Date of answer	29.10.2009

Issue

Value date – Availability of funds

Question

It is not clear how the European Commission can regulate with Article 73 the payment services included in a regular contract signed between the payment services provider and the non-consumer payee. If the contract specifies that there are no commission but the payment services provider is allowed to credit the payee account ten days after the amount is available to the payment services provider. The directive applies to payment services providers (Article 1) but does not apply to payment services users. Consequently if the non-consumer user is absolutely not interested in a new contract, compliant to the direcive, which substitutes the credit value with the commission, the payment services provider has no power to impose that. Could please explain clearly how the payment services provider can be compliant to the PSD in such a common case? How the payment services provider could impose something that the non-consumer user does not want?

Answer

Recital 20 recognizes 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. (…) In any case, certain core provisions of this directive should always be applicable irrespective of the status of the user." The provision on value date and availability of funds (Article 73) is one of those core provisions which applies in all cases and therefore is not listed within Article 51(1).

Relevant provisions	Article 52(3)	Question no	306
Date of question	11.9.2009	Date of answer	29.10.2009

Issue

Charges – Surcharging

Question

When will this directive become law, or come into the UK administration? I am very concerned that eBay/PayPal is refusing to allow users on eBay to charge buyers a fee?

Answer

The regulations implementing the PSD into UK legislation entered into force on 2 March 2009 but will only apply as from 1 November 2009. Article 52(2) of the PSD has been implemented through Regulation 54 (2009 No. 29, The Payment Services Regulation).
Surcharging cannot be forbidden by payment service providers once the PSD has been implemented into national law. However, Member States have the option to forbid or limit surcharging for the respective Member State. The abovementioned UK regulation has not limited or banned surcharching.

Relevant provisions	Article 68(1)(a)	Question no	307
Date of question	14.9.2009	Date of answer	29.10.2009

Issue

Maximum execution time – Currency conversion

Question

Does this article apply to payments in euro with/without conversion? The reference to 'payment transactions in euro' in Article 68(1)(a) is interpreted to cover payments in euro where there has been a currency conversion? If, for example, the payer wishes to make a payment in euro from a sterling (STG) account, would this be considered as a euro payment under Article 68(1)(a)?

Answer

No, Article 68(2) would apply in the case where a sterling account is held in a Member State where the euro is the national currency. This would mean that the currency conversion and the execution of the payment would have to be done within a D+4 maximum time. See the answer to Question 245 for more details.

Relevant provisions	Article 25(1)	Question no	308
Date of question	14.9.2009	Date of answer	29.10.2009

Issue

Payment institution – EU passport

Question

I want to carry out payment services in France. Could you tell me what is happening with the 'EU passport' – can it be a reality after 1 November?

Answer

The EU passport for payment institutions will be a reality after 1 November 2009. You may find more information on the competent authorities for the autorisation and supervision of payment institutions on the DG Internal Market and Services' website at:
http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf.
The guidelines for the exercise of the right of establishment and freedom to provide services in other EEA states ('passporting guidelines') are available for consultation on the same webpage:
http://ec.europa.eu/internal_market/payments/docs/framework/transposition/passporting_guidelines_en.pdf

Relevant provisions	Article 73	Question no	310
Date of question	21.9.2009	Date of answer	14.12.2009

Issue

Internal payment transaction

Question

Your answer to Question 224 is unclear and risks to increase confusion about internal transactions. It seems in line with the avoidance of 'float' that in such transactions value will be given to the payee on the same day as the payer's account is debited, and that funds will be put at the disposal of the payee as quickly as possible. Can the Commission services confirm this approach?

Answer

Both the clarity of the wording of Article 73 and the absence of any exemption for the particular case of 'in-house transactions' lead toa strict interpretation of the wording of this provision, which should be applied without any exception.

Relevant provisions	**General**	**Question no**	**311**
Date of question	23.9.2009	**Date of answer**	14.12.2009

Issue

Payment transaction – Paper-based

Question

Are interbank paper credit transfers in scope of PSD?

Answer

Payment transactions carried out between payment service providers fall out of the scope of the PSD in accordance with its Article 3(m).

Relevant provisions	Article 73	Question no	312
Date of question	26.9.2009	Date of answer	25.1.2010

Issue

Value date – Credit value date

Question

How can the ordering bank guarantee the credit value date on the payee side? Isn't it only possible to guarantee the credit value date of the payee's institution?

Answer

The provisions on value dating in Article 73 have to be read in conjunction with the provisions on the maximum execution time (Articles 68 and 69). According to Article 69(1) the payer's payment service provider ('ordering bank') has to ensure that the amount of the payment transaction is credited to the payee's payment service provider's account within the time limits specified in this provision. Once the amount has reached the account of the payee's payment service provider, it is the obligation of the payee's payment service provider to ensure that the credit value date for the payee's payment account is no later than the business day on which the amount was credited to his own account.

Relevant provisions	Article 66	Question no	314
Date of question	4.10.2009	Date of answer	14.12.2009

Issue

Irrevocability

Question

The Directive introduces in its Article 66 the new concept of irrevocability of payment orders, applicable to all payment instruments. In general, the concepts proposed in a Directive come from a national legislation. The French law did not refer to the irrevocability of payment orders until now, for payment instruments subject to the Directive. Could you indicate which law in which country has inspired the Directive on the concept of irrevocability of payments?

Answer

Even before the adoption of the PSD, the French legislation made reference to the irrevocability concept: Article L.132-2 of the French Financial and Monetary Code explicitely referred to the fact that a card order was irrevocable, except in a few cases which were listed in the same code. This was also the case in some other legislation, such as those of Belgium, Germany and Luxembourg. Such principle is in particular very important to ensure the certainty of the payments for the payee (merchants in the case of cards) and the overall trust in the cards used. More generally, as explained in Recital 38, such principle is also justified by the fact that "a certain point in time payment orders cannot be revoked without high manual intervention costs" given "the speed with which modern fully automated payment systems process payment transactions". "However, depending on the type of the payment service and the payment order, the point in time may be varied by agreement between the parties."

Relevant provisions	Article 28	Question no	315
Date of question	5.10.2009	Date of answer	14.12.2009

Issue

Payment systems – Access to designated systems

Question

In answer to Question 130 in relation to 'Payment systems – Access to designated systems' dated 4.11.2008, it was stated that "the Settlement Finality Directive (SFD) is currently being revised". Nearly 12 months have passed since this answer was provided. Is an update available please? The PSD provides for equal access to payment systems by Payment Instititions provided that those systems are not designated under the SFD. Payment systems are increasingly being designated under the SFD as central banks, understandably, seek to ensure that they have proper oversight following the collapse of financial systems last year. Those systems that are not yet SFD-designated rely on SFD-designated systems for settlement purposes and usually require that participants hold an account with the settlement system. This means that, in practice, PIs do not have equal rights of access as intended by Recital 16, Article 28(1) of the PSD. What are the Commission plans for addressing this please?

Answer

The Settlement Finality Directive has been revised. The new text adopted on 6 May 2009 is available at:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0044:EN:NOT.
The co-legislators have, however, decided to keep this legal situation for reasons of financial stability. We therefore regret, but the situation will not change in the near future. This point may, however, be further examined at the occasion of the coming revision of the PSD, due in 2012.

Relevant provisions	Article 66(5)	Question no	317
Date of question	13.10.2009	Date of answer	14.12.2009

Issue

Revocation – Payee's agreement

Question

Is the payee's agreement mandatory only for revocations received by payer's PSP after the time limits specified in Paragraphs 1–4 of the same article? Or is the payee's agreement a PSD requirement in any case, i.e. no matter of the moment in times received by payer's PSP?

Answer

Article 66(5) states that "After the time limits specified in paragraphs 1 to 4, the payment order may be revoked only if agreed between the payment service user and his payment service provider. In the case referred to in paragraphs 2 and 3, the payee's agreement shall also be required." These two sentences have to be read together, meaning that the payee's agreement will only be required when the payer wants to revoke its order after the time limits mentioned in Paragraphs 2 and 3.

Relevant provisions	General	Question no	318
Date of question	14.10.2009	Date of answer	14.12.2009

Issue

Scope – Geographical coverage

Question

Does the PSD apply to the French overseas departments (Guadeloupe, Martinique, Réunion, French Guiana)?

Answer

Yes: The four territories of Martinique, Guadeloupe, French Guiana and Réunion are overseas departments and at the same time mono-departmental overseas regions. According to the EC Treaty (Article 299(2)), overseas departments are outermost regions; provisions of the EC Treaty apply there while derogations are allowed.
As for the French territorial communities (collectivités territoriales) Saint-Pierre-et Miquelon, Mayotte, Polynésie française, Nouvelle Calédonie and Wallis et Futuna (territories mentioned in Annex II of the Treaty), while they are an integral part of France, they do not form part of the Community. Therefore, the application of the PSD depends on decision taken by the Member State (France) to which they are attached.

Relevant provisions	Article 67	Question no	319
Date of question	14.10.2009	Date of answer	25.1.2010

Issue

Full amount – Debt compensation

Question

According to Article 67, PSPs shall in principle transfer the full amount of the payment transaction and refrain from deducting charges. As far as B-to-B transactions within card schemes are concerned and as final payment of the payee on his operational account is considered as a separate transaction, does Article 67 prohibit any debt compensation between the payee and his PSP according to national law? Example: Payment: 100 Full amount transfer on the payee's PSP account: 100 Debt of the payee: 50 Final payment on operational account: 50.

Answer

Article 67 only prohibits the deduction of charges from the amount transferred. Therefore, a debt compensation other than charges between the payee and his payment service provider would be possible.

Relevant provisions	General	Question no	322
Date of question	19.10.2009	Date of answer	14.12.2009

Issue

Payment instrument – Definition

Question

In your answer to Question 34 you state: Please confirm that the set of procedures used to initiate payments on paper has to be considered a payment instrument.

Answer

If a payment transaction is initiated on paper, neither the paper slip itself, nor the set of procedures used to initiate the payment transaction, can be considered as a payment instrument as defined in Article 4(23).

Relevant provisions	Article 56(2)	Question no	323
Date of question	19.10.2009	Date of answer	14.12.2009

Issue

Security features

Question

Article 56(2) states: the payment service user shall, in particular, as soon as he receives a payment instrument, take all reasonable steps to keep its personalised security features safe. Paragraph 3 of the Terms and Conditions of a Card issued by a bank in Malta states: A personal identification number (PIN) may be issued and it must be kept secret. This means that you must not disclose it to anyone else including the police and/or … personnel or record it in any way, which allows another person to discover it. Upon receipt you must destroy the PIN notification (our emphasis). In addition, you are to comply with any other instructions, which we may issue regarding the safekeeping of the PIN. Does the sentence "Upon receipt you must destroy the PIN notification (our emphasis)" go beyond the (maximum) requirements of the directive?

Answer

Yes, a payment service provider can describe how a payment's instrument security features should be kept safe. Article 57(1)(a) states that "The payment service provider issuing a payment instrument shall make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 56." This may include some security prescriptions for the users.

