

COMMENTS ON THE DRAFT (Version 5.0) OF NLF DIRECTIVE

The stated objective of the Directive is to “ approximate” the laws ,regulations and administrative provisions which member states will have to pass with a view to achieve an internal market for payment services.

When considering the first NLF report issued in December 2003, the objectives have been scaled down; especially nothing is said about pan-European direct debit, value date principles, security. Moreover this 5th draft clearly mentions the possibility for EU Member States to adopt stricter regulations when applying the Directive; so payment service users (corporates, individual customers) may still be facing different implementation rules in the EU for the same payment service.

It clearly appears that this proposed Directive is a very general one aimed at opening the field of payment services to payment service providers not being financial institutions.

To get more specific ,the Draft intends to establish a Payments Committee which will clarify technical aspects of definitions (Title I), clarify the guiding principles for the harmonised application of the waiver (Title II), take account of technical developments and ensure uniform application of the directive in EU Member States. Its objectives are large and well defined in Title V Article 39 (especially development of a simplified standard information sheet for payment services, development of common operable standards, studies on the application of the directive). This Payments Committee will be composed of one representative per Member State of the payment system oversight authority (in practice Central Banks); so all other stakeholders are excluded. But it can be helped by working groups composed of different stakeholders.

EACT must be included in these working groups; moreover, as this Directive will have to be adopted by the EU Parliament, EACT should strive, through contacts with members of the Parliament, to increase the size of the Payments Committee to include representatives of European stakeholders such as the EPC, EACT, Consumers,...

Below are more detailed comments:

Title I Scope and définitions

- among payment service provider, appears a new category “payment institution” as a payment service provider which is not a bank, an electronic money institution, post office giro institutions, central banks. Title II deals specifically with those payment services providers.
- Point of time of acceptance: it is the date on which the payment service provider checks that the conditions for the payment execution are fulfilled and when he executes the payment. But it does not define when and how it happens: the day on which the payment service user sends his order ? the day after ?
- Execution time: the time goes up to the day when the funds are available to the payee. But is it the day when the account is credited or the day (which could be different because of value dating) when the payee can freely use the amount received without incurring interest charges?

The scope of the proposed directive excludes cheques, cash and promissory notes. It seems that payment instruments such as the bank transfer with a defined future maturity date (VCOM in France) are concerned after reading article 28 which clearly mentions the irrevocability date of a payment order to be executed at a specified date in the future.

EACT must at least require that the Title I includes the main payment instruments concerned and not only those excluded.

TITLE II Payment Service Providers

The Directive does not apply to credit institutions as defined by Directive 2000/12/EC, amended by Directive 2000/12/28, electronic money institutions as defined by Directive 2000/46/EC, central banks and Member States authorities providing payment services.

Financial Institutions as defined in Art. 1 paragraph 5 of Directive 2000/12/EC which provide payment services are included
Post Office Giro Institutions are excluded.

For payment service providers covered by Title II (mainly non banks), Chapter 2 defines how they will be authorised to operate, the scope of their activities, organisational requirements, supervision by competent authorities, possible waivers, exercise of freedom to provide services in all EU Member States;

Chap . 2 , Article 10

Records of operations must be kept up to a maximum of 5 years

Chap . 2 , Article 11

A payment Institution shall not use funds of a payment service user

Chap. 2 , Article 13

Member states may waive the application of some of Chapter 2 provisions when dealing with small operators and other situations

On this Title, EACT has no specific comments.

TITLE III Payment Services

It applies to all payment services providers: those mentioned in Title II and all credit institutions, Central Banks, Post Office Giro. For corporate users (corporates larger than SME), some articles of this Title III may be modified:

- prior information relating to a payment service contract
- framework contracts
- currency exchange
- information relating to a payment transaction
- micro payments
- obligations concerning payment verification instruments
- allocation of losses of unauthorised payment transaction
- refund of a payment transaction
- availability of funds on a payment account

The articles which cannot be changed are

- additional information requirements in Community legislation
- authorization of a payment transaction
- disputed authorization of a payment
- irrevocability of a payment order
- execution for the full amount and levying of fees
- execution time
- liability for the execution of a payment transaction
- exemption and limitations to the rules of data protection
- adequate and effective procedures for the settlement of disputes

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EUROPEAN ASSOCIATIONS OF CORPORATE TREASURERS

EACT should clearly state that SME may also negotiate specific modifications for payment services so that the possibilities offered to large corporates should also be offered to smaller ones. Such a precise distinction between large and medium-small is not practical.

Article 17 .Prior information

Prior information of service must contain , among other, a clear definition of

- time limit and conditions for a refund
- point in time of acceptance of a payment ordertime limit for revoking a payment
- execution time
- etc.

