

# **A case-study: the EU approach to ARS regulation**

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# **A New Legal Framework for Payments in the Internal Market**

- A. Proposal for a Directive on Payment Services in the Internal Market – Autumn 2005**
- B. Proposal for a Regulation on information on the payer accompanying transfers of funds – June 2005**

# A. Proposal for a Directive on Payment Services

## Objectives:

- I. **Foster competition** in the field of payments
- II. **Increase transparency and legal certainty** in the single payment area
- III. **Enhance security and efficiency** of payment infrastructure and products

# New regulatory regime for payment institutions in the EU

- Why

- Currently different regulatory regimes in the EU, ranging from simple registration to full banking license
- Need for a harmonised transposition of SR VI, in line with Internal Market principles
- Need to establish a level playing field in the EU

# New regulatory regime for payment institutions in the EU

## ■ How

- Creation of a 3rd category of payment service providers, besides credit institutions: payment institutions, **including money remitters**
- Payment institution: a “residual category”: a payment service provider that is neither a credit institution nor an e-money institution
- Basic principle: the business of payment institutions does not entail the same prudential risks as credit institutions or e-money institutions

# New regulatory regime for payment institutions in the EU

- Single EU passport on the basis of harmonised conditions
- At present, only credit institutions and e-money institutions, can benefit from mutual recognition in the EU (under respectively Directives 2000/12/EC and 2000/46/EC)
- The mechanism is a licensing regime by the competent authority in the home country, on the basis of harmonised conditions, in order to benefit from mutual recognition in the host country

# Payment Service Providers

Low level of risk

High level of risk

## Directive 2005/./EC

### **Payment institution**

....shall mean a payment service provider, other than a credit institution as defined in Directive 2000/46/EC and a post office giro institution authorised to provide payment services, central banks and public authorities, which is authorised according to the requirements of this Directive

## Directive 2000/46/EC

### **eMoney institution**

.....shall mean an undertaking or any other legal person, other than a credit institution ....which issues means of payment in the form of electronic money

## Directive 2000/12/EC

**Credit institution** ...shall mean an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account

# New regulatory regime for payment institutions in the EU

- **Licensing regime for payment institutions**
- **Authorisation subject to conditions** (communicate the following information to the national competent authorities, in order to prove that its payment operations are commensurate its activities as a payment institution):
  - Programme of operations
  - Business plan
  - Administrative and accounting procedures
  - Internal control mechanisms in order to comply with the requirements of 3rd Money laundering Directive
  - Structural organisation
  - Identity of persons holding, directly or indirectly, qualifying holdings and evidence that they are sufficiently good repute
  - Identity of the lead manager and evidence that he is sufficiently good repute
  - Legal status, address
- **Authorised payment institutions** benefit from **mutual recognition**



# New regulatory regime for payment institutions in the EU

- Tied agents

- They are not obligated to seek authorisation (but in that case, only the principal ARS is responsible in terms of compliance), but they are allowed to do so
- In case the principal ARS is responsible in terms of compliance, it shall nevertheless communicate the name and address of the tied agents to the national competent authority

# New regulatory regime for payment institutions in the EU

- **Supervision of authorised payment institutions**
- **Authorised payment institutions** shall be submitted to adequate organisational requirements with a view to protecting the interests of its users, ensuring compliance with legal obligations, continuity, regularity and smooth functioning, as well as avoiding undue operational risk
- **Authorised payment institutions** shall be submitted to Money Laundering legislation (i.e. CDD, record keeping, STR, etc), in conformity with third Money Laundering Directive
- **Authorised payment institutions** shall be submitted to supervision of competent national authorities; this shall consist of:
  - Requests for information
  - On-site inspections

# New regulatory regime for payment institutions in the EU

## ■ Sanctions

- **In the framework of on-going supervision by the competent authorities**, these may:
  - Issue recommendations and warnings
  - Apply proportionate sanctions
  - Ultimately suspend or withdraw authorization in case of persisting non-compliance

# New regulatory regime for payment institutions in the EU

## ■ Waiver

- **Possibility to waive** the application of some or all of the provisions of the regulatory regime established by the Directive when:
  - The total business of the activities does not exceed EUR 5 million on average and never exceeds EUR 6 million
  - The payment institution holds a vital economic role in micro-financial intermediation, such as providing access to payment services for underprivileged social groups
  - The waiver is in the public interest, in particular for the effective implementation of money laundering rules.
- **No single passport shall be granted** for payment institutions benefiting from the waiver
- At least, **registration shall be required**

## **B. Proposal for a Regulation on information on the payer accompanying funds transfers**

- **Harmonised transposition of SRVII of the FATF in the EU**
- Proposal covers funds transfers, which include money remittance
- One issue of particular relevance to money remittance: applicable thresholds

## **B. Proposal for a Regulation on information on the payer accompanying funds transfers**

### **Applicable thresholds**

- Currently a maximum of 3000 USD
- Review of applicable thresholds: on-going discussions in WGTF
- Provisional agreement in February 2004 – to be endorsed in June after consultation of interested parties

## B. Proposal for a Regulation on information on the payer accompanying funds transfers

- Contents of the provisional agreement regarding cross-border funds transfers below 1000 \$ or €:
- Countries are not obligated to require ordering financial institutions to identify, verify, record, or transmit originator information
- Countries may nevertheless require that incoming wire transfers contain full and accurate originator information

## B. Proposal for a Regulation on information on the payer accompanying funds transfers

### EU views

- **Typologies report on thresholds** demonstrates the **significant risk of terrorist financing for low-value funds transfers**, therefore full traceability of all transfers should remain the final goal: zero threshold for incoming and outgoing transfers



## **B. Proposal for a Regulation on information on the payer accompanying funds transfers**

### **EU views**

- Provisional deal does not ensure that, when originator information accompanies funds transfers, it has been duly verified by the sending financial institution, but risk of money being used to finance terrorists is in the receiving jurisdiction

## **B. Proposal for a Regulation on information on the payer accompanying funds transfers**

### **EU views**

- Crowding-out effect invoked by the US to justify threshold should be further investigated. Investigations could focus on:
  - The possible impact of identification requirements (including verification procedures) on the proportion of remittances going via the un-regulated sector (crowding-out effect)
  - The influence of other factors on the intensity of the use of un-regulated money remittance systems: regulatory regime, cost / efficiency reasons, cultural / proximity reasons

Thank you for your  
attention

[http://europa.eu.int/comm/internal\\_market/payments/  
index\\_en.htm](http://europa.eu.int/comm/internal_market/payments/index_en.htm)

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