

# FSC Newsletter

Number 1 Year 2009



**Financial Services  
Commission**

## The Payment Services Directive

### Introduction

This Newsletter is directed to firms who will be caught within the scope of the Payment Services Directive (PSD). This includes banks, building societies, e-money issuers, money transfer operations and non-bank credit card issuers. The aim of the newsletter is to provide background information to the imminent implementation of the Payment Services Directive.

### Background

The aim of the PSD is to enhance efficiency, innovation and competition in the European payments market. In doing this, the PSD will introduce specific information requirements and rules regarding the rights and obligations of users of payment services and payment service providers.

A payment service is defined in the Directive as being any of the following:

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- Execution of payment transactions<sup>1</sup>, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
  - Execution of direct debits, including one-off direct debits,
  - Execution of payment transactions through a payment card or similar device,
  - Execution of credit transfers, including standing orders.
- Execution of payment transactions where the funds are covered by a credit line<sup>2</sup> for a payment service user;
  - Execution of direct debits, including one-off direct debits,
  - Execution of payment transactions through a payment card or similar device,
  - Execution of credit transfers, including standing orders.
- Issuing and/or acquiring payment instruments.

---

<sup>1</sup> An act, initiated by the payer or by the payee (intended recipient of funds), of placing, transferring or withdrawing funds, irrespective of any underlying obligation between the payer and the payee.

<sup>2</sup> This refers to instances where a service is provided to clients enabling them to complete payment, for example, by way of direct debit using overdraft facilities, a payment card such as a deferred debit or credit card, electronic cheque using overdraft facilities or credit transfer (such as a standing order) using overdraft facilities.



- Money remittance.
- Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of goods and services.

The term “payment accounts” covers, for example, current accounts, e-money accounts, certain types of savings accounts and credit card accounts. Hence payment services will include, inter alia, services such as deposits and withdrawals from current accounts or savings accounts, card issuing, and money remittance, as well as electronic payments via direct debit, debit cards, credit cards, standing orders, and, payments from other digital services. Cash only transfers or cheque-based transfers are not included.

Activities which are excluded from the scope of the PSD include payment transactions through commercial agents, money exchange business such as bureaux de change, payment transactions between various financial intermediaries and institutions within payment or securities systems, payment transactions linked to securities asset servicing (for example, dividend payments, share sales or unit redemptions), payment services provided within a limited network of service providers or for a limited range of goods or services (for example store cards), and, payment services provided by telecommunications operators other than as an intermediary between payer and payee.

### How does this affect Gibraltar?

Gibraltar as part of the EU is required to implement the PSD by 1<sup>st</sup> November 2009. The Directive will impact firms providing payment services and the end users of these services.

This includes:

- Banks
- Building Societies
- E-money issuers
- Money transfer operators e.g. money transmitters
- Non-bank credit card issuers

### Key Provisions of the PSD

The PSD introduces the concept of “authorised payment institutions” that are not banks, building societies or e-money issuers. Authorised payment institutions will need to comply with the capital requirements and safeguarding of funds requirements set out in Articles 6 to 9 of the PSD.

Banks, building societies and e-money issuers are already authorised to carry out payment services as a result of their existing authorisation under the Financial Services (Banking) Act, and will not be required to seek further authorisation or registration.

Article 26 of the PSD also provides for “registered payment institutions” i.e. small payment institutions. These types of firms *may* be able to take advantage of a waiver from the prudential requirements set out in the PSD as long as turnover does not exceed €3million of payment transactions per month (averaged over 12 months) **and** none of the individuals responsible for the management and operation of the business have



been convicted of offences relating to money laundering or terrorist financing or other financial crimes<sup>3</sup>.

## Conduct of Business Requirements

The PSD sets out conduct of business requirements on the information that must be provided to customers and users of payment services. The Directive also sets out the rights and obligations of customers and providers. These requirements would apply to both authorised payment institutions and registered payment institutions, as well as banks, building societies and e-money issuers.

The conduct of business requirements apply only to transactions where the payment service providers of both the payer and the payee are located in the EEA and where the payment transactions are denominated in Euro, or in the currency of a member state that has not adopted the Euro (for example, Sterling in the case of the UK). However, all firms providing payment services must either be authorised or registered irrespective of where they send payments for their customers.

So, for example, a payment service provider based in Gibraltar that facilitates payment services for a customer between Gibraltar and India will be required to be authorised under the PSD, but most of the conduct of business provisions will not apply to the transactions executed. However, a payment service provider based in Gibraltar that facilitates payment services for a customer between Gibraltar and France, is not only required to be authorised under the PSD, but also has to ensure that the conduct of business provisions are complied with and applied in respect of the transactions executed.

## Passporting

Firms authorised as payment institutions in accordance with the PSD will be able to passport payment services business and operate in other member states of the EU. Small payment services firms that are not authorised under the PSD but are instead registered, will be unable to passport their services.

## Implementation Timescale

As indicated previously, Gibraltar as part of the EU is required to comply with the Directive which requires transposition by 1<sup>st</sup> November 2009. This means that the relevant laws and rules will need to be in place by then. The Government of Gibraltar has responsibility for the implementation of the PSD.

Published by:  
Financial Services Commission  
Suite 943 Europort  
Gibraltar  
March 2009

---

<sup>3</sup> Member States may opt to take advantage of this waiver but do not have to. In Gibraltar, this will be a matter for the Government of Gibraltar to consider when transposing and implementing the Directive. It is therefore not yet clear whether such derogation from the requirements will be available to small payment institutions.