

The Payment Services Directive

**Presentation by John Burns
to**

The E- Money Association

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The Unknowns – By Donald Rumsfeld

As we know,
There are known knowns.
There are things we know we know.
We also know
There are known unknowns.
That is to say
We know there are some things
We do not know.
But there are also unknown unknowns,
The ones we don't know
We don't know.

—Feb. 12, 2002, Department of Defense news briefing

Aims of the PSD



-
- **Regulation and Registration of Payment Institutions (FATF SRVI)**
 - **Open Payments Markets to new providers (Risk Issues)**
 - **Consumer Protection**
 - **Facilitate SEPA**

PSD Structure



- **Title I – Subject Matter, Scope & Definitions**
- **Title II – Payment Service Providers**
- **Title III – Transparency of Conditions & Information Requirements for Payment Services**
- **Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services**
- **Title V – Implementing Measures & Payments Committee**

The Payment Services Regulations 2009



- **UK implementing legislation**
- **Largely copy out of Directive**
- **FSA Approach Document, Perimeter Guidance & e-learning package**
<http://www.fsa.gov.uk/Pages/About/What/International/psd/>

Title I – Subject Matter, Scope & Definitions (1)



- **Who is a payment service provider?**

- Banks/B Socs
 - E-money issuers
 - The Post Office
 - Payment Institutions
 - ECB/ BofE
 - National/Local Government
 - Credit Unions
- Already FSA authorised/registered
- Exempt from authorisation
- Authorised/registered under Title II
- Exempt from the Directive

Title I – Subject Matter, Scope & Definitions (2)



Scope:

- **Title II – All payment services in all currencies**
- **Titles III & IV**
 - Only apply to payments in € or non € Area member State currency (i.e. £ payments in the UK)”
 - Both payer’s and payee’s PSPs must be located in the Community (with the exception of Art 73)

Title I – Subject Matter, Scope & Definitions

(3)



Payment Services

- **1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.**
- **2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.**
- **3. Execution of payment transactions, 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 a similar device,**
 - **- execution of credit transfers, including standing orders.**

Title I – Subject Matter, Scope & Definitions

(4)



- **Payment Services (Continued)**
- **4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:**
 - - execution of direct debits, including one-off direct debits,
 - - execution of payment transactions through a payment card or a similar device,
 - - execution of credit transfers, including standing orders.
- **5. Issuing and/or acquiring of payment instruments.**
- **6. Money remittance.**
- **7. 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 the goods and services.**

Title I – Subject Matter, Scope & Definitions

(5)



Negative Scope:

- **Pure cash transactions**
- **Cheques & paper instruments**
- **Settlement system transactions**
- **Technical services**
- **Limited use instruments (e.g. Oyster Cards, store cards etc.)**
- **Supermarket cashback**
- **Independent ATM providers**

Title I – Subject Matter, Scope & Definitions (6)



Important Definitions:

- **Payment account**
- **Framework contract**
- **Micro-enterprise**
- **Unique identifier**
- **Payment instrument**
- **Business day**
- **Agent**

Title II – Payment Service Providers

(1)



Payment Institutions:

Anyone providing payment services as a business, who is not :

(a) exempt, or;

(b) already a credit institution or e-money institution will need to be authorised or (if they meet the necessary requirements) registered by the FSA.

But note transitional provisions – if already providing payment services before 25 December 2007, do not need to be authorised until 30 April 2011 (or registered until 25 December 2010)

Title II – Payment Service Providers (2)



Article 28:

Access to Payment Systems

Competition law based provision and therefore the responsibility of the OFT rather than the FSA.

Title III – Transparency of Conditions and Information Requirements for Payment Services (1)



Provisions in this Title are default for all customers, but PSPs may agree differently with customers who are not:

- Consumers;
- Micro-enterprises; or
- Small charities (<£1 million income)

“the “Corporate Opt-out””

Title III – Transparency of Conditions and Information Requirements for Payment Services (2)



- **Single Payment Transactions Specifies**

- Info to be provided to payer before transaction;
- Info to be provided to payer after receipt of payment order; and
- Info to be provided to payee after execution

Title III – Transparency of Conditions and Information Requirements for Payment Services (2)



Derogation for low value payment instruments & e-money

- **Payment instruments where transactions cannot be for more than €30 or have spending limit/store funds of not more than €150**

Title III – Transparency of Conditions and Information Requirements for Payment Services (3)



- **Framework contracts (Account T&Cs)**
 - Detailed set of requirements as to what must be in T&Cs
 - 2 months notice for changes to framework contract
 - Maximum one month notice for customer to terminate.
 - No charge allowed for termination of framework contract after 12 months

Title III – Transparency of Conditions and Information Requirements for Payment Services (4) FSA[®]

- **Framework contracts (continued)**
 - Information provisions as per single payment transactions but may be agreed with customer to be made available “at least monthly”

Title III – Transparency of Conditions and Information Requirements for Payment Services (5)



- **Other information provisions**

- Currency conversion

- Full details must be provided to customer by person providing service, before initiation of payment transaction.