Relevant provisions	Article 55(2)	Question no	324
Date of question	20.10.2009	Date of answer	25.1.2010

Issue

Payment instrument – Blocking of online payment account

Question

Is there any obligation for the payment service provider to inform the payment service user in case the payment service user has blocked his online payment account?

Answer

Article 55(2) gives the payment service provider the right to block the use of a payment instrument for objectively justified reasons if such right has been agreed in the framework contract. In case the payment service provider uses this right, he has to inform the payment service user in accordance with Article 55(3). The PSD does not regulate the situation where the payment service user himself blocks the payment instrument for whatever reason (e.g. by mistake or by accident).
See also answers to Questions 34 and 143 as regards the qualification of online banking solutions as payment instruments.

Relevant provisions	Article 4(14)	Question no	325
Date of question	23.10.2009	Date of answer	14.12.2009

Issue

Definitions – Payment account

Question

The definition of a payment account refers to an account held in the 'name of one or more payment service users'. There are prepaid products that may be card, account or voucher based, where an account exists enabling multiple transactions to be made, and a means of showing transaction history, but where simplified due diligence is used in relation to the product, so that it is not registered in the name of the user, or registered at a later time. This appears to give rise to an anomaly where a product would not be a payment account while it is not registered, but would then become such an account once the user is registered. Similarly, products that remain unregistered because they fall below a given threshold, would not give rise to a payment account. The discrepancy gives rise to difficulties when drafting contracts and may have other unforeseen consequences. Clarity and consistency of treatment is sought.

Answer

Complete anonymous prepaid products used for the execution of payment transactions do not qualify as payment accounts for the purposes of the PSD, but as e-money. Only from the moment the prepaid card is registered in the name of 'one or more payment service users' and a payment account is created on their behalf, it could fall within the definition under Article 4(14).

Relevant provisions	Article 67(1)	Question no	326
Date of question	30.10.2009	Date of answer	25.1.2010

Issue

Charges – Returns

Question

In the answer to Question 303 dated 29 October 2009 it was indicated that banks could not charge for return payments. If a bank has specified to other banks the unique identifiers required to process an incoming payment, and the sending bank does not provide such unique identifiers in the payment, the receiving bank should be entitled to deduct a return fee from the payment. Where a correctly formatted unique identifier, as communicated by the receiving bank, is provided and the payment can not be completed for a valid reason e.g account closed then the payment should be returned in full. The current answer to Question 303 implies that sending banks that do not adhere to the standards communicated to them by their receiving bank, in accordance with Article 42(2)(b), will go unpunished. Furthermore, it also appears to be at variance with Article 65 third paragraph where the receiving bank's action could be construed as similar to refusing to execute a payment order. As the sending bank is aware of the required unique identifier the onus should be on them to fully reimburse the sender of such payments in the event that a charge is deducted. Please confirm that receiving banks may deduct charges on returned payments where they have advised their unique identifiers to the sending banks and the sending bank has not provided such information on the payment.

Answer

Payment service providers should refrain from deducting any fee or charge from the amount transferred. This principle also covers return payments.

Relevant provisions	Article 73	Question no	328
Date of question	2.11.2009	Date of answer	25.1.2010

Issue

Value date – Nostro account

Question

For cash management purposes the balances on certain currency nostro accounts at correspondent banks may be held as low as possible as these accounts do usually not receive a credit interest (debit interest only). Funding such nostro accounts (e.g. NOK, HUF) you may find that the bank (Bank A) where you pool your HUF funds (e.g. because you place the funds on the money market) is charging vale days in case you want to fund the nostro account (bank transfer) at the applicable HUF correspondent bank (Bank B). Bank A will argue that the PSD does not apply between PSPs, value days are allowed between banks especially as Bank A is not directly involved in a consumer's wire transfer. Yet, indirectly the bank transfer from Bank A to Bank B is necessary to fund the HUF nostro account at Bank B to perform the customer's HUF payment via Bank B.
How shall a small bank comply with the PSD if in above example Bank A is charging value days, yet you need to provide sufficient coverage for your nostro account at Bank B in order to facilitate a HUF payment via Bank B? Or in other words: if Bank A charges value days you won't be able to execute the wire transfer in this example within d+1 or even d+3 if you have to use Bank B. What do you say?

Answer

Nostro accounts, i.e. an account held by one payment service provider with another payment service provider, do not fall within the scope of PSD. Article 3(m) exempts payment transactions carried out between payment service providers, their agents or branches for their own account. Consequently, the provisions on value dating do not apply.

Relevant provisions	Article 68(2)	Question no	329
Date of question	4.11.2009	Date of answer	25.1.2010

Issue

Intra-community transaction

Question

Can you give me an example of intra- community transactions? Which transactions can the PSP agrees with PSU the execution time D+4 also after 1 January 2012?

Answer

Example: Transaction in GBP (or any other currency outside the euro area) from UK to Slovakia (cross-border).
According to Article 68(1), Section 2 of Title IV shall apply to the transactions mentioned in this paragraph. For all other payment transactions in an EU currency, the parties have contractual freedom within the framework of paragraph 2 of the same article.

Relevant provisions	**Article 2**	**Question no**	**331**
Date of question	9.11.2009	**Date of answer**	25.1.2010

Issue

Scope – Geographical coverage

Question

According to Question 138, can you confirm that the PSD shall apply to Gibraltar, Ceuta and Melilla?

Answer

Yes, the PSD applies to Gibraltar, Ceuta and Melilla.

Relevant provisions	Article 52(2)	Question no	333
Date of question	17.11.2009	Date of answer	25.1.2010

Issue

Charges – Intermediary's services

Question

How has the payment service provider of the payer to proceed if he is charged by other institutions (e.g. clearing institutions) involved in the transaction?

Answer

Article 52 in particular, and Title IV in general, do not deal with charges levied by other institutions on payment services providers but only with charges levied by payment services providers on their payment services users. While the payment service provider can not deduct any charge from the amount transferred, it is part of its pricing policy to calculate the influence on the price of the payment service provided. As stated in Article 42(3), the payment service user has to be informed of all charges payable well in advance.

Relevant provisions	General	Question no	337
Date of question	27.11.2009	Date of answer	25.1.2010

Issue

Charges

Question

My bank just charged me EUR 12 for a revocation of direct debit mandate. Should this act be free with the new directive?

Answer

If the revocation of the direct debit mandate is a preventive or corrective measure within the meaning of Article 52(1) of the PSD, e.g. if it aims at ending undue debits on the payer's account, then the revocation should be free of charge.

Relevant provisions	Article 64(1)	Question no	340
Date of question	18.12.2009	Date of answer	4.3.2010

Issue

Point in time of receipt – Determination

Question

In our example, the payment order on paper is presented by the payer at the bank's counter. It is a single customer credit transfer and not a regular future payment order. Please confirm which of the following interpretation is correct: 1) The point in time of receipt = the hand over of the payment order to the payer's bank. The point in time of receipt is the time when the payment order is received by the payer's payment service provider, without verifications of the correctness of the payment, the account balance, the IBAN validity etc. 2) The point in time of receipt = the moment when the payer's bank accepts the execution of the payment order. The point in time of receipt is the time when the payment order is received by the payer's payment service provider and all necessary steps are done in order to guarantee the execution of the payment order, i.e. the moment in time when the payment order is accepted by the payer's bank.

Answer

As stated in Recital 37, the point in time of receipt is the moment "when the payment service provider receives the payment order, including when he has had the opportunity to receive it through the means of communication agreed in the payment service contract, notwithstanding any prior involvement in the process leading up to the creation and transmission of the payment order, e.g. security and availability of funds checks, information on the use of the personal identity number or issuance of a payment promise." Therefore, the point in time of receipt is the moment when the payment order is simply received (including automated checks in case of electronic transfers) and not the moment when is has been accepted by the payment service provider.

Relevant provisions	General	Question no	342
Date of question	28.12.2009	Date of answer	4.3.2010

Issue

Definitions – Payment transaction

Question

Do internal/in-house transactions where the payer and the payee are the same person fall under the provisions of the Directive?

Answer

'In-house transactions' are those payment transactions where the accounts of both the payer and the payee are with the same payment service provider (PSP). The PSD does not make any specific differentiation regarding this specific class of payment transactions. Therefore, the PSD provisions apply to them. In particular, the question of the application of the value date and availability of funds' provisions under Article 73(1) was raised during the first meeting of the Payments Committee held on 1 October 2009, concluding that the wording of this provision should be strictly interpreted leading to its application without any exception to take into account the in-house transfers (see Point 8.1 of the summary available at http://ec.europa.eu/internal_market/payments/advisory_groups/pc_en.htm).

Relevant provisions	General	Question no	343
Date of question	29.12.2009	Date of answer	4.3.2010

Issue

Payment transaction – Currency

Question

Is the currency of an EU or EEA country which has not yet adopted the PSD to be considered as a 'PSD currency' or not? For instance, suppose to have a payment in SEK between a French Bank and an English Bank. Sweden has not yet adopted the PSD. Is this payment subjected to PSD?

Answer

Delayed PSD implementation prompts the practical question of how to handle payments into and out of jurisdictions that have not implemented the PSD in time by 1 November 2009. Unlike some Treaty provisions and regulations, directives have not hitherto been recognised by the European Court of Justice any direct horizontal effect (i.e. their provisions cannot be relied upon by any private party against another private individual or company), as this would be contrary to the fact that directives are addressed to the Member States and shall not, therefore, impose any obligations onto any other legal party.
However, in the situation raised, this payment would be subject to the PSD since the payment transaction would comply with its Article 2(2), which is in force and has been implemented by the two other Member States referred to (indirectly) in the question.

Relevant provisions	Articles 68, 69 and 72	Question no	346
Date of question	7.1.2010	Date of answer	4.3.2010

Issue

Maximum execution time – National payment

Question

Article 68 refers to national payment transactions in the currency of the Member State outside the euro area. Having in view that:
– Romania hasn't adopted the EUR currency yet;
– Local payments are considered payments in national currency (RON) and are processed through an automatic local clearing house;
– Euro payments, both cross-border and within Romania, are considered foreign currency payments and are processed via external correspondent banks;
Which payments should be included in 'national payments' category? Only payments in RON or all payments within Romania irrespective the currency? What is the maximum time that should be ensured for it?

Answer

Euro payments (both cross-border and within Romania) fall under Article 68(1)(a).
Payment transactions in RON 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 Romania, fall within Article 68(1)(b).
From 1 January 2012, credit transfers under the abovementioned categories must be made at the latest by the end of the net business day. Before that date, a payer and his/her payment service provider may agree on a maximum period of three business days.

Relevant provisions	Article 1(1)(c)	Question no	348
Date of question	8.1.2010	Date of answer	26.4.2010

Issue

Payment institution

Question

Please provide your opinion regarding the belonging of a national Post to the Payment Institutions if: 1) it is entitled under national law to provide payment services (offers money remittance in a PSD in-scope currency on the national level) and 2) it is not qualified as 'giro institution'.

