

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 12 November 2009

To all the persons concerned.

CIRCULAR CSSF 09/420

Re: Entry into force of the law of 10 November 2009 on payment services.

Ladies and Gentlemen,

We are pleased to draw your attention to the publication of the law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems (the "Law") whose main purpose is to transpose Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (the "Directive"), amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, as well as 2006/48/EC and repealing Directive 97/5/EC, into national law.

The purpose of the Directive is to lay down the legal basis for the construction of a **single European market in payment services**, namely the single euro payments area (SEPA) initiated by the financial sector and backed by the European Commission and the European Central Bank. Means of payment, whether they are coins, banknotes, cheques, payment cards, credit transfers or direct debits, are part of our everyday life and play a crucial role in the proper functioning of our economy.

It is important to note that the aim of the Directive is to achieve **full harmonisation** and that, except for the options laid down in the Directive, the Member States shall not maintain or introduce provisions other than those laid down in the Directive.

For consistency purposes, the Law gathers all the legal provisions transposing Community texts relating to payments in a **single legal act**. It replaces the provisions of the law of 5 April 1993 on the financial sector, which transposed Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions and Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

In principle, the Law applies to all **means of payment**, including electronic payments but excluding payments executed in bank notes and coins.

The Law applies to all **payment service providers**. Besides the new category of payment institutions, these include credit institutions, electronic money institutions, post office giro institutions, central banks, Member States of the European Union, their regional and local authorities.

All these payment service providers are required to comply with Titles III and IV of the Law. However, credit institutions, electronic money institutions as well as the Entreprise des Postes et Télécommunications are not required to be authorised under the new Law.

The Law introduces a **new status of financial institution, i.e. payment institutions**, and defines its **authorisation and operating requirements**. This category includes, among others, firms that provide payment services only on an incidental basis and that shall be named "hybrid payment institutions".

Article 2 of the Law provides that Titles I to IV, dealing with the definitions, scope, payment services providers, information requirements and rights and obligations of the users and providers of payment services, except for the chapter relating to electronic money institutions, shall apply to the services provided by a payment service provider located in Luxembourg.

The provisions of Titles III and IV apply to the payment services provided in Euro, in the currency of a Member State outside the eurozone and the currencies of the States of the European Economic Area (EEA), i.e. Liechtenstein (CHF), Norway (NOK) and Iceland (ISK).

Article 2(1) concerns "two-legged-in" operations¹ and mentions the four situations in which the payment service providers located in Luxembourg is required to comply with Titles III and IV. The only exception to this principle is Article 99 of the Law which refers to the value date and the availability of the funds which is also applicable to the payment operations where one of the payment service provider is located in a third country.

¹ Both the payer's and payee's payment service providers are located in Luxembourg.

Title III of the Law clearly defines the **information** that payment service providers must provide or make **available to users** of such services. Moreover, the Law distinguishes if the user makes a single payment transaction or a set of transactions presupposing the existence of a framework contract binding the user to the payment service provider. The parties may agree not to apply, in whole or in part, the provisions of Title III when the payment service user is not a consumer.

Title IV of the Law includes provisions relating to **rights and obligations in relation to the provision and use of payment services**. This Title reproduces Title IV of the Directive faithfully. The parties have a certain contractual freedom where the payment service user is not a consumer. In this event, the parties may decide not to apply or to only apply in part the provisions expressly listed in Article 78 relating to the scope of the provisions of Title IV of the Law.

With the entry into force of the Law, **the oversight of the payment and securities settlement systems** subject to the scope of Directive 98/26/EC was transferred from the CSSF to the Banque centrale du Luxembourg (the "BcL"). Consequently, operators of payment or securities settlement systems will no longer be subject to Ministerial authorisation nor to the prudential supervision of the CSSF². Moreover, the BcL is competent for the supervision of the payment instruments' security.

Section 5 of Title II of the Law on the **supervision of payment services** lays down that the competent authority for granting an authorisation to payment institutions is the Minister responsible for the Commission de Surveillance du Secteur Financier. The latter is competent for the supervision of payment institutions and compliance with Titles III and IV by payment service providers located in Luxembourg, including by persons benefiting from the waiver under Article 48³ of the Law, as well as by Luxembourg branches of payment service providers whose home Member State is a Member State other than Luxembourg and by agents set up in Luxembourg which these payment institutions engage.⁴

As regards the **insolvency procedures** of payment institutions, the Law provides that they are subject to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as well as to ordinary law on bankruptcy, unless otherwise stipulated in Articles 40 to 44 of the Law. Section 6 of Title II refers both to payment institutions whose home Member State is Luxembourg and to Luxembourg branches of payment institutions whose registered office is located in a third country. The Law provides for a special regime for hybrid payment institutions⁵.

Legal persons under Luxembourg law, that commenced the activities of payment institutions within the meaning of this Law before 25 December 2007 in accordance with

² Article 28-1 of the Law of 5 April 1993 is repealed; as a consequence, the statuses of operators of payment or securities settlement systems are repealed as well.

³ Exemptions under Article 48 are dealt with in the circular relating to the new payment institutions.

⁴ Article 58(1) of the Law.

⁵ Articles 41 and 44 of the Law.

the national law in force, are allowed to continue those activities in Luxembourg until 30 April 2011 without authorisation. If such persons have not obtained authorisation within this period they shall be prohibited to provide payment services as from 1 May 2011.

Similarly, natural or legal persons that commenced the activities of payment institutions within the meaning of this Law before 25 December 2007 in accordance with the national law in force, and who are eligible for waiver under Article 48, are allowed to continue those activities in Luxembourg until 25 December 2010, without being waived in accordance with Article 48 of the Law and entered into the register provided for in Article 36(1) of the Law. If such persons are not waived within this period, they shall be prohibited to provide payment services as from 26 December 2010.

Moreover, it is important to stress that the status provided for by Article 28-6 of the law of 5 April 1993 on the financial sector relating to professionals performing money transfer services is repealed, as money transfer activities are payment services covered by the Annex of the Law. These services may thus be provided by the payment service providers as defined by the Law.

The status of the new payment institutions and their operating requirements, as well as their own funds regime will be covered in a separate circular.

The same applies to the provisions of Titles III and IV of the Law.

Finally, it should be noted that the Law introduces several amendments to the law of 13 July 2007 on markets in financial instruments in order to solve a certain number of issues arising from the direct implementation of those provisions. It also removes any legal obstacle preventing the exchange of information between the public authorities concerned in stressed situations.

Useful links:

https://www.cssf.lu/en/regulatory-framework/?entity_type=15

http://ec.europa.eu/internal_market/payments/framework/index_en.htm

Yours faithfully,

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