- Info on additional charges/reductions for use of particular payment instrument

- Obligation on merchant to advise before initiation of payment transaction

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (1)



- **Scope:**
Provisions in this Title are default for all customers, but there is a list of provisions where PSPs may agree differently with customers who are not:
 - Consumers;
 - Micro-enterprises; or
 - Small charities (<£1 million income)
- “Corporate opt-out”***

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (2)



- **Charges:**
The payer and payee of a payment transaction must each pay their own PSP's charges – "Our" & "Ben" charging models prohibited.
- **Derogation from certain provisions for low value payment instruments and e-money**

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (3)



Authorisation & Consent

- **Form and procedure agreed between payer & PSP (T&Cs)**
- **Consent may be withdrawn at any time up to “point of irrevocability”**
 - Push transactions – point in time of receipt by payer’s PSP

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (4)



Point in Time of Receipt of Payment Orders

- Key element in assessing PSP compliance with requirements
- Identifies “D” in “D+1” & “D+3” requirements
- = Time (day) order received by payer’s PSP
- PSP may set cut-off time “*near the end of the business day*” after which deemed to have been received on next business day
- PSP and customer may agree future dated payment.

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (5)



Refusal of Payment Orders

- **PSP must notify customer if it refuses to execute instruction (including reason, if possible)**
- **PSP may include in T&Cs right to charge for notification “*if the refusal is reasonably justified*”**
- **If all the conditions in T&Cs are met, PSP is prohibited from refusing unless execution is otherwise unlawful**

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (6)



Amounts transferred & amounts received

- **The amount received by the payee must be the amount sent by the payer. No charges may be deducted by any PSP in the chain.**
- **Exception – Payee’s PSP may deduct charges by agreement with payee, but full details of charges must be provided.**
- **Push payments – Payer’s PSP liable to payee for any charges deducted.**

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (7)



Execution Time & Value Date

Scope

These provisions only apply to transactions:

- In Euro;
- In Sterling; and
- Involving one currency conversion between Euro & Sterling

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (8)



Payment transactions to a payment account

- Default provision that from 1 Nov 2009 payer's PSP must ensure funds received in payee's account by end of next business day after the payer's PSP received the payment order ("D+1")
- But until 1 Jan 2012 payer and PSP may agree on a period up to D+3
- Extra day allowed for paper initiated payment transactions

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (9)



Value date & availability of funds

Basic principle – value dating to detriment of customer is prohibited.

- Credit value date no later than business day on which funds credited to PSP's account
- Funds must be available & at payee's disposal immediately after funds credited to PSPs account
- Debit value date must be no earlier than time amount of payment transaction debited to payment account

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (10)



Incorrect Unique Identifier

- **If PSP executes payment order in accordance with unique identifier specified (e.g. sorting code & account number) , it is not liable if funds have gone to the wrong place even if other information with the payment order gave the correct information.**
- **Obligation on PSPs to make reasonable efforts to recover the funds (but may charge for this if agreed in T&Cs)**

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (11)



Non/defective execution of “Push Payments”

- Payer’s PSP liable to payer, unless it can prove that payee’s PSP received funds correctly.**
- If liable, payer’s PSP must restore debited account to state as if transaction had not occurred.**
- If payee’s PSP is liable it must immediately credit & make available amount in question.**
- Both PSPs liable to their customer for interest & charges**

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (12)



Right of Recourse

Where liability for non/incorrect execution is attributable to another PSP or an intermediary, that PSP or intermediary shall compensate the first PSP for losses incurred or sums paid.

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (13)



Force Majeure

There is a force majeure exception to liability under the preceding provisions

Title IV – Rights & Obligations in Relation to the Provision & Use of Payment Services (24)



Complaints

- **FSA obliged to maintain arrangements to enable payment service users to complain to it about breaches of Regulations**
- **FOS will act as out-of-court complaint & redress service for the Regulations**

Title V – Implementing Measures & Payments Committee



Implementing Measures

- **The European Commission has the power to adapt:**
 - list of payment services;
 - definition of micro-enterprise; and
 - Amount for Title II waiver
- **Payments Committee to assist**

Title VI – Final provisions



-
- **Full Harmonisation**
 - **Review no later than 1 November 2012**

Clarity - by Donald Rumsfeld

I think what you'll find,

I think what you'll find is,

Whatever it is we do substantively,

There will be near-perfect clarity

As to what it is.

—Feb. 28, 2003, Department of Defense briefing

Progress to Implementation



- **6 Member States still to implement**

- Estonia 12/09
- Greece End 09
- Latvia 12/09
- Poland End 09
- Finland Title II 1/10/10
Titles III & IV 1/5/10
- Sweden 1/4/10

Issues



-Passporting

Guidelines on Commission website

[http://ec.europa.eu/internal_market/
payments/docs/framework/transposition/
passporting_guidelines_en.pdf](http://ec.europa.eu/internal_market/payments/docs/framework/transposition/passporting_guidelines_en.pdf)

But.....

Issues



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- **National Derogations**
 - **Differences in interpretation**
 - **Willingness of PSPs to change the way they do things**

The Future

- **EMD2**
- **Mobile Payments**
- **New entrants**
- **.....**



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