Answer

A post office institution which is entitled under national law to provide payment services is to be considered as a payment service provider under Article 1(1)(c) of the PSD.

Relevant provisions	Title I, Article 1	Question no	349
Date of question	8.1.2010	Date of answer	4.3.2010

Issue

In-scope institution

Question

Are public authorities providing payment services out of scope?

Answer

Public authorities (national, regional or local), when not acting in their capacity as public authorities, are to be considered as payment service providers in accordance with Article 1(1)(f) of the PSD.

Relevant provisions	General	Question no	350
Date of question	15.1.2010	Date of answer	4.3.2010

Issue

Personal data – Bank account

Question

My online bank Cortal Consors is requesting my profession and salary data (mandatory). I asked them, why. Cortal answered this is due to the PSD. I wonder whether this is ok. Is there any legal relation between PSD and bank obligation to request profession and salary data?

Answer

None of the PSD provisions requires or authorises payment service providers to request payment service users' personal data such as 'profession' and 'salary data'.
According to Article 79, the processing of personal data necessary to safeguard the prevention, investigation and detection of payment fraud shall be carried out in accordance with Directive 95/46/EC.

Relevant provisions	Article 66(4)	Question no	351
Date of question	25.1.2010	Date of answer	4.3.2010

Issue

Irrevocability

Question

We have two Directives, which apparently are contradictory on the following issue: 1) The Directive 98/26/EC on settlement finality in payment and securities settlement systems specifies in Article 3 that the "transfer orders and netting shall be legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfer orders were entered into a system before the moment of opening of such insolvency proceedings as defined in Article 6(1). (…) No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as defined in Article 6(1) shall lead to the unwinding of a netting." 2) The PSD specifies in Article 66(4), irrevocability of a payment order "In the case referred to in Article 64(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day." According to your answer to Question 185, Article 66(4) of PSD refers also to the payee, i.e. the payee can revoke a payment order initiated via direct debit even it was send in CSM for settlement. According to the Directive 98/26/EC, the payee can not modify a payment order sent in CSM, even in the event of insolvency of one of the participants. Please explain the correct interpretation regarding the possibility of the payee to revoke a direct debit instruction between the moment when it was send into CSM for compensation and the moment of irrevocability in accordance with Article 66(4).

Answer

There is no contradiction between the two directives. The PSD deals with the relationships between users and their payment services providers, while "Payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 28" are excluded from its scope, in accordance with its Article 3(h). These transactions are then covered by the Settlement Finality Directive.

Relevant provisions	General	Question no	353
Date of question	29.1.2010	Date of answer	4.3.2010

Issue

Payment account – Combined services

Question

If a bank account combines payment transactions that fall within the scope of the PSD and other payment transactions that don't fall (e.g. payments with paper cheques), this bank account should be considered a 'payment account' within the meaning of Article 4(14)? Therefore for example, the changes in the interest of this bank account should be executed in accordance with Article 44 of the PSD?

Answer

If a payment account combines various payment services, some of which fall within the scope of the PSD and the rest do not, the provisions of the PSD only apply to these services which are inside the scope and not to the rest. For example, the changes in the interest on this payment account which concern the payment services within the scope of the PSD have to be dealt with in accordance with Article 44.

Relevant provisions	**Article 2**	**Question no**	**357**
Date of question	2.2.2010	**Date of answer**	4.3.2010

Issue

Scope – Geographical coverage

Question

Can you confirm that the PSD shall apply to Bermuda, Falkland, Anguilla, etc.?

Answer

The application of the PSD provisions to the overseas territories listed in Annex II to the Treaty on the functioning of the EU depends on explicit decisions of the Member States to which these territories are attached. In the absence of such a decision, the PSD provisions do not apply.

Relevant provisions	Article 2	Question no	360
Date of question	15.2.2010	Date of answer	7.6.2010

Issue

Scope – Geographical coverage

Question

France and Monaco are linked through different conventions as regards the banking business. Considering this, does Directive 2007/64/CE apply to Monaco and, if yes, more precisely:
– does it apply to intra-Monaco payments?
– does it apply to France-Monaco/Monaco-France payments?
– does it apply to EEA-Monaco/Monaco-EEA payments?

Answer

Titles I and II of the Directive apply to Monaco, thanks to the existing conventions between France and Monaco. The annex of the monetary convention will be modified accordingly very soon.
For Titles III and IV, however, Monaco do not envisage to take the legislative measures necessary to apply these titles to their territory, so the Directive will not apply as such. To be noted, however, banks in Monaco committed themselves to apply the SEPA rulebooks (which have to be in conformity with the PSD). Therefore, Monaco banks will thus indirectly apply a majority of the rules of the Titles III and IV to SEPA payments (but not to legacy payments).

Relevant provisions	General	Question no	361
Date of question	22.2.2010	Date of answer	26.4.2010

Issue

Scope

Question

Does the PSD address PCI compliance and/or compliance of card acceptance devices. Does PSD set standards for card acceptance devices and in particular for credit card terminals?

Answer

No, the PSD does not set any standards for card acceptance devices.

Relevant provisions	Article 73(2)	Question no	362
Date of question	28.2.2010	Date of answer	26.4.2010

Issue

Value date – Debit value date

Question

I have some doubts relating to exact meaning of 'value date' in relation to the moment of payer's account debiting by his/her payment service provider:
1) Does this provision create an obligation of payer's payment service provider to debit payer's account only directly prior to the beginning of transfer of an amount of payment transaction to payee's payment service provider?; or
2) Payer's payment service provider may debit payer's account immediately after receipt of payer's payment order and retain on his own account the amount of payment transaction until the beginning of its transfer to payee's payment service provider?

Answer

The directive does not deal with this question directly. It however sets two related rules:
First, according to Article 69(1), the payment service provider of the payer has to ensure that, after the point in time of receipt, the amount of the payment transaction is credited to the payee's payment service providers' account at the latest by the end of the next business day. Until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days.
Second, according to Article 73(2), the debit value date for the payer's payment account is no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

Relevant provisions	Article 42(3)(b)	Question no	363
Date of question	1.3.2010	Date of answer	26.4.2010

Issue

Exchange rate – Calculation

Question

Major international card processors (MasterCard, Visa) would convert a non-EUR (but EEA-currency) transaction (e.g. GBP), for the settlement purposes, into EUR (directly or indirectly via USD), using the exchange rate which is determined by the card processor on the particular processing day (settlement (reference) exchange rate). The processing day is the day when the transaction is submitted by the acquirer to the processor and not the day when the payer initiates the transaction. Therefore the payer is at the moment when initiating the transaction not aware of (and is unable to acquire the information on) the settlement day or the settlement exchange rate. The processor would inform, after settlement, the issuer and acquirer of the exchange rate used on the processing day for the settlement of the particular transaction. It is the case of ex post information. Pursuant to Art 42(3)(b), the issuer has to inform the payer of the applied currency exchange rate (i.e. debit exchange rate) in such a way that the payer is able to calculate the exact amount of the transaction which will be debited to the payer before he initiates an individual transaction. Accordingly, the issuer has to inform the payer of the debit (reference) exchange rate that will be used to convert the non-EUR transaction into EUR on the debit day before the payer initiates the individual transaction under a framework contract. The question therefore is, whether or not it is sufficient for the purpose of Art 42 if the issuer of the aforementioned cards informs the payer that the non-EUR individual transaction under the framework contract would be converted into EUR and debited to the payer on debit day, pursuant to exchange rates used by the processor (the relevant processor's (reference) exchange rate) on the processing day, or is the payer actually supposed to receive under Article 42 sufficiently precise information that would enable him to calculate the exact amount of the individual transaction before he initiates it?

Answer

Increased transparency is one of the main pillars of the PSD. Therefore, Article 42(3)(b) obliges the payment service provider of the payer to provide the payer with sufficiently precise information that would enable him to calculate the exact amount of the individual transaction before he initiates it at the point-of-sale. In case the actual exchange rate is not known in advance, the payment service provider has to inform the payer of the reference exchange rate which has to be made available by the payment service provider or comes from a publicly available source.

Relevant provisions	General	Question no	365
Date of question	3.3.2010	Date of answer	26.4.2010

Issue

Scope – Geographical application (Switzerland)

Question

How much can banks charge for a money transfer from Switzerland to Austria (payment via SEPA in euros)?

Answer

The PSD does not interfere in the pricing policy applied by payment service providers. As for the scope of application of the PSD with regard to transfers from and to Switzerland, please see the answers to Questions 149, 193 and 275.

Relevant provisions	Article 47(3)	Question no	366
Date of question	3.3.2010	Date of answer	26.4.2010

Issue

Information requirements – Paper-based information

Question

With regard to art. 47(3) of the Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal the manner in which article 47 (3)¬market, considering the following aspects: of the Directive has been transposed and implemented in Romania is the following: “Excerpt from Romanian Emergency Ordinance no. 113/2009 – on payment services: Art. 112 – (1) Following the withdrawal from the payer’s account of the amount arising from an operation or if the payer does not use a payment account, after the receipt of the payment order, the service supplier shall provide the payer with the following information, without delay and as per art 97, par. (3): (a) Reference allowing the payer to identify each individual operation and, if necessary, information regarding the payment’s beneficiary; (b) The value of the operation in the currency entered in the payer’s account or in the currency used for the payment order; (c) The total price of the operation and, where necessary, a break-down of the amounts included in the total price or the interest borne by the payer; (d) If necessary, the exchange rate valid in the operation’s day and the total value of the operation following the exchange rate conversion; (e) The date of the value used to credit the account and the date when the payment order is received; (2) Suppliers of payment services shall transmit to the payer – free of charge user- monthly paper-based information. (3) Also, if the parties agree, the information stipulated under par. (1) above may be communicated or provided periodically, at least once a month, as per the modus chosen by the client and accepted by the provider so that the client may store and reproduce identical information. (4) Users may waive their right stipulated under par. (2) only by means of explicit request in this respect and ¬shall instruct a different way of receiving the information free of charge. the manner in which the banks implemented the aforementioned procedure in Romania is that they stipulate under the general conditions signed by the client the following modalities for transmitting the free of charge monthly statements of account: - The Bank shall give monthly to the Client, the statements of account by means of the Bank’s branches where the Client may obtain them free of charge; - If the Client enjoys the “internet-banking” service, the Client shall give their consent to receive the free of charge monthly statement of account only electronically, exclusively by means of specific applications; - The free of charge monthly statements of account shall be delivered by the Bank to the Client by means of the following communication modalities: electronically – over whereas the aforementioned modalities of¬the Internet, by phone, fax. receiving the free of charge monthly statements of account by the client does not include the transmission by post. Please inform us whether the banks should, as a general rule, provide the customers by post with the free of charge monthly statements and only when the customers explicitly require, the banks should offer alternatives to the latter such as putting the information regarding monthly financial statements of account at the disposal of the customer by means of the following methods: on paper available at the bank’s quarters, by internet banking, by phone or by fax.