EACT wishes that this prior information is given at least one month before the initial payment order and that the payment service provider keeps the proof that the payment service user has received the information and agreed on the conditions prior to the initial payment order.

Article 18 .Framework contracts

Modifications of contractual agreements in detriment of the user must be communicated no less than one month in advance.

User can use the month's time to reject the changes .

No final fee can be levied in case the user terminates the payment service agreement .

No comment from EACT

Article 20 .Information relating to a payment

Subsequent to the execution of a payment transaction or to the acceptance of a payment order ...the PSP must supply a series of information

Comment Payment execution and Acceptance of payment order remain undefined...

Only one of the two time points/events should be chosen ...

Today, the conditions applied to the specific payment are known after execution (in credit advice or statement) .It looks unlikely that a bank sends an advise prior to execution and then again after execution . Conditions should already be known from contract .

Corporates only check once.

...a reference , which enables the user to identify the payment transaction

Comment the reference identifying the transaction is given by the bank ...It must be re-input by the user. No reference is made throughout the Draft to a unique identifier given by the PSU (payment service user)

Article 21. Micro payments

Micro payments (under 10 Euro) do not require the same level of information

Article 22. Additional Information requirements

A provision that more information may be required by other Community legislation

Comment very generic...does the Commission not know which other requirements exist because of existing Community legislation ? BOP reporting , anti-laundering ?

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Article 23. Authorization of a payment transaction

Seems to refer at the same time to credit and debit-transfer. This makes the text a little obscure .

a payment transaction may be authorised by the payer prior or subsequent to the execution of the payment transaction

Comment Without an example or little more explanation it's hard to imagine the second option

Article 27. Refund of a payment transaction

Par 1. Seems to refer to Direct Debit only ...Obviously, refunds of a credit transfer and a direct debit must be treated differently (and explained separately...)

Comment At the second indent*the payers legitimate expectations* ...is a bit vague

Par 3. It establishes time limits to the refund action ..*Request... at the latest within six weeks of the payer having been informed about the payment transaction in question ...or in any case no more than three months after the actual execution of the payment transaction*

Comment Not very clear formulation *within six week*means pre-knowledge of an incoming direct debit ?

But , in this case it's not a refund... is a refusal to accept the debit .

If it's not prior to the transaction ...how does it coordinate with the other time limit (three months) ?

Does it prefigure PEDD conditions ?

Article 28. Irrevocability of a payment order

Par. 1 . Treating both credit transfer and direct debit in the same paragraph makes it a little complex to understand ...

The *point in time of acceptance* is one of the key parameter "to be defined"

Article 29 Execution for the full amount and levying of fees

Par 1 . It establishes the principle that the full amount must be credited to the beneficiary , *without prejudice to explicit agreements between the payee and his payment service provider* .

Comment What does *without prejudice* exactly mean ? Will payee accept to pay bank charges for credit transfer to his payment service provider?

If bank charges are charged separately from the transferred amount ,everything is O.K. ?

Par 2. *It says that payer and payee both will pay the applicable fees to their respective service provider ...and that the OUR or BEN options are prohibited ...*

Comment . Credeuro / ICP payments have a SHA option and "bene-deduction" is banned ... The beneficiary's PSP cannot charge more than it's customary for domestic payments (generally zero at the receiving end)

Article 30. Execution time

Par .1 For credit transfer ,the maximum allowed period for crediting the beneficiary account is **4 working days**, day 1 being the date in which point-of-acceptance falls

(1+2+1) .

Comment . What the point-of-acceptance really is must be defined .

Par. 2 . Same working days for crediting Direct Debit

Par. 5.*Member states may provide for a shorter execution time for purely national payment transactions*

Comment . Seems in contradiction with SEPA's objectives . What is a purely national payment ? No difference be. national and euro-cross-border paymentsBoth will be euro-domestic payments processed by PEACHs and charged at the same cost .
Unless it refers to the present interim period (up to 2008/10)

Article 31. Availability of funds on a payment account

The whole article needs clarification .

It says that PSP makes available the funds to the beneficiary at the point in time when he is credited (by the other bank ..the clearing ...) . This moment may be different depending of payment channels, interbank agreements and practices ...How many banks today are able to credit on line their clients when they get credited ?

When there is a time lag between execution and information received/acknowledged , how does it work ?

Par.1 It equals "availability of funds" to point in time when funds are credited to the account .

The *availability of funds may be delayed* in the two cases of the indents .

Comment . If availability is delayed , are funds credited to the account ? . Can we give a name to the different "type" of dates used ? .For example ...funds are booked to the account on date X (X is "booked" or "transaction date"), may have a different "value date" X+1 (not X – 1 ?) and still another " liquidity date" X+ 5 .

