

# Newsletter

## *Payment Services Directive*

May 2009

**The EU Payment Services Directive ("Directive") must be implemented in Dutch legislation by 1 November 2009. In addition to a single European currency, this Directive aims to create a uniform system of payment services within Europe. This will increase the efficiency of the European payment market and improve European competitiveness in relation to the United States, for instance.**

The Directive provides, inter alia, for the following:

- the possibility of initiating cross-border direct debits;
- the accelerated execution of cross-border payments;
- value dating (amounts must be credited to the payee's account on the same business day on which the payment service provider receives the amount);
- separate charging of costs for carrying out a payment;
- an increased information obligation for payment service providers, particularly concerning services to consumers;
- clear rules with regard to entry reversals; and
- the limitation of the consumer's own risk if a means of payment is stolen or lost.

### **Purpose**

The Directive aims to create an internal market for payment services. The purpose is to (a) promote competition, (b) increase transparency with regard to the conditions and information requirements for payment services, and (c) harmonise the rights and obligations of payment service providers and users in Europe. The purpose of the Directive must be achieved by harmonising the legal framework for payment services. This harmonisation must take place in accordance with the Directive through the establishment of uniform rules for (1) market access and (2) the provision of payment services.

By establishing uniform rules for market access (licensing obligation), new parties

are given the opportunity to provide payment services after obtaining a licence. At present, payment services are mostly provided by licensed credit institutions.

The cross-border provision of payment services must be promoted in particular. This can be achieved by establishing uniform rules for information obligations and the rights and obligations of payment service providers and users.

### **Scope**

The Payment Services Directive applies, inter alia, to the following forms of payment services:

- services whereby funds can be credited to and debited from an account and all acts relating to the provision of payment accounts;
- the execution of payments and fund transfers by and between payment service providers;
- issuing and selling of means of payment;
- the execution of payment transactions;
- fund transfers; and
- the execution of digital payment transactions (online banking, etc), in which the digital system administrator operates solely as an intermediary for system users.

The scope of the Directive is structured so that it applies to consumers at all times. In the case of business clients, an agreement can be reached to exclude the application of the Directive. As far as the applicability of the Directive to SMEs is concerned, each Member State may decide independently

whether the rules that apply for the provision of payment services to consumers will apply *mutatis mutandis* to SMEs. The Netherlands has opted out of this possibility.

Insofar as the provisions of the Directive relate specifically to payment services, these provisions apply to all payments to the extent they are carried out in euros or another currency of a EU Member State outside the euro zone, where both the payment service provider of the payer and that of the payee are established within the EU. The legislative bill for the implementation of the Directive states that non-EU Member States that form part of the European Economic Area also fall under the scope of the Directive.

### **Licensing Obligation**

The Directive introduces a licensing obligation for payment service providers. Credit institutions (banks and electronic monetary institutions) that currently provide payment services do not have to apply for a licence as they already possess one and are supervised in respect of the same services. Other institutions that may provide payment services (after obtaining a licence or being subject to exemption) are payment institutions, the European Central Bank, central banks of the Member States, the Member States and their governments. The definition of payment institution is widely drafted so that it offers new parties the opportunity to focus on the provision of payment services, obviously with due observance of the licensing obligations.

The new definition also means that certain activities which are currently performed unlicensed by payment transaction offices will fall under the scope of the licensing obligation as from 1 November 2009. An over-the-counter payment to the energy company NUON, for instance, at a payment transaction office is one such example. The licensing application will be dealt with by the Dutch Central Bank (DNB). In addition to DNB, the Netherlands Authority for the Financial Markets (AFM) and Netherlands Competition Authority (NMa) will also supervise the implementation of the Directive's provisions.

### **Some of the consequences of implementing the Payment Services Directive**

The implementation of the Payment Services Directive will create a lot of work, particularly for banks (that currently form the main group of payment service providers). Systems must be adapted to ensure that all new obligations can be met by November 2009, some of which are discussed briefly below.

#### Information obligations

A distinction can be made between the information obligations for one-off payment transactions and framework contracts for payment services. A more stringent information obligation applies with regard to the latter form of payment services. General information obligations (for both types of payment transactions) involve information relating to charges for information, the possibility to deviate from information obligations, currency and currency exchange, as well as information about additional charges or discounts. In addition, there is a broad range of specific information obligations.

#### Consent requirements for payments

The payer must have given express consent for every transaction. The bank must immediately reverse any unauthorised transactions.

#### Execution time

From 1 November 2009, payments in the following cases must be processed within 3 days: (1) all payment transactions in euros, (ii) national payment transactions in the currency of the Member State concerned outside the euro zone and (iii) payment transactions involving only one currency conversion between the euro and the currency of a Member State outside the euro area, provided that the required currency conversion is carried out in the Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euros. As of 1 January 2012, this must take place within one business day.

### Value dating

Value dating is the method for determining the date on which an amount that is credited or debited is taken into account for calculating interest on the balance of the payment account. After the implementation of the Directive, the credit value date for the payee's payment account must be the same as the date on which the amount of the payment transaction is credited to the account of the payee's bank.

### **How will implementation take place?**

The Directive must be included in Dutch legislation by 1 November 2009. Implementation of the Directive will lead to the amendment of the Financial Supervision Act and the Civil Code. Amendments will also be made to the Act on Money Transaction Offices, while the Cross-Border Payments Act will be repealed.

Customers can all expect a letter from their payment service providers by mid-September 2009, setting out the new terms and conditions for the provision of payment services.

### **Further information**

Would you like to know how the implementation of the Payment Services Directive will (or may) affect you? Are you perhaps planning to establish a payment institution, or do you feel compelled to apply for a licence and wish to exchange ideas with us in that regard?

If so, please feel free to contact us and we shall gladly look at the consequences and possibilities with you on a no-obligation basis.

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