Answer

In accordance with Articles 47 and 48(2)–(3), a framework contract may include a condition that the information referred to in Paragraph 1 is to be provided or made available periodically at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged. However, Member States may require payment service providers to provide information on paper once a month free of charge. The PSD does not say whether this information should be provided by post or at the premises of the payment service providers.

Relevant provisions	Article 8	Question no	368
Date of question	19.3.2010	Date of answer	26.4.2010

Issue

Payment institutions – Calculation of own funds

Question

Please could you give me an excample on Methode C to calculate the necessary capital? I struggled with 'Indicator' multiplied by 'Multiplication factor' multiplied by 'Scaling factor k' – this result was an amazing (unrealistic big) number!

Answer

This approach is based on a payment institution's income over the preceding year. It works through the following steps:
1) Calculate the payment institution's income indicator from additioning interest income + interest expense + commission and fees received + other operating income. Example: payment institution (money remitter) has an income indicator of EUR 25 million.
2) Using this result, calculate the sum of the following: 10 % of EUR 2,5 million (slice I up to EUR 2,5 million) + 8 % of EUR 2,5 million (slice II EUR 2,5–5 million) + 6 % of EUR 20 million (slice III EUR 5–25 million) = EUR 1 650 000.
3) Multiply the result by the scaling factor 0,5 for money remitters: EUR 1 650 000 x 0,5 = EUR 825 000.

Relevant provisions	Article 72	Question no	369
Date of question	19.3.2010	Date of answer	26.4.2010

Issue

Maximum execution time – National payment transactions

Question

Taking into consideration that, for Member States outside the euro area, national euro payments (both payer's and payee's payment service provider are located in the same country) are made via foreign correspondent bank and not via an efficient national payment infrastructure, please let us know if it is appropriate to set rules specifying an execution time shorter than three business days (four for paper initiated payment transactions).

Answer

Member States can stipulate that maximum execution time might be shorter for national payment transactions, being defined, in principle, as those pure domestic transactions (both the payer and the payee are within the same Member State) in the currency of the Member State concerned. In addition, payment service providers are free to grant shorter execution times to payment service users, in accordance with the second subparagraph of Article 86(3).

Relevant provisions	Articles 66 and 74	Question no	370
Date of question	19.3.2010	Date of answer	26.4.2010

Issue

Unique identifier – Incorrect details

Question

Bank transfer to a wrong account number was done. The bank was contacted immediately to cancel it. The bank did not cancel it even though the name and the number did not correspond. 15 days after the bank actions to get the money back were only through a post mail.
What are the consumer's rights and procedure to cancel a transfer? What is in the bank hands to get the money back?

Answer

In accordance with Article 66, payment service users may in principle not revoke a payment order once it has been received by the payer's payment service provider. It may however be revoked if agreed between the payment service user and his payment service provider. If agreed in the framework contract, the payment service provider may charge for revocation.
Article 74 then deals with cases where the user did not provide the correct unique identifier for the transaction. It sets that if a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier. If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable for non-execution or defective execution of the payment transaction. However the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction. If agreed in the framework contract, the payment service provider may charge the payment service user for recovery. Moreover, if the payment service user provides information additional to the one agreed with the payment service provider, the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.
Therefore, the PSD does not oblige the payment service provider of the payee to check consistency between the name and the number of the recipient.

Relevant provisions	Article 3(k)	Question no	371
Date of question	22.3.2010	Date of answer	26.4.2010

Issue

Internet credit platform

Question

Would a credit platform in the Internet, where private persons can register as users and via which they can conclude loan agreements with each other (business to business, natural person to business and natural person to natural person) fall under this exception (3k), if it includes having to transfer the money to the platform service provider's designated account (the ownership will not be passed to the service provider), after which the user's 'virtual account' on the website will be credited and the assets on the 'virtual account' can only be used to fulfil one's obligations under the loan agreement concluded with another user via the platform? (i.e. the purpose is not to provide a payment service, but to assist the platform by assuring the payments.)

Answer

Loan agreements established via a credit platform do not fall within the scope of the 'payment account' definition under Article 4(14) of the PSD.

Relevant provisions	Article 34	Question no	372
Date of question	26.3.2010	Date of answer	14.6.2010

Issue

Information requirements – Electronic money

Question

Article 34 is titled "Derogation from information requirements for low-value payment instruments and electronic money". However in the body of the article no reference is made to electronic money. So how is this article to be interpreted? Does Paragraph 1 apply to low-value payment instruments and low-value electronic money? And Paragraph 2 applies to national payment transactions where the funds are electronic money?

Answer

This provision applies to electronic money, with the limitations mentioned in paragraphs 1 and 2, meaning that only electronic money below the thresholds set up in this provision can benefit from this derogation.

Relevant provisions	Article 60	Question no	373
Date of question	9.4.2010	Date of answer	14.6.2010

Issue

Refund rights – Conditions

Question

Does the client have to lodge a formal complaint in case of fraudulent use of his bank card to be able to benefit from the Directive (immediate reimbursement)?

Answer

No, it is not compulsory under the Directive to lodge a formal complaint with a given national authority.

Relevant provisions	Article 44	Question no	374
Date of question	26.4.2010	Date of answer	14.6.2010

Issue

Information requirements – Prior notice

Question

Changes in the framework contract should be communicated to the users 2 months in advance. Is 2 months prior notice valid also if payment service provider wants to offer new product or service to the users, under presumption that new product or service doesn't influence on existing products/services which are already defined in terms and conditions?

Answer

This provision aims to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. In case the PSP proposes a change to an element already agreed in the framework contract, the two-month period applies. As far as a new element, such as a new payment service, is offered and the customer is ready to accept it immediately, this should be possible and the period of two months does not apply. However, the contractual provisions for the new service can later form an integral part of the former framework contract.

Relevant provisions	Article 4(1)	Question no	375
Date of question	26.4.2010	Date of answer	14.6.2010

Issue

Payment institution – Activities

Question

Company A is collecting (through its own network) cash from payees that are:
a) clients of utilities companies – for the invoiced services; and
b) clients of other financial institutions (e.g. banks) for credit installments. The cash (banknotes and coins) is collected, processed by a specialised company and delivered to a bank where Company A is holding an account. Afterwards Company A is distributing the funds towards accounts of utilities companies for case a) and clients repayment accounts of other financial institution for case b). Please tell us if Company A needs to be authorised as a payment institution.

Answer

The competent authorities of the Member State in which the head offices are located are better placed for further examination of the case. You will find their contact details at the following link: http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf.

Relevant provisions	Article 64	Question no	376
Date of question	4.5.2010	Date of answer	14.6.2010

Issue

Maximum execution time – Bank holiday

Question

In my business, the real estate business, the standard lease debit day is the first of the month. The first day of the month is the standard transaction date in our debit transaction files. Now and then the first of the month is a Saturday or Sunday. In case of a debit file with a transaction day in the weekend the bank used to process the file on the first business day. For years running our debit transaction files have been accepted by our bank. No problem whatsoever. August 1, 2009 was a Saturday. While uploading our monthly debit transaction files containing the lease for August 2009 in July, our upload was refused by the online banking application. After calling the helpdesk our bank informed us that due to new European financial regulations (Payment Services Directive) the transaction date in our payment/debit files no longer can be a weekend or a holiday (referring to their website with holidays). We were not amused. We have not been informed about this change of functionality. What is wrong with the old situation: in case of a file transaction date in a weekend, process the files on the first business day? It does not make sense to refuse the file. This issue resulted in a compliance issue for our business process because we are forced to manually hack our payment/debit transaction files. Our solution is to edit the debit transaction files manually, and adjust the transaction date to the first business day, in this particular case to Monday August 3, 2009. We requested the bank to resolve our compliance issue and start accepting our payment/debit files when the transaction day is a weekend/holiday. We do not mind if the files are processed on the first business day. Unfortunately the bank is not willing to help us. Is our bank correct? Is there such regulation that prevents a payment/debit file transaction date to be a weekend/holiday? I could not find it in the PSD? Can you explain the logic behind the new regulation? In my opinion this regulation is only causing problems (compliance issues). I hope that you will conclude that our bank has mis-interpreted the PSD and they have to adjust their online banking software not to refuse payment/debit files because of a weekend/holiday transaction date, and simply process the files on the first business day. If there is a valid reason not to process the files as is, I suggest the following workaround: The bank should never refuse the file. After uploading the file the online banking application interacts with the user to suggest another valid transaction date. This will avoid manual hacking of he payment/debit files. Please clarify.

Answer

According to Article 64 of the Directive, "the point in time of receipt is the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's payment service provider. If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day. The payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day."

Relevant provisions	Article 2	Question no	377
Date of question	8.5.2010	Date of answer	14.6.2010

Issue

Scope – Geographical application

Question

Article 2 states that it applies to payment services provided within the Community. How does this apply to individuals and businesses that establish relationships with a service provider outside of the Community where those persons then come within the Community and use those services? For example: 1. If a tourist from the USA uses a credit card in the UK that has been issued in the USA, does that person have rights under the PSD for transactions carried out in the UK? My understanding is that it would not because that person's primary service provider is based outside of the Community (although a local UK card acquisition network would be involved in processing the transaction) and that transaction would ultimately be processed in US$ for that person. Also, the PSD would continue to apply to the retailer's part of the transaction and its relationship with its merchant acquirer (although the customer using the USA issued card would not be entitled to refunds/reversals under the PSD (e.g. Article 62)). 2. If a mobile business from China (who has established a merchant acquisition contract with a service provider in China) comes within the Community and takes payments from Community citizens using Community issued cards, would the PSD apply to the transaction (including the related refund and reversal rights under the PSD)? My understanding is that: the PSD would apply to the consumers as normal and that the PSD would apply to the Chinese service provider's sub-contractor that operates in the Community. This would mean that the mobile business must establish a direct contract with the Community based PSP if the Chinese service provider is not to come within the scope of the PSD – this could be achieved by the Chinese service provider contracting with the mobile business as an agent for the Community based service provider. Please confirm.

Answer

Only two-leg transactions fall within the scope of Titles III and IV (with the exception of Article 73) of the PSD.
Please consult the document via the hyperlink below for which Member States have decided to apply Titles III and IV (or some of their provisions) to one-leg transactions:
http://ec.europa.eu/internal_market/payments/docs/framework/transposition/options_en.pdf.

Relevant provisions	Article 3(k)	Question no	378
Date of question	11.5.2010	Date of answer	14.6.2010

Issue

Scope – Limited network

Question

According to Article 3(k) PSD, the Directive shall not apply to "services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services". Knowing that this Article is of total harmonisation, are Member States allowed to provide for specific additionnal requirement in order to benefit from this exception? For example, stating that Article 3(k) exception is not applicable for specific payment instruments or when credit in granted?