A PSP shall cease to make funds available from the point in time at which they have been debited (from?) him

Comment Same comment as the "credit" of funds

Par. 2 *The point in time of debit and credit shall be respectively the debit and credit value on a payment account*

Comment . Will value date and book/transaction date always be equal ?

In the case of "delayed availability" ...What is value date ?

Article 32 . Liability for the execution of a payment transaction

Par 1 . *If a payment order is executed in accordance with the information or unique identifier specified by the PSP*the execution is deemed correct

Comment . The **or** probably refers to the current situation where in certain countries (like France) the account number prevails over the description of the account ownership.
But... this is one diversity that should be eliminated ...

Par 6. PSP's liability does not apply *in cases of forces majeure and other legal obligations expressly covered by national or Community legislation , such as money laundering and anti-terrorist financing provisions* .

Comment . The cited legal obligations are known beforehand and should be factored in the SLA/ payment contract .If they cause unexpected difficulties or block a payment (without fault on the part of the payer ...) the liability should still apply .

For these occurrences and for cases of force majeure which inhibit the correct functioning of interbank or bank infrastructure , it may be a good idea if the banking system ,as a whole, would set up a fund or an insurance to take on these liabilities .

Article 34. Out of court Redress

Member States should encourage the bodies responsible for out-of-court settlement of disputes to co-operate in the resolution of cross-border disputes concerning payment services.

It could be an area where EACT could take initiatives

TITLE IV Level of harmonisation and mutual recognition

Article 35 .

Par 2 . *Member states are allowed to implement national requirements which may go beyond the level harmonised by the Directivemember states may apply additional information requirements which may be contained in Community legislation*

Comment . Allowing this latitude to members states is very dangerous and could lead to different implementations. In payments, unlike other areas, there seem to be no need to give member states this leeway .

Also.....*additional information requirements which may be contained in Community legislation* should be known to the Commission and listed in the draft .

TITLE V Payments Committee and final provisions

Article 37 .

Par 1.Cites implementation measures to insure uniform application of the Directive, in terms of clarification of some of the points included in the Directive, namely

- Article 2 .. Definitions
- Scope of activities (Annex...see below)

- (1) Execution of payment transactions, where the funds are held as a deposit according to Directive 2000/12/EC with the payment service provider;
- (2) Execution of payment transactions, where the electronic money according to Directive 2000/46/EC is issued by the payment service provider.
- (3) Execution of payment transactions, where the funds accepted by the payment service provider from the payment service user are for the sole purpose of rendering a payment service.
- (4) Execution of payment transactions, where the transfer of funds is made against a credit line to the benefit of a payment service user.
- (5) Issuing payment cards to a payment service user, acquiring of payment transactions on behalf of a payment service user and issuing of guarantees for payment transactions

- harmonized application of Waiver of Art. 13 where member states are allowed to ignore/modify some of the requirements for access to Payment services in case of small operators or other circumstances

The clarifications foreseen do not include a more detailed analysis of key parameters of payment services .

Articles 38 and 39 Establishment and tasks of the Payments Committee

This Committee must assist the Commission to ensure the proper implementation of this Directive .



It's this Committee that must tackle the analytical and implementation work deemed necessary prior to implementation
Here is the list of tasks

- a) ensuring that national implementation measures enter into force as far as possible at the same time and in a harmonised manner;
- b) preparing studies on the application of this Directive;
- c) examining market developments and the need for clarification on the definitions of this Directive and the scope of payment services in the Annex;
- d) monitoring the implementation of the waiver in Article 13 of this Directive and examining the need for clarification on the application;
- e) development of a simplified standard information sheet for payment services covering the information requirements stipulated by this Directive in a succinct and user-friendly way.
- f) examining the need for amendment of this Directive in respect to the creation of an Internal Market for payments and the necessary infrastructure and procedures for a Single European Payment Area
- g) examining the level of security payment systems and the development of common interoperable standards

The Committee is made up of one representative par Member State of the payment system oversight authority (i.e. Central Banks). There is some room for “experts and qualified persons” that might be invited to participate in the meetings.

Mention of “**stakeholders representatives**” is made in connection to the **working groups** that the Committee may decide to set up for **fact finding exercises and the exploration of specific questions**.

Comment . **The Payment Committee is a good opportunity for EACT , even though corporates participation is left at its discretion and could be limited .**

Still, it's an interesting opening and EACT should insist with the EU Commission and the ECB to be included in the picture.

Before the discussion in the EU Parliament, EACT should strive to enlarge the size of this Payments Committee by asking to add one representative for each category of stakeholders. EACT should be the corporate representative. On the basis of the actual European Parliament attitude, EACT could easily find members supporting this request. And it is very important as consumers representatives certainly will present the same request and likely get it. It would be a pity if only consumers would be part of the enlarged Payments Committee.

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