

PSD Implementation – An Industry Update

Webinar

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Ruth Wandhöfer
EMEA Head Payments Strategy and Market Policy
Treasury & Trade Solutions, GTS



Agenda

- PSD overview – recap
- Official transposition timetable (as at July 2009)
- PSD Banking Industry Guidance: purpose and overview
- Selective Analysis and Guidance on the following areas:
 - Scope: EU versus leg-out transactions, key definitions
 - Information Requirements: framework contracts, interest and exchange rates
 - Payments Processing Conduct of Business Rules: full amount and charging, currency conversions, value dating, cash placements
- Conclusions and Outlook

PSD key facts (1/2)

Objectives of the PSD: competition, efficiency and innovation, customer protection

- The PSD represents a legal framework for payments within the European Union Single Market, covering the EU 27 as well as Norway, Iceland, Lichtenstein (not Switzerland!).
- The PSD is a European Directive, which means that all Member States will have to implement PSD rule into their national legislation, a process called transposition, by the deadline of the 1st November 2009.
- The PSD applies to payment transactions in Euro and all other Member State currencies within the Single Market, where those are provided by payment service providers located in this Community.
- The PSD will cover all electronic payment services, while cash to cash transactions and cheques are exempted from the scope.
- The PSD does not intend to cover payment services associated with securities asset servicing.
- PSD focus is on customer protection (not just consumer protection), covering the relationship between all providers and users of payments services.

PSD key facts (2/2)

Banks need to get ready for compliance and enhanced competition

- With the aim of enhancing competition the PSD creates a new lightly regulated entity called a “Payments Institution”, allowing non-banks to handle payments and join the banking industry’s payment schemes and associations.
- The PSD also defines conduct of business rules for all payment service providers covering the end to end payer to payee relationship.
- The PSD will have a revolutionary impact on the legal framework between banks and their customers setting stringent rules for information disclosure, conduct of business rules and service provision.
- Harmonised refund rules have been established to support SEPA Direct Debits, while unique identifier primacy ensures for enhanced levels of straight-through-processing.
- Central Bank Reporting requirements for Euro transactions across the EEA still constitute a barrier to the free flow of SEPA transactions.
- Every credit institution that provides payment services will have to comply to PSD conduct of business rules by the 1st of November 2009 when national PSD legislation is expected to be in place.



Transposition timetables - UK, BUL, DK have adopted the PSD

Countries	Adoption																					
	Entry into force																					
	2009																					
	3	4	5	6	7	8	9	10	11	12		3	4	5	6	7	8	9	10	11	12	
AT																						
BE																						
BG	OK																					
CY																						
CZ																						
DE																						
DK			OK																			
EE																						
EL																						
ES																						
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NL																						
NO																						
PL																						
PT																						
RO																						
SE																						
SI																						
SK																						
UK	OK																					

AT - Austria
 BE - Belgium
 BG - Bulgaria
 CY - Cyprus
 CZ - Czech Republic
 DK - Denmark
 DE - Germany
 EE - Estonia
 EL - Greece
 ES - Spain
 FI - Finland
 FR - France
 HU - Hungary
 IE - Ireland
 IS - Iceland

Country codes:

IT - Italy
 LT - Lithuania
 LI - Liechtenstein
 LU - Luxembourg
 LV - Latvia
 MT - Malta
 NL - Netherlands
 NO - Norway
 PL - Poland
 PT - Portugal
 RO - Romania
 SE - Sweden
 SI - Slovenia
 SK - Slovakia
 UK - United Kingdom

PSD: Challenges for banks

Compliance by 1/11/09 will be complicated by a number of challenges...

- Practical challenges:
 - Ts&Cs and sufficiently early send-out
 - Defining requirements for operational and technical changes
- Timeline - being stretched out, but 1/11/09 is fast approaching
 - Many countries have not published PSD draft legislations yet (and Sweden will be late)
- Multi-country implementation – additional challenges:
 - Translation
 - Patchwork of derogations
 - Upgrade of existing laws vs. new PSD law
 - The role of national supervisors varies – guidance very rarely provided

A harmonised PSD approach?

PSD requires common interpretation and implementation...

- Goal of consistent PSD interpretation, supported by:
 - EU Commission Transposition WG and FAQ on the Commission website
- Dialogue with regulators in each domestic market
- At European industry level, practical PSD Implementation Guidance in progress
 - Industry best practice and clarifications crucial, as otherwise significant risk of additional costs and interoperability issues/inter-bank conflicts



PSD EU Level Industry Guidance

The European banking industry PSD Expert Group

- Established in 2007 by the European Banking Federation (EBF) in response to the final publication of the Payment Services Directive at EU level
- Chaired by Citi's Ruth Wandhöfer
- Active participation of the other European Credit Sector Associations – the European Association of Co-operative Banks (EACB), the European Savings Banks Group (ESBG) and the EPC
- Goal: To promote a consistent, high quality and harmonised national transposition of the Payment Services Directive across the Single Market
- Continuous dialogue with the EU Commission Services in DG Market as well as representatives of the EU Council of Finance Ministries during 2008-2009.
- In final stages of preparing high level 'best practice' guidance for banks on the implications of certain provisions at a very practical level.