Answer

National legislators should refrain from adding supplementary conditions for extending or restricting the scope of each of the provisions under Article 3.
When the Community legislators have excluded certain matters from the scope of harmonisation, Member States remain free to regulate these matters as they see fit, provided that they respect their general obligations under Community law. In the case at hand, this means that Member States may introduce no rules at all as far as the exempted services are concerned, apply some or all of the PSD rules or introduce completely different rules. However, it is important to bear in mind that even if a Member State chooses to apply the rules of the PSD in their entirety also to the services, businesses and transactions mentioned in Article 3, these will not become payment services within the meaning of Article 4(3) of the PSD.

Relevant provisions	Article 65	Question no	379
Date of question	13.5.2010	Date of answer	14.6.2010

Issue

Payment order – Refusal

Question

We believe that a condition for the execution of a payment order is that the payer's account must be covered to execute the order. If this is not the case, the order can not be executed. We have specified in our contract with the payer's that the account must be covered. Must we also inform the payer's (by phone, e-mail and so one) if we insered as a condition that the account must be covered otherwise we will not execute the order?

Answer

Payment service providers can insert in their terms and conditions that payments will be executed only if the corresponding funds are available on their clients' accounts. Such information on the characteristics of the payment service to be provided, as well as on the related charges, shall in that case be made available like for the other information, in accordance with Articles 41–42 of the Directive.

Relevant provisions	**Article 64**	**Question no**	**380**
Date of question	17.5.2010	**Date of answer**	14.6.2010

Issue

Scope – Cheques

Question

We receive amounts on our accounts which we transfer by check the day after. To be compliant with the PSD, which is the point in time to draw the check?

Answer

Checks are out of scope of the Directive, according to its Article 3(g).

Relevant provisions	Article 3(k)	Question no	381
Date of question	19.5.2010	Date of answer	30.7.2010

Issue

Scope – Limited network

Question

Is the 'instrument' a card with credit on it or can it be a club membership card (merely a piece of plastic with a membership munber written on it) that allows the club member to buy from company A on credit and then repay the money to company B who then passes it to company A?

Answer

Cards which can only be used within the premises of the provider (e.g. a holiday resort or a social club) for making purchases within these premises (e.g. paying drinks, tennis lessons, etc.) would fall within the scope of Article 3(k). It is, however, up to the competent authorities empowered to apply the national provision implementing Article 29 (prohibition for persons other than payment service providers to provide payment services) to monitor the market and, where appropriate, to take the adequate measures.

Relevant provisions	Article 3(b)	Question no	382
Date of question	20.5.2010	Date of answer	30.7.2010

Issue

Scope – Commercial agent

Question

Can you give us a detailed definition of the term commercial agent as used in Article 3(b). Does the term commercial agent also cover insurance intermediaries? In particular, does the exemption still apply if a commercial agent holds advance payments e.g. in order to pay for possible future damages (e.g. in the case of an insurance intermediary)? In other cases (e.g. credit mediation and selling of products via Internet,) can you give guidelines on how to assess the supplementary character of payment services.

Answer

When the payment transaction is executed from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee (point b), it falls out of the scope of the PSD in accordance with its Article 3(b). With regard to the question of how to draw the line between two related agents, namely the commercial agent and the payment service agent, it should be pointed out that while the pure 'commercial agent' acts on behalf of the payer or the payee, by contrast, the 'agent' acts on behalf of the payment institution. The exemption under Article 3(b) would not apply to the latter.

Relevant provisions	Articles 51/61	Question no	383
Date of question	26.5.2010	Date of answer	30.7.2010

Issue

Unauthorised payment transactions – Limit

Question

Article 51 permits a payment services provider and a non-consumer/micro-enterprise, to agree, in a framework contract, that Article 61, including the EUR 150 limit for unauthorised transactions, not to apply. Would it be possible, in a credit card scenario, for a consumer to expressly ask his bank to issue a credit card, with a much higher credit limit than the bank's standard credit cards? The bank would only be prepared to do so, if the consumer's liability for unauthorised transactions would also be higher than the EUR 150. The consumer would be prepared to declare in writing that he understands that he would be forfeiting the protection granted to him by the PSD i.e. that he would only be protected as for unauthorised transactions exceeding a treshold which is higher than EUR 150.

Answer

Article 61 is not at the disposal of the parties when the payment service user is a consumer. Therefore, this provision always applies in those cases where the payment service user is a consumer.

Relevant provisions	General	Question no	384
Date of question	8.6.2010	Date of answer	30.7.2010

Issue

Competent authorities – Complaints

Question

On 10.3.2010 I asked in a written statement my French bank (BPE) to close my account(s) and have all the standing amounts transferred to my bank account in Lithuania, where I reside. I indicated the IBAN and SWIFT/BIC codes for the transfer, as requested by the French bank. I also provided a print screen from my Lithuanian bank's ebanking system, as was requested by BPE. In my close-and-transfer request, I did not specify the currency, as both the sender bank's accounts and the receiving bank's accounts were euro accounts – I assumed, by default the account currency must be used. On 22.3.2010, BPE made the requested transfer. However, BPE bank converted all the standing amounts into Litas – the currency of Lithuania – without asking for my permission for doing so, or without notifying me on the conversion. For the currency conversion, they did not use the French Central Bank's fixed currency exchange rate for Litas, which is 3.4528, but some other rate. Besides, after the transfer (I received money on 26.3.2010), BPE requested me to pay additional EUR 327, which, according to them, was generated due to worse than they expected currency exchange rate. Until today (8.6.2010), they refuse to close my account and demand me to compensate them for EUR 327. They refuse to admit the existence of the Payment Service Directive. They refuse to admit that I did not request the currency exchange. I would like to know:
1) Did BPE have a right to make currency exchange without my request for that when closing my euro account and transferring money to my euro account in Lithuania, if I did not specify in which currency the transfer must be made?
2) If BPE had a right to decide on currency conversion without my provision for that, am I protected by Payment Service Directive to request the cancellation of the transaction and full compensation of all the incurred charges due to the fact that I was not informed that transferring money between my two euro accounts in two EU countries will cost me EUR 327 more than the standard banking fees for a similar transaction?
3) If BPE had a right to decide on currency conversion without my provision for that, and if I am not protected by Payment Service Directive to request the cancellation of the transaction due to the concealed charges, does SEPA or another EU directive determine what currency exchange rates must be used when transferring money between two SEPA banks?

Answer

The Commission is not empowered to supervise concrete payment service providers. The full list of competent authorities for handling complaints under Article 80 is available on the website at: http://ec.europa.eu/internal_market/payments/docs/framework/transposition/complaints_en.pdf.

Relevant provisions	General	Question no	385
Date of question	9.6.2010	Date of answer	30.7.2010

Issue

Scope – m-payments

Question

New ideas of PSD regulated by regulators in EU. Mainly use of mobile phones to transfer funds in excess of one million euros. Protocol for developing new protocol for digital money transfer!

Answer

The PSD aims to establish the modern and harmonised legal framework necessary for the creation of an integrated payments market which would enable payments to be made more quickly and easily throughout the whole EU.
By removing the legal obstacles blocking the creation of a single payments market, the directive aims to introduce more competition in payment systems and facilitate the realisation of economies of scale. This will improve efficiency and reduce the cost of payment systems to the economy as a whole.
The PSD, together with the new E-Money Directive 2009/110/EC creates a proportionate regulatory regime for new entrants in the payments market, including mobile operators, thereby allowing them to enter the market and develop innovative services. Being able to issue electronic money and provide payment services under a single licence will significantly reduce administrative burden.

Relevant provisions	General	Question no	388
Date of question	9.7.2010	Date of answer	30.7.2010

Issue

Transposition

Question

Why some countries, as Greece and Poland, have not yet approved the PSD?

Answer

On 5 July 2010, the draft law which implements the PSD into the domestic legislation was adopted by the plenary of the Hellenic Parliament.
As for Poland, the entry into force of the national law implementing the PSD has been delayed and it will take place not earlier than by the end of the autumn 2010. The Commission has taken the appropriate steps to address this issue under Article 258 of the Treaty (see press release IP/10/682 of 3 June 2010 at http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/682&format=HTML&aged=0&language=EN&guiLanguage=en).

Relevant provisions	General	Question no	389
Date of question	13.7.2010	Date of answer	30.7.2010

Issue

Implementation – PSD in Norway

Question

Has Norway implemented the Payment Services Directive yet? If not, when is it expected to do so?

Answer

According to our sources, all the required legislation to implement the PSD should have been passed before the summer break. For more detailed information, please check with the EFTA Surveillance Authority (www.eftasurv.int).

Relevant provisions	Article 52(3)	Question no	394
Date of question	22.7.2010	Date of answer	14.1.2011

Issue

Charges – Surcharging

Question

In what way are the surcharging practices limited by local implementation of the PSD? Interdiction or limitation of surcharging. The following Member States transposed the option of limitation of surcharging practices: BG, DE and PT, and EL the option of interdiction for specific instruments. FI plans to transpose the option of limitation. I would like to have more information in which way the allowance of surcharging practices is limited per country. Please advise.

Answer

Surcharging cannot be forbidden by payment service providers once the PSD is implemented into national law. However, Member States have the option to forbid or limit surcharging for the respective Member State. An overview on how Member States have implemented the various options under the PSD can be found via:
http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm.

Relevant provisions	Article 60(1)	Question no	395
Date of question	27.7.2010	Date of answer	14.1.2011

Issue

Payment transactions – Unauthorised transactions

Question

Laser card skimmed, money taken from account, reported to bank. 2 weeks later still waiting on refund to my account.
What is the timeframe, in the directive, given to the banks to refund stolen moneys back to the customers account? Does the customer have to wait until fraud dept has solved problem or should the customer be refunded sooner?

Answer

Article 60 states that the payment service provider of the payer has to refund the payer immediately in the case of an unauthorised transaction. Derogation to this general principle is contained in Article 61. These provisions aim at achieving a fair balance between the respective liabilities of the payment service provider and the payer. When interpreting these provisions, one has to consider the effects they may have on the incentives of the contractual parties. For instance, "legislation should not through distorted incentives increase the likelihood of fraudulent behaviour of the legitimate payment service user i.e. so-called first-party fraud". The issue has to be approached pragmatically:
(1) If the payment service provider of the payer can exclude, on a prima facie basis, that the payer has acted fraudulently, it should refund the user immediately. If it does not refund the amount claimed, it would do so at its own risk.
(2) In case of high suspicion of fraud, the payment service provider might take reasonable time to conduct an investigation. If the investigation shows that the payer acted fraudulently, the payer would bear all the losses relating the unauthorised transaction (in accordance with Article 61(2). The adequateness of the length of the investigation needs to be calibrated on a case by case basis, taking into account all the circumstances of the case. However, the payment service provider would risk a sanction if it does not act within a reasonable time and the investigation does not show that the transaction was unauthorised.
(3) As for the cases in the grey area (e.g., the payer claims that he has not failed to keep the personalised security features of the payment instrument safe), Article 60(1) would grant an immediate refund right to the payer once the notification has been made in accordance with Article 58. Once the payer has been reimbursed, the payment service provider will then have the time necessary to look for evidence, in accordance with Article 59 (e.g. if after its search for proof, the payment service provider finds evidence showing that the payer failed to keep the personalised security features of the payment instrument safe, the payment service provider would be able to debit the amount mentioned in Article 61(1) from the payer's account).

Relevant provisions	General	Question no	396
Date of question	3.8.2010	Date of answer	14.1.2011

Issue

Payment institutions – Activities / e-money institutions

Question

Given the different prudential regimes - what additional actvities can an EMLI carry out that a payment institution can not? By way of guidance, it is not clear when a payment institution's activities would push it into requiring EMLI authorisation. Any further guidance on the overlap would be very helpful.

Answer

Today, under Article 1(4) of the current Directive 2000/46/EC, electronic money institutions are prohibited from doing any business other than the issuance of electronic money and closely related services. However, the new E-Money Directive 2009/110/EC, aimed to create a consistent legal framework in line with the PSD and which will replace the Directive adopted in 2000, contains provisions under its Article 6 extending the scope of electronic money institutions' activities. In fact, the current restriction of activities is not in line with the non-exclusivity approach for payment institutions which, under Directive 2007/64/EC, may engage in non-payment services business (e.g. retailing or telecom activities).
In accordance with its Article 22(1), Member States will have to transpose the obligations of the new Directive in national law by 30 April 2011. Therefore, as from 1 May 2011, the scope of activities of e-money institutions will not be restricted to issuing electronic money.

Relevant provisions	Article 4(3), Annex	Question no	398
Date of question	11.8.2010	Date of answer	14.1.2011

Issue

Definitions – Payment services (credit transfers and money remittance)

Question

Payment services 3 (payment transactions) – is it possible to execute payment transaction without having payment account with the user's payment service provider or with another payment service provider?
Payment services 6 (money remittance) – money remittance means only remittance made by cash or also by credit transfer or other? (Could we get some examples?)

Answer

A credit transfer is a payment service for crediting a payee's payment account. Therefore, it implies the existence of a payment account, at least, in the recipient side.
On the contrary, money remittance, in accordance with the definition under Article 4(13), is a payment service where funds are received from a payer, "without any payment accounts being created in the name of the payer or the payee". An example would be money transfer/remittances.

Relevant provisions	General	Question no	400
Date of question	27.8.2010	Date of answer	14.1.2011

Issue

Payment institutions – Activities / e-money institutions

Question

As stated in the preamble of Payment Services Directive, payment institutions are not permitted to issue electronic money. However, it is not clear in the case of payment services provider intends to conduct business activities related to electonic money and payment services, for example PayPal payment services.
With regard to this issue, is it possible for payment provider to have both licenses for electronic money institution and payment services institution?

Answer

In the light of the principle 'same activity, same risks, same rules', the new E-Money Directive 2009/110/EC, combined with the PSD, provides for a single licence which will have to be chosen keeping in mind the scope of the activities of the payment services provider:
For carrying out only one or several of the payment services listed in the annex of the PSD (alone or together with other business activities mentioned in Article 16 of the PSD), the licence of 'payment institution' would be enough.
Today, it is problematic for e-money institutions in the EU to be profitable since the current Directive limits the type of activities e-money institutions may perform. Therefore, the issuance of e-money at a premium is thus, practically, the only source of return for them. With the new EMD, these institutions will be able not only to issue e-money but also to carry out those payment services listed in the annex of the PSD plus carry out any any other business activity.
Finally, the monopoly to accept deposits continues to belong in exclusivity to banks which, in addition, are able to carry out those payment services mentioned in the annex of the PSD and to issue e-money.

Relevant provisions	General	Question no	401
Date of question	8.9.2010	Date of answer	14.1.2011

Issue

Translation

Question

Could you please help us and let us know how the wording 'Payment Service Provider' has been officially translated in French, Dutch and German?

Answer

Please consult the definition of 'payment service provicer' under Article 4(9) in the French version ('prestataire de services de paiement': http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:01:FR:HTML), in the Dutch version ('betalingsdienstaanbieder', http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:01:NL:HTML) and in the German version ('Zahlungsdienstleister', http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:01:DE:HTML).

Relevant provisions	Article 1(1)(d)	Question no	402
Date of question	14.9.2010	Date of answer	14.1.2011

Issue

Scope – Branches of third country payment institutions

Question

Does our company from Russia need to get an authorisation according to PSD? Does the money transfer System Leader (Russian company), web site www.leadermt.com, need an authorisation according to the Payment System Act in Bulgaria on money transfer if a Bulgarian bank or other financial institution inside the EU is a participant or an agent of Leader's system?

Answer

Contrary to branches of third-country credit institutions (see Article 1(1)(a)) and e-money institutions (see Article 1(1)(b) of the PSD, in connection with Article 1(1)(b) of Directive 2009/110/EC), the PSD requires branches of payment institutions (such as money remitters) of third countries to establish specific legal entities within the EU if they want to continue to carry out payment services within the EU. Article 2(1) of the PSD defines the scope of the Directive as "payment services provided within the Community". It follows from the second sentence of Article 2(1) that certain parts of the Directive would apply even if a payment service provider is located outside the EU. Consequently, it appears that the intention of the EU legislator was to ensure a harmonised approach to payment services within the EU, irrespective of the origin of the payment service provider. This territorial approach is supported by Article 29 of the PSD according to which "Member States shall prohibit natural or legal persons that are neither payment service providers nor explicitly excluded from the scope of this Directive from providing the payment services listed in the Annex." Branches of third-country payment institutions were not explicitly excluded from the scope of the Directive. This shows again the intention of the EU legislator to make the provision of payment services in the EU subject to a completely harmonised regime.
In light of the wording of Articles 2 and 29 of the PSD and the fact that Article 1(1) of the PSD only refers to payment institutions and not to branches of third-country payment institutions, branches of third country firms which are located within the EU and want to provide payment services, can only carry out payment services if they fit into one of the categories of payment service providers set out in Article 1 of the PSD. In practical terms, this means that the PSD would oblige branches of third-country payment institutions to take one of the legal forms foreseen in Article 1(1) of the PSD in order to be allowed to provide payment services in the Community (e.g., become a payment institution within the meaning of Article 1(d), i.e. establish a company in the Community and subsequently apply for an authorisation under Article 10 of the PSD once the PSD has been implemented into national law).

Relevant provisions	Article 73(2)	Question no	403
Date of question	14.9.2010	Date of answer	14.1.2011

Issue

Value date – Charges

Question

According to Article 73(2) of the PSD the debit value date cannot be earlier than the point in time at which the amount of the payment transaction is effectively debited to that payment account. Does this provision apply to the charges for execution of operation of payment?

Answer

The payment service user and his payment service provider have to agree on all charges payable by the payment service user to the payment service provider. However, in doing so, they can not derogate the rule according to which the use of value dating to the disadvantage of the user is not permitted.

Relevant provisions	Article 67(1)	Question no	404
Date of question	21.9.2010	Date of answer	14.1.2011

Issue

Charges – Intermediary's services

Question

Example: Customer transfer MT103 in EUR currency was processed by our financial institution (Bank Sender - A) via Target II payments system to Direct participant (Intermediary Bank for Beneficiary Bank - B) in favour of Indirect participant customer (Receiver Bank - C), where indicated in Field 71A:SHA. All payment service providers located within the EU/EEA countries. We kindly ask you inform us if an intermediate institution such as Direct participant (Intermediary Bank - B) of Target II system acting on behalf of Indirect participant (Receiver Bank - C), have a right to claim charges from the remitting bank (Bank Sender - A)?

Answer

As stated in the last sentence of Recital 41, "the provisions on the amount transferred or any charges levied have no direct impact on pricing between payment service providers or any intermediaries".

Relevant provisions	General	Question no	406
Date of question	21.9.2010	Date of answer	14.1.2011

Issue

Scope – Geographical scope

Question

List of countries, states, principality, territory etc that have or plan to transpose the Payment Services Directive.
I should be grateful if you could forward the list of all the countries and those with special ties that plan or have transposed the Payment Services Directive including: Switzerland, the European microstates of Andorra, Monaco, San Marino and the Vatican, the Isle of Man, Channel Islands (three Crown Dependencies) and the Faroe Islands, Gibraltar, Overseas territories, Azores, the Canary Islands, Madeira, Lampedusa, French Guiana, Guadeloupe, Saint Barthélemy, Martinique, Réunion, Ceuta and Melilla, and any other state, principality, terrority etc.

Answer

To date (November 2011), the PSD has been implemented by all the Member States of the EU, with the exception of Poland. The three non-EU countries of the European Economic Area (EEA) – Iceland, Liechtenstein and Norway – will also transpose the PSD into their national law.
The four territories of Martinique, Guadeloupe, French Guiana and Réunion are overseas departments and at the same time mono-departmental overseas regions. According to the Treaty on the Functioning of the European Union (Article 349), overseas departments are outermost regions; provisions of the treaty apply there while derogations are allowed. Hence the PSD applies in these territories. The same is valid for Azores, Madeira and the Canary Islands. The PSD also applies in Ceuta and Melilla, which forms part of the territory of Spain.
As for Gibraltar, the required legislation (Subsidiary 2010/078) was passed on 29 April 2010. The Channel Islands and the Isle of Man are not part of the United Kingdom, and are excluded from EU legislation (unless otherwise stated).
As for the French territorial communities (collectivités territoriales) Saint-Pierre-et Miquelon, Mayotte, Polynésie française, Nouvelle Calédonie and Wallis et Futuna and the other overseas territories mentioned in the question (territories mentioned in Annex II of the Treaty), see answers to questions 318 and 357. With regard to Monaco, see answer to question 360.
Switzerland is not an EEA country; therefore, it has no legal obligation to implement the PSD.

Relevant provisions	Article 3(g)	Question no	408
Date of question	28.9.2010	Date of answer	14.1.2011

Issue

Scope – Paper cheques

Question

Do paper cheques have to be issued by a payment service provider?

Answer

It is not appropriate for the PSD to apply be fully comprehensive. Since it does cover electronic payments, it is not appropriate for it to apply, as stated in Recital 6, "where the transfer is based on a paper cheque, paper-based bill of exchange, promissory note or other instrument, paper based vouchers or cards drawn upon a payment service provider or other party with a view to placing funds at the disposal of the payee". Therefore, the PSD does not provide an answer to the issue raised by this question.

Relevant provisions	Article 8, method C	Question no	409
Date of question	29.9.2010	Date of answer	14.1.2011

Issue

'Business estimates' – Interpretation

Question

Article 8, Method C, Section a) describes how to calculate relevant indicator. The relevant indicator shall be calculated over the previous financial year. Further, own funds shall not fall below 80 % of the average of the previous three financial years for the relevant indicator. However, "when audited figures are not available, business estimates may be used." What is actually meant by 'business estimates'? Does it refer to a situation where financial year has ended but audited figures are not (yet) available by the time of calculation of own funds? Or does it somehow refer to 'business plans' as in Method A? Is Method C therefore available for companies who have been operating less than three years?