PSD EU-Wide Industry Implementation Guidance

Structural overview of the PSD EG Guidance document

- General Introduction

- Overview of the structure context and scope of the PSD
- Transposition situation (regular updates will be issued)

Scope and Definitions

- General scope and update on non-standard approach being adopted in some MS to 'One-leg' transactions and usage of derogations
- Key definitions

- Information Requirements

- Best practices in relation to key information requirements

- Payment Transaction Processing

- Best practices in relation to key operational requirements



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Examples: Scope and Definitions

- Definition of a Payment Account:
 - Promotion of a principles-based approach which:
 - Focuses on the underlying purpose and functionality of an account
 - Takes into account the presence of contractual terms which confirm the nature of the account
- Definition of Business Day:
 - Confirmation that business days can differ according to payment product/system/channel
 - Management of customer perception is crucial
- Clarifications on general scope questions:
 - PSD's impact on contractual relationships between banks: inter-bank transactions *per se* excluded
 - Documentary Products – service *per se* excluded, underlying payment transaction could be in scope
 - Securities related transactions excluded
 - Swiss Francs are considered as a PSD currency



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Examples: Information Requirements

- **Framework Contracts:**
 - Focussed on a specific set of terms governing the provision of payment services
 - The 2 months' notice requirement for changes only relates to the framework contract elements of a PSU's Ts&Cs
 - Down to each PSP to determine the structure of an account's contract (integrated or separate)
- **Clarifications on general questions:**
 - Ability to tailor information provided to the payee according to the product/service being provided
 - Means of obtaining consent for exercise of corporate opt-out
 - Ability to 'provide or make available' information via electronic statements



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Examples: Payment Transaction Processing and Rights and Obligations

- Value Dating and Availability
 - Requirement to make available and credit beneficiary on day of receipt by PSP
 - Importance of receiving the funds and the necessary information required to be able credit the payee's account: significant in the context of requirements on a payee's PSP who has their account credited on a non-business day.
 - No option, even if upon client's request, to ensure compensation via 'float' rather than transparent and direct pricing.
- Cash Placement on Payment Account
 - In line with principles in Article 64, so long as customer perceptions are managed clearly, receipt other than during a business day can be deferred to the next business day.
 - Will allow for a wide range of convenient methods of cash placement to continue to be offered to payment service users such as night safes, network extension arrangements.



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Examples: Payment Transaction Processing and Rights and Obligations

- Full amount principle and charging options
 - General rule: no deductions of charges allowed from the full amount where both legs are in the EEA and the transaction is in Euro or another Member State currency
 - The Commission Services' view is that charges code SHA is required by A52(2) where there is no currency conversion, but some Member States have a broader interpretation and are not ruling out use of OUR option in certain circumstances.
 - In any event, transactions outside the PSD scope will still be sent with inter-bank charge codes OUR or BEN, so beneficiary banks would be unwise to reject payments on the grounds that such charge codes are in the message.
 - General expectation that charge code SHA will gain further ground in the cross-border payment context (in addition to effectively being the scheme rule for SEPA CTs).



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Examples: Payment Transaction Processing and Rights and Obligations

- Clarification on general processing questions:
 - PSPs' liability in the event of unauthorised payment transactions:
 - European Commission has confirmed that reasonable investigation can take place in cases of suspicion of fraud
 - For corporate clients and in the context of Article 59 opt-out option, approach to evidence for authorisation contractually agreed – as a consequence application of Article 60 could be different
 - Execution times and currency conversions
 - Currency conversions involving a non-Member State currency completely outside scope (Article 2).
 - D+1 (or D+3 until 1/1/12) still applies where there is one currency conversion between € and another MS currency (where the conversion takes place in that MS and any cross-border transfer in in €).
 - The Commission regards payment transactions involving other types of conversions as 'other' transactions, meaning that up to D+4 is allowed.



Conclusions

PSD: challenge and opportunity

- The PSD will be a major challenge for European Banks
 - Detailed conduct of business rules to comply with
 - Potential for reduced revenue (no float, shorter execution cycles)
 - For some jurisdictions increased liability (in relation to consumer clients)
- Potential legal fragmentation with 30 PSDs
 - PSD is additionally open for non harmonised implementation via Article 86
 - Work still underway to ensure Member States arrive at a shared and coherent interpretation of the PSD scope and key provisions
 - Multi-country banks are particularly at risk
- PSD as an enabler for
 - SEPA Direct Debits
 - Increased efficiencies in payments processing
 - Enhancement of competition with the arrival of payment institutions
 - Streamlined consumer protection
- To reduce the PSD challenge:
 - European guidance at banking industry is being prepared – dissemination via ECSAs and EPC to reach all banks (updates will follow)
 - Domestic PSD industry guidance at banking industry level where available will complement this EU guidance in line with additional legal and practical flavours for national jurisdictions.

Questions & Answers

Ruth Wandhöfer
email: ruth.wandhofer@citi.com

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