Answer

Under Article 8, the regulator must determine the method, of which there are three, by which the firm's ongoing capital requirements shall be calculated. The aim and spirit of the three different methods for calculating capital requirements was that an appropriate method could be determined in relation to the specific business situation of the payment institution concerned, for example for that reason some Member States felt that Method A could be appropriate for start-up situations.
Method C for the calculation of ongoing capital is based on a firm's level of income over the preceding year. The words 'preceding year'/'previous financial year' might be interpreted purposively as including 'forecasts' so this method (as well as Method B) can also be used to calculate on-going capital for start-ups' companies or for companies which have a deviating financial year of more or less than 12 months. In any case, the supervisory authorities are better placed than the legislators to assess the specific business situation of a given payment institution.

Relevant provisions	Article 4(22)	Question no	410
Date of question	4.10.2010	Date of answer	14.1.2011

Issue

Clarification when the payment service might be provided through an agent

Question

The situation is: Company A is a payment institution, providing money remittance service through a Company B. The Company B acts as an intermediary of the Company A, which receives funds from the payers in cash, physically collects cash, or transfers cash to the bank account of the Company A. In both cases (cash collection and transfer) funds are accounted in the Company's A accounts (funds received from the payers goes straight to the Company's A accounts by means of system integrated into cash collection machine). The question is whether the Company B acts as an agent of the Company A or the Company A outsources operational functions of payment service to the Company B? What are the main features of an agent which acts on behalf of a payment institution in providing payment services?

Answer

An outsourcing agreement is an agreement in according to which a natural or legal person (the outsourcee) accepts to undertake operational functions related to the payment services provided by a payment institution (the outsourcer); in most of the cases, the agreement does not provide for the representation of the payment institution by the outsourcee in front of the customer.
Article 17(7) of the PSD seems to restrict oursourcing arrangements to 'operational functions'. However, its second subparagraph makes a difference with regard to 'important operational functions' which are defined in its third subparagraph. An example of outsourcing arrangement may be the internal clearing of the operations outsourced to a third entity.
In any case, the supervisory authorities are better placed to assess the specific business situation of a given payment institution.and to determine whether a company should be considered an agent acting on behalf of the payment institution or an outsourcee.

Relevant provisions	Article 67(1)	Question no	412
Date of question	19.10.2010	Date of answer	14.1.2011

Issue

Is a entry in field 23E admissible inside of a PSD-payment?

Question

One of our customers is complaining about a deduction of charges for a outgoing EUR payment which has been filled with INTC in field 23E. As per our understanding, a PSD relevant payment order did not have any content in field 23E, and therefore due to INTC in field 23E we have deducted our charges and now the ultimate beneficiary is claiming an additional payment of these charges. Is a payment INCLUDING field 23E still a PSD payment?

Answer

Article 67(1) requires that the amount of the payment transaction is transferred in full without any charges to be deducted from it. This 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.

Relevant provisions	Article 3(b)	Question no	414
Date of question	22.10.2010	Date of answer	8.2.2011

Issue

Scope – Bill collection services

Question

A company provides bill collection services, i.e. based on agreements concluded with bill issuers it receives cash from the bill payers in partner locations (retail outlets), and transfers the corresponding amounts of money to the bill issuers. Services are provided in favor of the bill issuers, against a commission deducted from the value of the payments received. Does such activity fall under the scope of the Payment Services Directive?

Answer

Bill payment services are not directly mentioned in any of the articles of the directive, but are referred to in Recital 7 as follows: "In some Member States supermarkets, merchants and other retailers provide to the public a corresponding service enabling the payment of utility and other regular household bills. Those bill-paying services should be treated as money remittance as defined in this directive, unless the competent authorities consider the activity to fall under another payment service listed in the Annex." The recital appears to reflect the need for to national competent authorities to make judgments as to which payment service the bill payment service falls under.
While some business models for bill paying services clearly falls within the PSD scope (e.g. when the service is being provided by the bill payment service provider to the customer wishing to pay his invoice and is effectively a simple money remittance service), other models operate on the basis of the invoice issuer as the principal, with the provider as his agent providing a means by which the bill payer can settle their bills. In this model, the invoice issuer provides the consumer with the option of settling the invoice by payment to the bill payment service provider. Such payment extinguishes the debt by virtue of the agency relationship between the bill payment service provider and the invoice issuer and is therefore equivalent to payment direct to the invoice issuer. In the event of the failure of the bill payment service provider, the risk lies with the invoice issuer, as the client. The bill payer has no exposure, as the receipt issued by the bill payment service provider is evidence of the debt having been extinguished. This is not a payment service; because the invoice is settled as soon as the money is given to the bill payment service provider, there is no request for execution of a payment transaction and therefore no payment order being made. This service would therefore fall under the exemption in Article 3(b) of the Directive.

Relevant provisions	Article 9(1)	Question no	416
Date of question	2.11.2010	Date of answer	8.2.2011

Issue

Payment institutions - Safeguarding requirements

Question

PSP D is a hybrid credit card company (issues MasterCard and Visa credit cards and also provides other commercial activities). Taking into consideration the wording of Article 9(1) of the PSD that refers only to 'funds received', please let us know if you would consider that the funds made available by PSP D to its payment service users (revolving credit) for credit card transactions should be safeguarded in accordance with the provisions of Article 9 of the PSD. We are of the opinion that the funds subject of a payment transaction ordered by a card holder should be safeguarded from the moment of receipt of the payment order from the payee PSP in accordance with the provisions of Article 64 of the PSD.

Answer

Article 9(1) requires hybrid payment institutions that also engage in a nonpayments business activity (e.g. an hyprid payment institution which issues credit cards and engages in other commercial activities) to safeguard or ring-fence any funds received from payment service users, such that they are insulated in the event of an insolvency. As stated in Article 9(1)(a), at the end of the business day following the day when the customer first paid in the money, payment institutions that still hold such funds muștdeposit the monies into a bank account, and not release them until a payment order is made on those funds; ọrinvest such funds into secure, liquid and low-risk assets such as cash deposits.

Relevant provisions	Articles 3, 4(3) & 10	Question no	417
Date of question	2.11.2010	Date of answer	8.2.2011

Issue

Money remittance vs credit transfer; intermediary PSP; cross-border service

Question

PSP A is an intermediary payment service provider established in Romania, i.e. it receives funds from another payment service provider PSP B (the payer payment service provider which is established in another Member State) and transfers them to PSP C (the PSP of the payee that is a credit institution established in Romania or in a third country that holds an account for the payee). In fact, PSP B collects funds from payers and transfers them through its bank to PSP A (by crediting PSP A's account held at its credit institution). Then PSP A initiates payment orders at its bank for crediting with a corresponding amount the accounts of the payees held at their credit institutions (PSP C). Neither PSP A nor PSP B opens accounts for their clients and PSP A has no liability against the payers or the payees (the liability against the payment service users is on their PSPs – PSP B and PSP C). For the execution of this payment transactions, between PSP A and PSP B there is an contractual arrangement where the payer is charged a fee by PSP B (depending on the amount transferred) whilst part of the fee is being passed to PSP A by PSP B. Between PSP A and the credit institution of the payee (PSP C) there is no contractual arrangement. We mention that PSP A also provides classic money remittance. We would be grateful to receive your answers on the following questions: a) What payment service is provided by PSP B for its clients (money remittance, credit transfer or other payment services) taking into consideration that (i) the payment transaction is 'cash to account' and (ii) the definition of money remittance stipulates that no account is being created in the name of the payer or the payee. b) Are PSP A's activities as intermediary within the scope of the PSD and so it would need to comply with PSD requirements (own funds requirements, safeguarding measures, etc.)? If yes, what payment service PSP A provides? If PSP A's activities are out of scope of the PSD under which para of Article 3 of the PSD would you consider them fit? c) If PSP B is established in a third country and PSP A and PSP C are established in a Member State would you consider that PSP B is providing payment services in the Community and so it would need to be authorised according to Article 10 of the PSD or would you consider that PSP B is providing payment services where its head office is situated and PSP A and PSP C are providing payments services in the Community?

Answer

Since the question mentions that the entity provides 'classic money remittance', that entity needs to get an authorisation to carry out the services mentioned in Point 6 of the Annex to the PSD. As for other transactions between such payment service provider and other payment service providers, it will be up to the national competent authority to assess whether Article 3(m) applies.

Relevant provisions	General	Question no	418
Date of question	9.11.2010	Date of answer	8.2.2011

Issue

Definitions – Payment account

Question

An internet service provider selling goods/services via internet and offering payment services without the seller or buyer having a payment account (as such) with the internet service provider. This means that the service provider is collecting the funds of the seller on his own account located most of the time at a bank and is transferring them after a certain time under specific conditions to the buyer. The buyer and the seller may have at their disposal some kind of 'accounts' where they can consult the processing of the operation (how many money is left, has been paid or even give the order for pay out). Do such service providers fall under the scope of the PSD? Could such accounts be defined as payment accounts?

Answer

It will be up to the national competent authorities to assess whether this internet service provider falls within the scope of the E-Money Directive.

Relevant provisions	Article 13	Question no	420
Date of question	12.11.2010	Date of answer	8.2.2011

Issue

Payment institutions - Registration

Question

We would like to find a list of all the Payment Institutions, whether authorised or registered, by country. The individual country registers are hard to find and are not easy to naviagate. As a trade body we are often asked how many PIs there are in each country and there is no way of knowing this. It would be useful to use this information to manage members' queries and to measure each country's progress. Can you please advise if there is, or there are plans for, a central registry of all authorised and registered payments intsitutions covered under the Payments Services Directive? Is it possible to get a consolidated list of names of payment institutions across the EU?

Answer

As stated in the last sentence of Article 12, national registers for payment institutions "shall be publicly available for consultation, accessible online, and updated on a regular basis". The Commission has made available the full list of national registers at http://ec.europa.eu/internal_market/payments/docs/framework/transposition/public_registers_en.pdf. There are no plans to replace national registers by a central registry since the responsibility to authorise and register payment institutions falls primarily on Member States.
As for the available figures for authorised payment institutions, this issue was on the agenda of the Payments Committee meeting of 19.10.2010. On the basis of the information provided by Member States, the Commission services have prepared a table which shows that, to that date, 120 payment institutions licences had already been granted and 1 033 entities have been waived under Article 26. The minutes of that meeting are publicly available at: http://ec.europa.eu/internal_market/payments/docs/pc/summary-2010_10_19_en.pdf.

Relevant provisions	Article 10	Question no	421
Date of question	18.11.2010	Date of answer	8.2.2011

Issue

Payment institution - Authorisation

Question

Can a company go live in first in a host Member State before going live in a home one?

Answer

As stated in the last sentence of Article 10(1), an authorisation shall only be granted to a legal person established in a Member State. Since payment institutions shall be entered in the register of the home Member State, they have to be set up first in that Member State, before going through the procedures provides for in Articles 10(9) and 25 for the provision of services in other Member States.

Relevant provisions	General (New answer)	Question no	422
Date of question	19.11.2010	Date of answer	22.2.2011

Issue

Role of FIN-NET - Article 83

Question

Please could you clarify the below in respect of Article 83 of the PSD. The complaint handling procedures are not harmonised under PSD and each state has a different complaint rules and redress bodies. This leads to confusion with firms, customers, regulators and even redress bodies on whether a cross-border complaint falls under their remit. For e.g. a complaint referred to Redress Body A of Country X is likely to be rejected if the subject matter of the complaint is investigated and findings indicate that firm under remit of Redress Body A is not at fault and that error would have occured at Country Y covered by Redress Body B. The customer then has to restrart the redress process with redress body B of country Y. To address this situation, Is it possible for the EU commission to review and activate role of FIN-NET and designate it as Nodel agency to recieve all PSD/cross-border complaints. The FIN-NET can then liaise internally with its members and assign complaints based on correct jurisdiction. In other terms, could payment services firms advise FIN-NET as ADR contact to their customers uniformly across all EEA states.

Answer

FIN-NET is a financial dispute resolution network of national Alternative Dispute Resolution (ADR) schemes in the European Economic Area countries. The role of FIN-NET is to facilitate access to out-of-court complaint procedures in cross-border cases. If a consumer in one country has a dispute with a financial services provider from another country, FIN-NET members will put the consumer in touch with the relevant ADR scheme and provide the necessary information about it.
It is important to remember that ADR schemes cover service providers which operate in and from the country where the scheme exists. This means that if a consumer complains about a foreign financial services provider, his/her complaint will be handled by a complaint body which operates in the country where the financial services provider is located.
Following the evaluation of the functioning of FIN-NET by the external contractor and the results of the public consultation, the Commission services plan to improve functioning of the network. This will form part of a broader strategy on the use of ADR in the EU. A public consultation on the use of ADR as a means to resolve disputes related to commercial transactions and practices in the EU is currently ongoing (deadline for contributions: 15.3.2011). You can find the consultation document at: http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/adr_consultation_18012011_en.htm.

Relevant provisions	Article 4(28)	Question no	423
Date of question	22.11.2010	Date of answer	8.2.2011

Issue

Definitions - Direct debit

Question

Does the directive deal with direct debit system within the EU counties? E.g. Slovak banks still (even after 1.11.2010) stick to debtor mandate flow (DMF) system – if not directly then through the Terms of Service where the CMF or SEPA Direct Debit is blocked by default and the client is required to visit the bank and unblock it. The banks also strongly suggest to the clients to keep the SDD blocked – for safety reasons. I consider that as a strong barrier for the local business where for example a gym or mobile operator can't set up a DD in the same way than in Germany or the UK. This practice is against the basic idea of the free EU market and the idea of SEPA as companies from lets say Spain in a fact can't debit the customer from Slovakia because of the preset blockage of SEPA direct debits on the accounts.

Answer

The definition of direct debit under Article 4(28) is indifferent with regard to the mandate flow, since it covers all situations ("on the basis of the payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider") and therefore does not discriminate between CMF or DMF.

Relevant provisions	Article 4(21)	Question no	424
Date of question	23.11.2010	Date of answer	8.2.2011

Issue

Unique identifier - IBAN and BIC

Question

I would like to know, from which date on I have to use IBAN and BIC also for national payments (in Austria)?

Answer

The PSD does not require a particular identifier to be used for payment transactions, but contains rules on the information required to execute a payment order correctly (see, in particular, its Article 74 on incorrect unique identifiers).
Regarding the move over to IBAN, in practice, banks are adopting measures to make SEPA migration as easy as possible, especially for consumers. In the case of Austria, issuer banks are putting IBAN and BIC on plastic bank cards so that customers can quickly find details of his/her IBAN/BIC. This is the case for all new debit cards, http://ec.europa.eu/internal_market/payments/docs/sepa/forum-2009_10_20/at_en.pdf.

Relevant provisions	General (New answer)	Question no	425
Date of question	29.11.2010	Date of answer	22.2.2011

Issue

Licence

Question

We would like to offer Merchant Cash advances to small and medium enterprises, meaning that the company will be buying from the Merchant his future credit card receivables at a discounted rate and the merchant will and the repayment will be a percentage from the merchant's daily settlement. What are the procedures that need to be applied to receive a license?

Answer

You will have to check this issue with the competent authorities designated under Article 20 of the PSD in your home Member State (see the list at http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf).

Relevant provisions	General (New answer)	Question no	427
Date of question	13.12.2010	Date of answer	22.2.2011

Issue

Pre-paid cards and debit cards

Question

Are payment institutions allowed to issue pre-paid cards or debit cards themselves (not on behalf of a bank) in any circumstances?

Answer

No, they are not. In the light of the principle 'same activity, same risks, same rules', the new legal framework for carrying out payment services within the EU provides for a single license which will have to be chosen keeping in mind the scope of the activities of the provider.
For carrying out only the payment services listed in the Annex of the Payment Services Directive, 2007/64/EC (the PSD), the licence of 'payment institution' would be required. In the cases where the legislation of the Member State has provided for this option (see http://ec.europa.eu/internal_market/payments/docs/framework/transposition/options_en.pdf), a waiver under Article 26 of the PSD might be granted.
Today, it is problematic for e-money institutions in the EU to be profitable since the current directive limits the type of activities the e-money institutions may perform. Therefore, the issuance of e-money at a premium is practically the only source of return for them. Once the provisions of the new E-Money Directive, 2009/110/EC, have been implemented in the national law of the Member States, these institutions will be able, under a single licence, not only to issue e-money but also to carry out some or all of the payment services listed in the Annex of the PSD and carry out, if they wish so, any other business activity.

Relevant provisions	General (New answer)	Question no	428
Date of question	14.12.2010	Date of answer	22.2.2011

Issue

Currency conversion - Card transactions

Question

Application of the 'Currency Conversion Charge' to online card transaction, where the server processing such transaction is located outside the euro area or the EU: To what extent is it acceptable for a bank to apply a Currency Conversion Charge to an on-line transaction in euro (the cardholder's card statement is issued in euro) which was processed by a server located outside the EU or outside the euro-area? Is it enough and in line with the word and spirit of the EU directives if the bank which applies such a fee informs its cardholders in its terms and conditions that a charge to this effect and in such circumstances will be applicable?

Answer

Since the payment transaction was carried out in euro, a currency conversion service was not offered prior to the initiation of the payment transaction. Therefore, it is not possible to charge for a currency conversion which has not taken place and for which a currency conversion service was not offered, neither required nor needed.

Relevant provisions	General (New answer)	Question no	429
Date of question	15.12.2010	Date of answer	22.2.2011

Issue

Foreign cash correspondents

Question

A non-Member State credit institution (the Cash Correspondent) wishes to offer cash correspondent services to European payment service providers (PSPs) (but not to other entities). European PSPs need the services provided by the Cash Correspondent when their own transactions or transactions initiated by their clients involve foreign currencies. The Cash Correspondent wishes to contact European PSPs to market its services. The Cash Correspondent will perform its services out of a non-Member State, but may visit its clients in the Community in the context of these services. No European establishments of the Cash Correspondent will be involved in offering or performing the services. In its home country, the Cash Correspondent is a full service credit institution. The payment services offered by the Cash Correspondent include the opening and operation of cash clearing accounts for the PSPs and the acceptance and execution of payment transactions. The Cash Correspondent can not obtain a PSD license since Article 10 of the PSD (Granting of authorisation), paragraph 1, second sentence, provides that "An authorisation shall only be granted to a legal person established in a Member State". We would like to receive confirmation that the Cash Correspondent can offer its services to European PSPs. We believe that the following considerations may be relevant. (1) Assuming the services provided by the Cash Correspondent would be deemed to constitute payment services and assuming that these services would be provided within the Community, the PSD would apply (Article 2, 1, first sentence of the PSD). The sixth recital of the preamble to the PSD provides that the application for the legal framework for payment services "should be confined to payment service providers whose main activity consists in the provision of payment services to payment service users". Under Article 3(m) of the PSD, the PSD does not apply to payment transactions carried out between PSPs, their agents or branches for their own account. In your response to question 184 of 'Your questions on PSD', you have confirmed that the only relevant criteria for the interpretation of this Article 3(m) is whether PSPs, their agents or branches exchange payment transactions for their own account (which would be excluded from the scope) or whether the payment transactions are covered by a contract with a payment service user in which case they would fall within the scope of the PSD. The Cash Correspondent would not itself be a party to the relationship in which payment is due and in the context of which the cash correspondent services are performed. There would not be a contract between the Cash Correspondent and the ultimate client of the relevant European PSP. There would only be a contractual relationship between the Cash Correspondent and its client, the European PSP. Can you please confirm whether, in the situation of the Cash Correspondent, the exemption under Article 3(m) would be available taking into account the circumstances set out above? (2) If the exemption in Article 3(m) is not available, can we argue that the services provided by the Cash Correspondent to the European PSPs are not provided within the Community, based on the fact that (i) the Cash Correspondent will perform the characteristic feature its services out of a non-Member State and (ii) no European establishments of the Cash Correspondent will be involved in offering or performing the services? If indeed the services are not provided within the Community, the PSD (including the license requirement) should not apply (Article 2, 1, first sentence of the PSD). To identify the territory where the activity is exercised, the European Commission traditionally (cfr the interpretative release of the European Commission of July 1997 in the context of investment services) uses the criterion of the location of the 'characteristic feature' (that is, the essence of the service paid for). The European Commission has considered that visiting clients in another EU Member State, and the performance of legal transactions of a preparatory character would not trigger the notification requirement for the provision of cross-border services, if the visits and the transactions are not the 'characteristic feature' of the service. We note however that certain national regulatory authorities have taken the (different) view that services can be located in the Community even if the characteristic feature of the service is performed outside the Community. Can you please confirm, based on the circumstances set out above, that the services provided by the Cash Correspondent would not be deemed to be located in the

Community? (We note that this question is different from question 252 of 'Your questions on PSD'. Question 252 confirms that European PSPs should manage their relationship with intermediary PSPs in such a way as to ensure that the provisions of the PSD are fully respected, even if such intermediary payment service provider is located outside of the Community. Information requirements and rights and obligations in relation to the provision and use of payment services do not apply to PSPs located outside the Community (Article 2, 1, second sentence of the PSD). However, the PSD does not seem to exempt PSPs established outside the Community from the provisions of Title II of the PSD, which, among other things, require undertakings who intend to provide payment services to obtain authorisation as a payment institution before commencing the provision of payment services.)

Answer

Commission services can not confirm, as requested, that a foreign (non-EU) cash correspondent can offer its services to European payment service providers. Please check the status of such a cash correspondent with the competent authorities designated under Article 20 of the PSD in your home Member State (see the list at http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf).