

Your questions on PSD

Payment Services Directive 2007/64/EC

Questions and answers

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The answers have been prepared by the Commission services with input, where appropriate, from the Member States.

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Relevant provisions	Article 73(2)	Question no	1
Date of question	20.11.2007	Date of answer	31.1.2008
Issue			
Value date – Debit value date in case of bank holiday			
Question			
<p>Article 73(2) of the PSD states: "Member States shall ensure that the debit value date for the payer's payment account is not earlier than the point in time at which the amount of the payment transaction is debited to that payment account" In the case of a SEPA direct debit collection, the payer's account is held in the books of the 'debtor bank'. According to the cross-border property of the SEPA payment instruments, the due date of a SEPA direct debit collection can be an inter-bank business day for Eurosystem and at the same time, a bank holiday or closing day in the country of the payer. Since it is an inter-bank business day for Eurosystem, the payer's bank will be debited by the Clearing and Settlement Mechanism for the amount of the transaction on the given due date. On the other hand, the payer's bank will not be able to execute the debit booking on the payer's account on the requested due date, since it is considered locally as a bank holiday. My question is consequently: is it allowed for the debtor bank to debit the payer's account on the next (local) banking business day with value date equal to the inter-bank settlement date applied by the Clearing and Settlement Mechanism for the same transaction? Please note that the same issue applies to the credit booking on the payee's account in case of local bank holiday in the payee's country. In that case, the value date applied would be earlier than the point in time at which the amount of the payment transaction is credited to the payee's account.</p>			
Answer			
<p>In case the SEPA direct debit collection happens on an inter-bank business day for the Eurosystem which is at the same time a bank holiday in the country of the debtor bank, the debtor bank can only debit the payer's account on the following business day. According to Article 73(2) of the PSD the debit value date cannot be earlier than the point in time at which the amount of the payment transaction is effectively debited to that payment account. Consequently, the debit value date has to be equal to the day on which the account is debited and cannot be an earlier inter-bank business day. As far as the credit value date is concerned, the latter can be prior to the day of the actual crediting of the account as Article 73(1) states that "the credit value date...is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account."</p>			

Relevant provisions	General		Question no	2
Date of question	20.11.2007	Date of answer	31.1.2008	
Issue				
Payment Institution –Application				
Question				
Which registrars in which countries currently accept an application under the PSD to become a Payment Institution? Some countries may not be aware of the PI, so which EU country is able to accept applicants?				
Answer				
<p>To date, the relevant provisions on applications for authorisation under Title II of the PSD have not yet been transposed in any of the Member States. Only the UK has announced the decision to assign responsibility for supervision of payment services in the PSD to the FSA. This information is available in our webpage concerning Member States competent authorities for the authorisation and supervision of payment institutions (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf) and national public registers of payment institutions (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/public_registers_en.pdf). Both pages will be regularly updated with the information received from Member States.</p>				

Relevant provisions	Article 88(2)	Question no	4
Date of question	14.12.2007	Date of answer	31.1.2008
Issue			
Transitional measures – Grandfather clause			
Question			
<p>Is the time limit for notification under Article 88(2) valid? If your answer is affirmative, please provide me the reason for establishing a derogation only for those entities.</p> <p>The article establishes transitional provisions regarding the entities that have commenced payment activities before 25.12.2007, meet the requirements laid down in Article 24(1)(e) from Directive 2006/48/EC and that notified the home competent authority of these activities before 25.12.2007. It seems that the time limit established for the notification (25.12.2007) is not relevant taking into account that the obligation regarding the authorisation/notification for payment institutions has been introduced under the Directive 2007/64. The notification required under Article 88(2) isn't compatible with notification for doing business on European passport (there are additional conditions for granting this passport) or with the information obtained in the context of the consolidated supervision (it is possible that the authority responsible for consolidated supervision is not the home competent authority).</p>			
Answer			
<p>The provision of payment services has been regulated very differently in Member States. Although in more than half of the Member States the payment services that have been included in the PSD for the scope of business of the new authorisation for payment institutions have not been regulated in the past, in some other Member States some persons can provide these services (such as money remittance, payment card issuance and acquiring, mobile payment services or post-paid billing) after having met the conditions required by the current national law for registration. The grandfather provision under Article 88 of the PSD aims to make "transitional arrangements in accordance with which persons who have commenced the activities of payment institutions in accordance with the national law in force before the entry into force of this Directive (25 December 2007) may continue those activities within the Member State (that means, in accordance with the national law and without benefiting from the advantages of the European passport) concerned for a specified period" (until 30 April 2011).</p>			

Relevant provisions	Article 73(1)		Question no	6
Date of question	5.2.2008	Date of answer	19.3.2008	
Issue				
Value date – Credit value date in the event of a bank holiday				
Question				
<p>In your one of your answers published on 31 Jan 2008 you state "As far as the credit value date is concerned, the latter can be prior to the day of the actual crediting of the account as Article 73(1) states that "the credit value date...is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account." My understanding of the PSD intention, as stated in Recital 45, is to outlaw the practice whereby banks gain interest through delaying giving credit to their customers. Therefore in the credit example you give Article 73(1) requires that the bank must give the customer value on the date the bank was credited via the Clearing and Settlement Mechanism (ie. to the payee's payment service provider's account) even where this is the day before the bank can actually pass the entry onto the customer's account because of a local bank holiday. In your answer you say the banks can give credit a day early whereas I believe the bank must do so.</p>				
Answer				
<p>If the payee's payment service provider decides to credit value dates the payee's account before his account has been credited this would be completely in line with Article 73(1) and Recital 45 as this practice favours the payment service user. The payee is already given interest for funds which have not been received by the payment service provider himself.</p> <p>By contrast, once the payee's payment service provider's account has been credited, he is immediately obliged to make the funds available to the payee according to the second subparagraph of Article 73(1), even though this would fall on a local bank holiday. As for the credit value date, this has to be no later than the business day on which the payee's payment service provider's account has been credited. Therefore, in the case the payee's payment service provider's account was credited on a day where only interbank clearing mechanisms are operating, but which is a local bank holiday, the credit value date for the customer will be the next business day.</p>				

Relevant provisions	Article 8	Question no	7																				
Date of question	22.2.2008	Date of answer	11.4.2008																				
Issue																							
Clarification of 'payment volume'																							
Question																							
<p>Article 8 of PSD is slightly differently understandable for us regarding the calculation of own funds under Method B. It is unclear what is meant by the words 'payment volume' (PV) as it may treat at the same time a total amount of payment transactions (or number of transactions) but also a total monetary value of payments. So could you please specify this? For example own funds calculation in case of section (a) 4.0% of the slice of PV up to EUR 5 million – what is exactly meant by this? Could you please provide us also some examples of calculation of own funds under Method B.</p>																							
Answer																							
<p>The expression 'payment volume' used in the third subparagraph of Article 8(1) (Method B for the calculation of the own funds of a payment institution) relates to the amount of the payments (total monetary value of payment transactions) and not to their number.</p> <p>The approach used in Method B is therefore based on the total value of payment transactions executed by the payment institution in the previous year, which has to be divided by 12; this result is to be used for calculating the sum of the following, using the slices until the payment institution's payment volume (PV) is reached:</p> <p>PV (EUR million) – Multiple of PV (%) +</p> <table> <tr> <td>Slice 1 – up to 5</td> <td>x</td> <td>4</td> <td>+</td> </tr> <tr> <td>Slice 2 – 5 to 10</td> <td>x</td> <td>2.5</td> <td>+</td> </tr> <tr> <td>Slice 3 – 10 to 100</td> <td>x</td> <td>1</td> <td>+</td> </tr> <tr> <td>Slice 4 – 100 to 250</td> <td>x</td> <td>0.5</td> <td>+</td> </tr> <tr> <td>Slice 5 – above 250</td> <td>x</td> <td>0.25</td> <td></td> </tr> </table> <p>Then, the result obtained must be multiplied by the scaling factor K defined in paragraph 2 of the same provision, as follows:</p> <p>0.5 for payment services under point 6 of the Annex (money remittance) 0.8 for payment services under point 7 of the Annex (digital operators) 1.0 for any of the payment services listed in items 1 to 5 of the Annex</p> <p>Example: a mobile phone payment operator has total payment transactions the previous year of EUR 2.4 billion.</p> <p>Step 1: PV = EUR 2.4 billion divided by 12 = EUR 200 million</p> <p>Step 2:</p> <p>4% of EUR 5 m (EUR 0/EUR 5 m slice) = EUR 200 000 + 2.5% of EUR 5 m (EUR 5/EUR 10 m) = EUR 125 000 + 1% of EUR 90 m (EUR 10/EUR 100 m)= EUR 900 000 + 0.5% of EUR 100 m (EUR 100/EUR 250 m) = EUR 500 000 Total = EUR 1 725 000 x 0,8 = EUR 1 380 000</p> <p>So this method would require the payment institution will have to hold ongoing capital of, at least, EUR 1 380 000.</p>				Slice 1 – up to 5	x	4	+	Slice 2 – 5 to 10	x	2.5	+	Slice 3 – 10 to 100	x	1	+	Slice 4 – 100 to 250	x	0.5	+	Slice 5 – above 250	x	0.25	
Slice 1 – up to 5	x	4	+																				
Slice 2 – 5 to 10	x	2.5	+																				
Slice 3 – 10 to 100	x	1	+																				
Slice 4 – 100 to 250	x	0.5	+																				
Slice 5 – above 250	x	0.25																					

Relevant provisions	General		Question no	9
Date of question	14.3.2008	Date of answer	11.4.2008	
Issue				
Transposition				
Question				
I have the information that in one of the Member States the transposed PSD will enter into force already in January 2009 – not in November. Which is this Member State? Have all the other 26 Member States committed to transpose by November 2009?				
Answer				
According to our sources, all 27 Member States intend to introduce the necessary legislation for implementing the obligations of the PSD into their respective domestic laws well before the final deadline for transposition. Five of those Member States have also indicated that they would have the required legislation formally adopted by end-2008. In addition, there is a broad consensus on a common date for the entry into force of the implementing measures. In fact, most of the Member States have already indicated that the legislation implementing the PSD into their respective domestic laws will enter into force on 1 November 2009. We are not aware of plans to apply the new rules as from 1 January 2009 in any of the Member States.				

Relevant provisions	Article 3(h)	Question no	10
Date of question	26.3.2008	Date of answer	15.4.2008
Issue			
Scope – Clearing and settlement service models			
Question			
<p>My firm provides clearing and settlement and ancillary services to regulated financial services firms. Under one of our clearing and settlement service models, we maintain customer accounts on our system to facilitate the settlement of executed investment transactions. This will naturally include the receipt and transmission of customer funds through payment systems to support this business. We are not a credit institution or e-money issuer. We accept funds onto customer accounts in lieu of investment transactions. Such funds can be received in via direct debit or card payment. Monies held that are not required to settle investment transactions can be paid back to the customer on their instruction (either to their originating account or another account anywhere in the world) or to a third party, who again may be based anywhere. Would such activities (including the maintenance and operation of the customer accounts) fall within the definition of payment services set out in the Annex of the Payment Services Directive? If the Payment Services Directive does apply to my firm, do we need to apply to the FSA for authorisation as a payment institution or would we already be 'grandfathered' in?</p>			
Answer			
<p>Under Article 3(h) payment services provided only to other payment service providers or financial institutions fall outside the scope of the PSD. However, if such services were provided directly to the payment service user under an agreement between your firm and the payment service user, these services would fall within the scope of the PSD and you would have to seek authorisation from the designated competent authority in your home Member State. If the conditions under Article 88 are met, your firm could benefit from the transitional provisions laid down in this Article.</p>			

Relevant provisions	Article 4(14)	Question no	11
Date of question	14.4.2008	Date of answer	22.5.2008
Issue			
Payment account versus mortgage accounts			
Question			
<p>Are certain types of mortgage accounts that include payment facilities included in the scope of the PSD? Whereas initially, it seemed clear that the scope of the PSD would only cover payment accounts with an external payment function including e-money, credit cards and current accounts, the wording of this paragraph seems to clearly broaden the scope of the PSD to include, for instance mortgage accounts which include payment facilities in order to reduce the overall mortgage balance. Can you clarify exactly what the scope of the PSD is, in particular with regard to accounts that combine mortgage and payment facilities?</p>			
Answer			
<p>Mortgage accounts established by the mortgage lender (e.g. a credit institution) in conjunction with a mortgage loan on a residence, into which the borrower is required to make regular periodic payments, are not to be considered as 'payment accounts' within the meaning of the PSD as the holder of the debt is the lender: in case of early repayments, the lender (e.g. the credit institution) is to be considered as 'the payee' (and not only as a payment service provider). However, when one account combines e.g. mortgage, saving and payment facilities in order to reduce the overall mortgage balance, this should be considered as 'payment account' within the meaning of the PSD as far as it is used for making payment transactions.</p>			

Relevant provisions	Article 16(3)	Question no	12
Date of question	15.4.2008	Date of answer	22.5.2008
Issue			
Payment institutions activities – Credit			
Question			
<p>Can a Payment Institution (PI) by sole virtue of its authorisation as PI, engage in the provision of credit related to its payment services, i.e. is there no longer a separate consumer credit authorisation required; therefore non-bank (owned) PIs could start offering a certain form of consumer credit (under the conditions laid out in Article 16(3)) across all EU Member States without legal barriers? What national rules/laws, other than conduct of business rules, will still apply to the provision of credit in relation to payment services?</p>			
Answer			
<p>A payment institution which has been authorised in accordance with Articles 5 and 10 of the PSD can grant credit in line with the requirements laid down in Article 16(3) (see also Recital 13). As far as consumer credit is concerned, the national law implementing Directive 87/102/EEC applies. In addition, other relevant legislation regarding conditions for granting credit to consumers which have not been harmonised by the PSD also apply, as stated in Article 16(5).</p>			

Relevant provisions	Article 28(1)	Question no	13.1
Date of question	15.4.2008	Date of answer	22.5.2008
Issue			
Access to payment systems – Card schemes			
Question			
Does the article imply that a payment system may not impose different requirements for access upon a Payment Institution (PI) as opposed to a credit institution (therefore a PI could not be imposed any additional capital requirements in addition to the ones specified in the PI authorisation criteria if such requirements are not explicitly required by the payment system from credit institutions)?			
Answer			
As stated in Recital 16, access should '...be subject to appropriate requirements in order to ensure integrity and stability of those systems. Each payment service provider applying for a participation in a payment system should furnish proof to the participants of the payment system that its internal arrangements are sufficiently robust against all kinds of risk.' However, these requirements should be applied on a non-discriminatory basis to all payment service providers. Therefore, no additional capital requirements can be imposed on the basis of the institutional status.			

Relevant provisions	Article 28(2)	Question no	13.2
Date of question	15.4.2008	Date of answer	22.5.2008
Issue			
Access to payment systems – Three-party schemes			
Question			
Does Article 28(2) imply that three-party card schemes would be exempt from the requirements of Article 28(1), whereas four-party card schemes would not?			
Answer			
As stated in Recital 17, '...the provisions of the access to payment systems should not apply to systems set up and operated by a single payment service provider. Those payment systems can operate either in direct competition to payment systems, or, more typically, in a market niche not adequately covered by payment systems. They typically cover three-party schemes, such as three party card schemes, payment services offered by telecommunication providers or money remittance services where the scheme operator is the payment service provider to both the payer and payee as well as internal systems of banking groups.'			

Relevant provisions	Article 28(2)(a)	Question no	13.3
Date of question	15.4.2008	Date of answer	22.5.2008
Issue			
Access to payment systems – Card schemes designated under the Settlement Finality Directive			
Question			
How to apply Article 28(2)(a) in the case where a four-party card scheme (subject to Article 28(1)) would be using a payment system falling under Directive 98/26/EC as its core processor for clearing/settlement between participating payment service providers of that scheme? I.e. if certain PIs would not be granted access to the processing payment system (based on Article 28(2)(a)), they would de facto not be able to participate in the card scheme, hence there would be discrimination in access to the latter.			
Answer			
In accordance with Article 28(2)(a), a four-party card scheme whose payment system would be designated under Directive 98/26/EC would be excluded from the requirements under Article 28(1).			

Relevant provisions	Article 3(o)	Question no	14
Date of question	15.4.2008	Date of answer	22.5.2008
Issue			
Scope – ATM operators			
Question			
<p>Why are Independent ATM Operators (IAOs) who solely provide basic cash withdrawal services (as opposed to any other payment service provider who provides ATM services next to other payment services) excluded from the provisions of the PSD, as this seems not to support the creation of a level playing field? Arguments: Banks and/or Payment Institutions (PI) operating ATMs next to other payment services (listed in the Annex) are subject to the provisions of the PSD. This would create a discrimination of these organisations vs. the IAOs, who do not fall under the same prudential regimes. Given the risk of fraud at ATMs, especially those at less secure locations (e.g. supermarkets, nightclubs, etc.), this seems to be against the spirit of consumer protection as envisaged by the conduct of business rules in the PSD. It also stifles any innovation around additional payment services on ATMs, which would make the provider to fall under the PSD and needing an authorisation as PI (hence resulting in lower service levels being given a preferential treatment). The text of the article mentions that IAOs to be excluded are 'not a party to the framework contract with the customer'. However, if the card issuer has a clause in the framework contract mentioning that any surcharges from IAOs will be passed on to the customer, then one could argue that the IAOs are implicitly part of such framework contract as their charges are explicitly mentioned to the customer – hence it would make sense that these charges are subject to the same rules on transparency etc.</p>			
Answer			
<p>This derogation was decided by the co-legislators. The intention is to exempt independent ATM service providers, e.g. typically ATMs in supermarkets, nightclubs, etc. All other ATM providers which are either the card issuer (that means, 'party to the framework contract with the customer withdrawing money from a payment account') or provide other services as listed in the annex, however, do fall under the PSD.</p> <p>The exemption only covers services provided by these independent service providers (e.g., as regards information requirements in Articles 36 and 37, liability provisions; no license under Title II). It does not exclude the ATM transaction itself as the cardholder conducts the transaction under his/her framework contract with the card issuer who has to comply with PSD rules.</p> <p>However, Article 50(2) contains a rule on information on additional charges which applies also to independent ATM providers as they are considered as third party within the meaning of this provision.</p>			

Relevant provisions	Article 4(30)	Question no	15
Date of question	14.5.2008	Date of answer	15.7.2008
Issue			
Definitions – Group			
Question			
<p>In Article 4(30) the definition of a 'group' gives a reference to Article 12(1) of Directive 83/349/EEC. Article 12(1) of Directive 83/349/EEC offers an option for the Member State: "... Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:". While transposing Directive 83/349/EEC, we have decided not to use this option (not to require consolidated accounts and a consolidated annual report in cases stated in the subparagraphs a) and b) of Article 12(1)).</p> <p>As we understand, in this case, we do not have to enclose statements of Article 12(1) of Directive 83/349/EEC into the transposition of Article 4(30) of the PSD. Could you please confirm that?</p>			
Answer			
<p>This definition, as all the other definitions under Article 4, is 'for the purposes' of the Payment Services Directive, mainly for the calculation of the own funds under Article 7(2) and (3). In this context, the decision by a Member State on the option under Article 12(1) of Directive 83/349/EEC should not have any influence on the way this definition is implemented in domestic law.</p>			

Relevant provisions	Articles 16(2)/16(4)	Question no	17
Date of question	11.6.2008	Date of answer	15.7.2008
Issue			
Payment account – Credit balances on card accounts			
Question			
<p>Credit and charge (incl. deferred debit) card accounts, due to the nature of these payment products, typically show a debit balance. However, in certain circumstances (e.g. where refunds are given or overpayments are made on the account) these accounts may show a credit balance which may continue to appear in future monthly billing cycles depending on frequency and levels of card usage. Although in the normal course of running a card business these credit balances are unavoidable, the amounts do not provide material financing to card issuers. The card terms typically do not contemplate or invite credit balances. They do not define how such balances should be repaid, nor do they provide for payment of interest on these balances. Can the Commission confirm, therefore, that such balances do not constitute deposit taking or receipt of other repayable funds for purposes of the PSD but rather constitute funds held on payment account?</p>			
Answer			
<p>The fact that the funds are maintained on a payment account for the sole purpose of making a payment transaction does not convert the payment account run by a payment institution into a deposit. In this context, handling of credit balances on card accounts by a non-bank card issuer (e.g., a payment institution under the PSD) should not be considered as constituting the business of taking deposits or other repayable funds in breach Article 16(4) PSD.</p>			

Relevant provisions	Article 16	Question no	18
Date of question	16.6.2008	Date of answer	15.7.2008
Issue			
Credit – Refund period over 12 months			
Question			
As to Article 16 of the PSD, credit activities of Payment Institutions (PI) are limited (not more than 12 months reimbursement deadline). What happens for credits (e.g. revolving credit) if the repay period exceeds 12 months?			
Answer			
<p>Article 16(3) and (5) do not provide for any restriction on credit duration for national rules on credit cards. Therefore, national rules may provide for a credit duration period longer or shorter than 12 months.</p> <p>However, when a payment institution wishes to offer payment services in a Member State other than the home Member State in which it is authorised, credit provided through, for example, a credit card must be repaid within a short period which must not exceed 12 months. So if an authorised payment institution wishes to start marketing credit cards to users in other Member States, the maximum credit duration period is 12 months.</p> <p>This situation must be clearly distinguished from the use of a national credit card in other Member States. For example, if a user is entitled to a credit duration period exceeding 12 months for national payments, this credit period will also apply to payments carried out by the same user when using the credit card in other Member States.</p>			

Relevant provisions	Article 3(n)	Question no	19
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Payment transactions between a parent undertaking and its subsidiary			
Question			
<p>Regarding the out of scope 'payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group', what examples of transactions could this definition include? What does 'intermediary intervention by a payment service provider' mean in this context? If the PSP e.g. provide cash pooling solutions or regular sweeping of subsidiary accounts to the parent account – are these payment services out of scope of the PSD? The PSP does not act as an intermediary in this case, rather facilitating the transfer of money between the company's different accounts.</p>			
Answer			
<p>Such transactions may include any kind of payment transactions that enable a company to get or to use liquidities (e.g. cash pooling solutions, clearing mechanisms...) as long as they remain within a group, ie they are made between a parent undertaking and its subsidiaries or between the subsidiaries themselves.</p> <p>One of the entities of the group may happen to be a PSP, but what matters is that these transactions do not concern any third entities outside of the group. If these criteria are met, such an activity does not fall within the scope of the Directive.</p> <p>This would, however, be different in the case where a PSP would provide such services to entities that do not belong to the same group as the PSP. Such payment transactions would then fall in the scope of the Directive. What must however be noted is that the Directive allows for a certain contractual flexibility for companies in their relationship with their PSP (in Titles III and IV).</p>			

Relevant provisions	General		Question no	20
Date of question	20.6.2008	Date of answer	15.7.2008	
Issue				
Transposition				
Question				
<p>Which EU Member States have already transposed the Directive on Payment Services in the internal market? If possible, please provide a source or site where I can find further information in relation to this issue. Furthermore, can you provide or otherwise indicate a source or site where I can find short description of the transposition options of each Member State that has already transposed this Directive.</p>				
Answer				
<p>The transposition work is currently under process in the Member States so as to meet the time limit set by the Directive (1 November 2009). However, no Member State has transposed the PSD yet. You can find more information on the planned transposition date of each Member State on the Commission website at http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm. Once the transpositions are done, you will also find information on the options chosen by each Member State on the Commission website at http://ec.europa.eu/internal_market/payments/framework/options_en.htm.</p>				

Relevant provisions	Recital 37	Question no	22
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Payment order – Refusal			
Question			
We believe that a precondition for a valid payment order is that the payer's account is sufficiently covered to execute the order. As long as this is not the case, the order is deemed not to be accepted. What information requirements need to be fulfilled by the payment service provider?			
Answer			
The payment service provider could include the availability of the funds as a condition for the execution of an order in the framework contracts with his users. It will only be in such a case that it may refuse the order (as stated in Article 65(2).			

Relevant provisions	Recital 38	Question no	23
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Execution of a payment transaction – Irrevocability			
Question			
Fully automated payment systems operate in a rapid manner. Can in such a case a revocation time of 0 be agreed?			
Answer			
<p>According to Article 66(1), the payment service user can not revoke a payment order after it has been received by the payment service provider.</p> <p>However, a revocation point in time later than the points in time mentioned in Article 66 may be agreed between users and PSP (as stated in paragraph 5 of that article). It is therefore left to contractual freedom.</p>			

Relevant provisions	Article 3(e)	Question no	24
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Cash-back			
Question			
Which services are meant?			
Answer			
Cash-back services provided by merchants at point of sales.			

Relevant provisions	Article 3(i)	Question no	25
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Payment transactions related to securities			
Question			
Does this comprise the following services: cash deposit/transfer to a securities account (the money will be used to buy securities without crediting his account and the securities will be added to his securities deposit account); payments on his savings account (savings accounts are commonly not designated to carry out payment transfers)?			
Answer			
Cash deposit/transfer to a securities account would fall within the scope of Article 3(i). However, saving accounts where the holder can place and withdraw funds without any additional intervention or agreement of his payment service provider should be considered as payment accounts within the meaning of the PSD. On the contrary, fixed term deposits should fall out of this category as the funds are taken and paid back by the payment service provider and the holder of the deposit does not keep any freedom to place additional funds or withdraw funds during the term of the deposit.			

Relevant provisions	Article 3(j)	Question no	26
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Technical service providers			
Question			
What is a technical service provider? Is a payment institution's subsidiary which carries out the services mentioned under (j) excluded from the PSD?			
Answer			
A technical service provider is an entity that provides technical services to payment service providers so that the payment service provider can provide payment services to their users. They themselves never enter in relationship with the users directly and are therefore not covered as such by the PSD. However, PI that would want to outsource some activities to a third party (be it a subsidiary or not) would have to comply with the obligations set in Articles 17(7) and 18.			

Relevant provisions	Article 3(k)	Question no	27
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Limited network			
Question			
What services are meant? We believe that 'Club' solutions in the frame of client loyalty programmes offered by companies which do not fall under the PSD, fall into this category (e.g. super market chains).			
Answer			
<p>The intention of this provision is to exempt instruments like, e.g., the following:</p> <p>Store cards: They can only be used for payments in a specific shop or a chain of stores, e.g. by spending points collected for purchases in these shops.</p> <p>Club cards: This type of cards can only be used within the holiday compound for e.g. paying drinks, tennis lessons and a new pair of flip-flops.</p>			

Relevant provisions	Article 3(n)	Question no	28
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Payment transactions within a group			
Question			
Does this refer to payments effected between companies belonging to one group (netting)?			
Answer			
Yes.			

Relevant provisions	Article 3(o)	Question no	29
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Scope – Independent ATMs			
Question			
Does this apply to 'multifunctional' ATMs only? Does this mean that the Directive is of relevance to service providers which have not concluded any framework contract with the client who withdraws the money? If so, in which points?			
Answer			
Article 3(o) covers independent ATM service providers which only dispense funds to customers and which typically do not belong to a bank network, e.g. ATMs in supermarkets or nightclubs. However, all other ATM providers which are either the card issuer (= 'party to the framework contract with the customer withdrawing money from a payment account') or provide also other services as listed in the annex, however, do fall under the PSD.			

Relevant provisions	Article 4(11)	Question no	30
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Definitions – Consumer			
Question			
Does this definition replace the definition existing in national law and if so, does this definition only apply for the purposes of this Directive?			
Answer			
This definition is to replace any definition existing in national law, but only for matters covered by the PSD.			

Relevant provisions	Article 4(14)	Question no	31
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Payment account – Saving accounts, credit accounts, etc.			
Question			
<p>The term 'used for the execution of payment transactions' would mean that the following services are captured by the Directive: savings accounts, securities-savings accounts, credit accounts, short term deposits. All these contracts have in common that they may not be used for general payment services. Does any contract which is linked to a money transfer, fall under the Directive or are such contracts (deposit accounts, savings accounts, credit accounts) not regarded as a payment account?</p>			
Answer			
<p>The concept of payment account under the PSD is related to the objective of regulating payment services. As all types of accounts which can be used for payment transactions are covered, as long as they are not exempted under Article 3, the conduct of business rules in Titles III and IV apply to transactions made to and from these accounts.</p> <p>Credit accounts such as mortgage accounts established by the mortgage lender in conjunction with a mortgage loan on a residence, into which the borrower is required to make regular periodic payments, are not to be considered as 'payment accounts' within the meaning of the PSD as the holder of the debt is the lender: in case of early repayments, the lender is to be considered as 'the payee' (and not only as a payment service provider). However, when one account combines mortgage, saving and payment facilities in order to reduce the overall mortgage balance, this should be considered as 'payment account' within the meaning of the PSD as far as it is used for making payment transactions.</p> <p>As for the saving accounts, see answer to Question no 25.</p>			

Relevant provisions	Article 4(21)	Question no	32
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Unique identifiers – IBAN and BIC			
Question			
Does this relate to IBAN and BIC?			
Answer			
Yes, IBAN and BIC are an example of unique identifiers. Unique identifiers may also include card numbers or any other identifier provided by a payment service provider to his user so that it can execute a payment transaction.			

Relevant provisions	Article 4(22)	Question no	33
Date of question	18.6.2008	Date of answer	15.7.2008
Issue			
Payment institutions – Agents			
Question			
If a payment service provider outsources his payment services (or part of them) to a subsidiary, is the subsidiary an agent?			
Answer			
A subsidiary could be an agent, but not necessarily. It will depend on whether the subsidiary acts on behalf of the payment institution in providing payment services.			

Relevant provisions	Article 4(23)	Question no	34
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Definitions – Payment instrument			
Question			
Does this mean that a payment order form (e.g. a payment order form which has been filled in by the receiver) is not a payment instrument? What exactly means personalised?			
Answer			
This definition is meant to cover physical devices (such as cards or mobile phones) and/or set of procedures (such as PIN codes, TAN codes, digipass, login/password, etc) which a payment service user can use to give instructions to his payment service provider in order to execute a payment transaction. If the payment transaction is initiated by paper, the paper slip itself is not considered as payment instrument.			

Relevant provisions	Article 4(24)	Question no	35
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Definitions – Means of distance communication			
Question			
This means that also a letter is a means of distance communication?			
Answer			
Contracts negotiated at a distance involve the use of means of distance communication not involving the simultaneous presence of the payment service provider and the payment service user. Consequently, an exchange of letters could fall in this category.			

Relevant provisions	Article 4(25)	Question no	36
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Definitions – Durable medium (web link)			
Question			
Would it be sufficient to provide a link if the link enables to reconstitute the information?			
Answer			
It is possible to provide a link as long as this link is addressed personally to the payment service user, is accessible for future reference and allows the unchanged reproduction of the information stored for a period of time adequate for the purpose of information.			

Relevant provisions	Article 4(26)	Question no	37
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Definitions – Micro-enterprises			
Question			
What happens if the contract was concluded a long time ago and it is not possible anymore to find out if the company was a micro-enterprise?			
Answer			
This will only be an issue in the Member States that will choose to assimilate micro-enterprises to Title IV of the PSD. In such cases, the payment service provider will have to carefully examine whether its client was a micro enterprise or not at the time of the conclusion of the contract.			

Relevant provisions	Article 4(27)	Question no	38
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Definitions – Business day (public holiday)			
Question			
How does this provision have to be interpreted if different payment service providers of different countries are involved and in one country is a public holiday?			
Answer			
As the PSD only regulates the relation between the payment service provider and the customer and excludes the interbankspace from its scope, the focus should lie on the customer and his/her perception. The customer is not in a position to know whether a back office payment system is up and running, but rather whether a payment service provider is open for business. Accordingly, payment service providers have to adjust their systems to their opening hours and/or find the right clearing and settlement partners. Where transactions are initiated via internet it has to be made clear to the customer if the payment service provider is open for business on that day.			

Relevant provisions	Article 32(3)	Question no	39
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Charges – Provision of information			
Question			
Does this also comprise the possibility for revenues?			
Answer			
<p>This wording has to be read keeping in mind the interest of transparency in pricing, increased competition and consumer protection (see Recitals 28 and, in a different context, 45). Under these conditions, charges should correspond with the real cost of the administrative service provided. Charges not justified by real costs (which have to be calculated in line with the companies' internal approach on cost accounting) and aimed to penalise, to disincentive the request from the payment service user or to get unjustified incomes should be avoided.</p>			

Relevant provisions	Article 35(2)	Question no	40
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Information requirements – Single payment transactions within a framework contract			
Question			
We believe that a single payment transaction is not based on a framework contract. How does this provision need to be interpreted?			
Answer			
Single payment transactions may occur with instruments covered by a framework contract (e.g., cash withdrawals from an independent ATM).			

Relevant provisions	Article 36(1)	Question no	41
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Single payment transactions – Information to be 'made available'			
Question			
How does this provision apply if only one single payment transaction is effected?			
Answer			
The payment service provider may make the listed information available to his payment service users through posters, leaflets or any other kinds of communication tools in his premises or on his website. The idea is that the user can access the information easily if he wants to.			

Relevant provisions	Article 36(2)	Question no	42
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Single payment service transactions – Means of distance communication			
Question			
Can these conditions be fulfilled in the case of a single payment transaction?			
Answer			
This may happen, for example, in the case of single payment transactions initiated via a fixed phone or a mobile phone.			

Relevant provisions	Article 37(1)(b)	Question no	43
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Single payment transactions – Maximum execution time			
Question			
What measures are necessary in order to fulfil these conditions in the case of a single payment service contract?			
Answer			
The payment service provider of the payer shall include in the set of information made available or provided to his payment service users information on the maximum time for the execution of a single payment transaction, i.e. from the point in time of receipt of the funds to reach the payment service provider of the payee and to be at the disposal of the payee.			

Relevant provisions	Article 38(a)	Question no	44
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Single payment transactions – Reference			
Question			
Is this a reference the payer has to provide or is this a reference of the payment service provider?			
Answer			
It is a reference that is provided or made available by the payment service provider to the payer.			

Relevant provisions	Article 42(1)(a)	Question no	47
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Framework contracts – Right of cancellation			
Question			
Does the user have the right of cancellation if one of the indicated items changes?			
Answer			
The aim of this provision is to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. For example, a change in the address of the payment service provider could have a negative impact on the payment service user, e.g. the payment service provider suddenly decides to move its branch to a remote area far from the place of the payment service user.			

Relevant provisions	Article 42(1)(b)	Question no	48
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Supervisory authority – Information about relevant authority			
Question			
What is the relevant supervisory authority? In Austria, would this be the FMA?			
Answer			
<p>The supervisory authorities refer to the authorities in charge of the supervision of the payment service provider. It is up to each Member State to designate them in accordance with the subsidiarity principle. Member States will notify the designated competent authorities to the European Commission. For further information, please consult the following website: http://ec.europa.eu/internal_market/payments/docs/framework/transposition/authorisation_supervision_en.pdf.</p>			

Relevant provisions	Article 44(1)	Question no	49
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Framework contracts – Right of cancellation			
Question			
The right of cancellation is also granted for conditions which are not under the control of the service provider or which are not related to the contract (name change of the service provider or change of the address). Is there any possibility to waive the right of cancellation for such cases?			
Answer			
The aim of this provision is to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. In case the payment service provider proposes a change to an element already agreed in the framework contract, the two-month period, including the right of cancellation for the payment service user, applies. As far as a new element, such as a new payment service, is offered and the customer is ready to accept it immediately, this should be possible and the period of two months does not apply. However, the contractual provisions for the new service can later form an integral part of the former framework contract.			

Relevant provisions	Article 44(3)	Question no	50
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Exchange rate – Calculation			
Question			
How has this paragraph to be interpreted? Is it enough to make reference to officially published exchange rates?			
Answer			
It would be sufficient if reference to an officially published exchange rate was made. In case an extra margin is to be applied to this exchange rate, it has to be agreed between the parties in the framework contract.			

Relevant provisions	Article 47(1)(a)	Question no	54
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Individual payment transactions – Reference			
Question			
What reference is meant? The one of the payment service provider (this one is already know by the user) or a reference which needs to be indicated by the payer?			
Answer			
It is a reference that is provided by the payment service provider to the payer.			

Relevant provisions	Article 47(1)(c)	Question no	56
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Individual payment transactions – Interest rate			
Question			
Is it correct that reference is made to charges and interests related to the transaction and not the account as such?			
Answer			
Yes, this provision concerns only the charges and interests related to the individual payment transaction.			

Relevant provisions	Article 48(1)(e)	Question no	60
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Value date – Credit value date for transactions over the counter			
Question			
A credit value date needs the entry on a payment account. What date is meant, when the money is paid out at the cash desk of the bank?			
Answer			
In case the funds are paid out in cash over the counter, the credit value date does not apply since 'value date' means a reference time for the calculation of interests on the funds debited or credited to a payment account (see definition under Article 4(17)).			

Relevant provisions	Article 49(1)	Question no	62
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Currency			
Question			
What parties are meant (payer – payee) or (payment service provider – user)?			
Answer			
The 'parties' are the payment service user (payer or payee) and the respective payment service provider.			

Relevant provisions	Article 49(2)	Question no	63
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Currency conversion			
Question			
What is the right evidence for the receiver of the payment to prove that the payer has agreed on a currency conversion?			
Answer			
If the payee wants to have evidence about the agreement of the payer to the currency conversion, it will be up to payee to propose means of evidence, e.g. in writing or through technical means.			

Relevant provisions	Article 51(1)	Question no	64
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Businesses – Non-application of certain provisions			
Question			
Is the contractual relationship between payer and service provider/payee and his service provider meant?			
Answer			
The 'parties' are the payment service user (payer or payee) and the respective payment service provider.			

Relevant provisions	Article 52(2)	Question no	66
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Charges – Intermediaries' services			
Question			
How has the payment service provider of the payee to proceed if he is charged by other institutions (e.g. clearing institutions) involved in the transaction?			
Answer			
The payment service user and his payment service provider have to agree on all charges payable by the payment service user to the payment service provider. No extra charges can be levied on the payment service user by the payment service provider without prior agreement.			

Relevant provisions	Article 53(3)	Question no	67
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
E-money – Derogation			
Question			
Liability provisions do not apply to electronic money if the payment service provider cannot freeze the payment account?			
Answer			
<p>Article 53(3) contains a <i>lex specialis</i> which applies to e-money irrespective of any threshold. By law, Articles 60 and 61 do not apply when the payer's payment service provider is not able "to freeze the payment account or block the payment instrument". Member States have the option to fine-tune this mandatory rule by setting a threshold for its application. Therefore, when the payer's payment service provider can freeze the payment account or block the payment instrument, the parties have no option to agree on the disapplication of Articles 60 and 61.</p> <p>A different situation is governed by Article 53(1)(b) which applies to low-value payment instruments (not exceeding EUR 30, having a spending limit of EUR 150 or allowing storage of funds not exceeding EUR 150) which are used anonymously or when authorisation can not be proved. In those cases, Article 53(1)(b) allows the parties to agree on the disapplication of Articles 60 and, partly, 61 (only Paragraphs 1 and 2).</p>			

Relevant provisions	Article 54(1)	Question no	68
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transaction – Authorisation after execution			
Question			
We believe that a payment transaction needs to be authorised per se. How should an authorisation 'after the execution of the payment transaction' look like?			
Answer			
Most of the transactions are authorised before execution. However, some direct debit transactions with creditor mandate flow are authorised by the payer to his payment service provider after the execution of the payment transaction as the mandate only contains a prior authorisation to the payee.			

Relevant provisions	Article 54(2)	Question no	69
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Authorisation			
Question			
Is the aim of this provision to define how the payer has to authorise the transaction or has this agreement to be concluded for each single transaction? How shall we proceed if no such agreement exists (if the payer gives a mandate to the payee in the case of direct debit)?			
Answer			
This provision deals with the form for authorising payment transactions. In general, all payment transactions have to be authorised by the payer in accordance with Article 54(1).			

Relevant provisions	Article 54(3)	Question no	70
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Direct debits – Authorisation			
Question			
How to deal with direct debit if the payment institution of the payer does not have any authorisation?			
Answer			
If the payer did not give his consent to his payment service provider before or after execution of the direct debit transactions, the transaction is considered to be unauthorised.			

Relevant provisions	Article 54(3)	Question no	71
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Direct debits – Revocability			
Question			
According to Article 54(1) it can be agreed that the authorisation is given after the execution of the payment transaction. In such a case, the point in time of irrevocability is before the authorisation has taken place. What is the intention of the legislator in this context?			
Answer			
According to Article 66(5), the payment service provider and the payment service user can agree that the payment order may be revoked after the time limit for revocability of direct debit transactions (end of the business day preceding the day agreed for debiting the funds). In this case, the payee's agreement is also required.			

Relevant provisions	Article 57(1)	Question no	73
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment instrument – Prevention of use of lost or stolen payment instrument			
Question			
It is not possible to prevent the use of all payment instruments (e.g. the use of a stolen credit card) once the notification has been made. Only the debiting of the users account can be prevented.			
Answer			
The payment service provider shall prevent all use of the payment instrument once the notification has been made by the payment service user, e.g. by blocking the payment instrument or by updating the databases on stolen or lost instruments.			

Relevant provisions	Article 58	Question no	74
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Authorisation			
Question			
We believe that according to Article 54(1) each transaction needs to be authorised by the payer. Otherwise direct debits may be cancelled within a period of 13 months.			
Answer			
According to Article 54(1), payment transactions are only considered to be authorised, if the payer has given his consent to the payment service provider to execute the payment transaction. For authorised direct debit transactions, the payer has a right for a refund within 8 weeks after the debit date, if the conditions set out in Article 62(1) are met. Unauthorised direct debit transactions, however, shall be rectified in accordance with Article 58 (13 months after the debit date).			

Relevant provisions	Article 59(1)	Question no	75
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Direct debits – Proof of authentication			
Question			
How shall the authentication of a payment which was authorised after execution (Article 54(1)) take place? Is the payment service provider obliged to accept non-authorised transactions at his own risk?			
Answer			
Article 59 applies in cases where the payment service user denies having authorised a payment transaction.			

Relevant provisions	Article 60(1)	Question no	76
Date of question	18.6.2008	Date of answer	20.5.2009
Issue			
Payment transactions – Liability for unauthorised transactions			
Question			
Does 'without prejudice' mean that the 13 months mentioned in Article 58 are not applicable?			
Answer			
<p>Article 58 deals with the requirements the payment service user has to comply with for claims due to 'unauthorised or incorrectly executed payment transactions'. This means that the 13 months period mentioned in this provision would apply to the claims of the payment service user under both Articles 60 and 75.</p> <p>For example, in case where EUR 100 are transferred instead of EUR 1 000, the payer can claim from his payment service provider the transfer of the missing EUR 900 or ask him to refund EUR 100. In any case the payment service user would have to notify his payment service provider within the 13 months period.</p> <p>In the case of late payments, a right of the payer to ask for a refund seems not justified. If the amount of the payment is already at the disposal of the payee the payment service provider of the payer has no possibility to call funds back. The right of a refund would rather be a sanction for the payment service provider of the payer and would lead to an unjustified enrichment of the payer. However, Articles 75(3) and 76 grant him the right to request compensation for possible damages he might have suffered as a consequence of late payment.</p>			

Relevant provisions	Article 62(3)	Question no	77
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Refund right – Exclusion			
Question			
We believe that 'given his consent' means 'authorisation'. In the case of direct debit the execution starts at the moment the payee instructs his payment institution to carry out the payment. At this point of time the possibility of a non-authorized payment exists, if authorisation means 'given his consent'.			
Answer			
The refund right can be excluded if the following conditions are met: – the consent (= authorisation) to execute the payment transaction is given directly to the payer's PSP (direct debit with Debtor Mandate Flow) and – the payer has received information about the amount of the transactions at least 4 weeks before the agreed due date (= debit date), by e.g. receiving the electricity bill from the electricity company (payee).			

Relevant provisions	Article 63(1)	Question no	78
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Refund right – Calculation of period			
Question			
We assume that this period has to be calculated according to calendar days. If the last day of this period is a banking holiday or holiday, does this mean that the refund must take place on the next working day, following the holiday?			
Answer			
The refund period has to be calculated based on calendar days, irrespective of whether the end of the period falls on a bank holiday.			

Relevant provisions	Article 63(2)	Question no	79
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Refund right – Moment of start			
Question			
Does this period start to run from the moment where it is sure that the payment has been authorised?			
Answer			
The period starts to run from the day when the payment service provider receives the request for refund.			

Relevant provisions	Article 69(1)	Question no	80
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Maximum execution time – Paper-initiated transactions			
Question			
This provision can be fulfilled in the case of electronic payments. In the case of paper based payments a longer period of time is necessary. Can such a differentiation be made?			
Answer			
As stated in Article 69(1), the execution time may be extended for paper initiated payments by a further business day.			

Relevant provisions	Article 64(2)	Question no	81
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Point in time of receipt – Future payments			
Question			
This provision cannot be applied to direct debit. The payment transaction is initiated by the payee's payment institution.			
Answer			
This provision also applies to direct debits. In such cases, the payee and his payment service provider may agree that the execution of a payment order sent in advance will only start on a certain day.			

Relevant provisions	Article 65(1)	Question no	82
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Refusal of payment order – Notification			
Question			
How shall the notification be carried out if no contact with the payer can be established?			
Answer			
The notification must be carried out in the agreed manner, which may either be the manner agreed between the payment service provider of the payer, and the payer in the case of payment transactions initiated by the payer, or the manner agreed between the payment service provider of the payee and the payee in the case of payment transactions initiated by the payee.			

Relevant provisions	Article 66(2)	Question no	84
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Card transactions – Irrevocability			
Question			
How can the payer's payment institution verify that the payer has authorised this payment transaction?			
Answer			
In case of card transactions, the payment service provider may check whether the payer has entered his PIN code or signed an authorisation form.			

Relevant provisions	Article 66(3)	Question no	85
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Direct debits – Irrevocability			
Question			
How shall this provision be brought in line with Article 66(2)? With whom has the debit day to be agreed? How has this provision to be interpreted if no debit day was agreed – this will most probably be the case for direct debit?			
Answer			
The day for debiting the funds in case of direct debits is to be agreed between the payer and the payee.			

Relevant provisions	Article 67(1)	Question no	86
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Charges – Full amount principle			
Question			
Does this mean that the payment service provider may not charge any fees or does this only mean that the amount to be transferred may not be changed?			
Answer			
This provision requires that the amount of the payment transaction shall be transferred in full without any charges to be deducted from it.			

Relevant provisions	Article 69(2)	Question no	87
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Value dating and crediting of amount			
Question			
Does this provision (in relation to Article 73(1)) mean that the amount may not be credited before the value date?			
Answer			
The credit value date can be prior to the day of the actual crediting of the account as Article 73(1) states that "the credit value date...is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account." See also the last sentence of Recital 45, which states that "Specifically, the use of value dating to the disadvantage of the user should not be permitted." Senso contrario, the use of value dating to the advantage of the user is permitted.			

Relevant provisions	Article 69(3)	Question no	88
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Direct debits – Maximum execution time			
Question			
How can the payment service provider of the payee (he has no contractual relationship with the payer) verify the correct date?			
Answer			
The payment service provider of the payee will have to rely on the date given by the payee, since the due date is agreed between the payer and the payee (see Question No 85 on Article 66(3)).			

Relevant provisions	Article 70	Question no	90
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Availability of funds – No payee's payment account			
Question			
We believe that it is sufficient to hold the amount at the disposal of the payee? How to deal with a bank's closing hours for the cash desks?			
Answer			
The amount will have to be made available to the payee during the opening hours of the payment service provider.			

Relevant provisions	Article 73(1)	Question no	91
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Value date and availability – Currency conversion			
Question			
How to deal with a transaction that involves a currency conversion (e.g. the payee's bank receives euro, but the amount needs to be credited in dollar). It may easily be the case that the bank has to buy dollar on the market. This will take some time and delay the crediting of the amount. How to deal with accounts, were the amount is not at the disposal of the payee but used to reimburse a credit tranche?			
Answer			
Title IV of the PSD only applies to payment services made in euro or any other currency of a Member State outside the euro area (Article 1(2)).			

Relevant provisions	Article 75(1)	Question no	93
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Liability – Errors caused by the payment service user			
Question			
Will it be possible to claim a fee for investigations which were required by the payer and which were not justified? In the case that a transaction error or delay was caused by the user (missing or wrong information) the liability is not clearly defined.			
Answer			
According to Article 74(2), the payment service provider shall not be liable under Article 75 if the unique identifier provided by the payment service user is incorrect. If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.			

Relevant provisions	Article 75(2)	Question no	95
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Defectively executed			
Question			
Clarification of 'a defectively executed payment transaction' is necessary. Does this mean that refund needs to be done, even when the payment transaction takes longer as foreseen in the Directive?			
Answer			
Incorrect execution covers, among others, late execution of payment transactions (outside maximum execution time). In case of payment not executed within the maximum execution time, Article 75 has to be read in conjunction with Article 58 which allows for a rectification of such transactions. In addition, the payment service provider would have to compensate the payment service user for any charges or interests that would have occurred because of that delay.			

Relevant provisions	Article 94(1)	Question no	96
Date of question	18.6.2008	Date of answer	6.10.2008
Issue			
Transposition – Asymmetric transposition of PSD			
Question			
How can we proceed in a correct manner, if other countries (were a payment has been sent to) are late with the transposition into national law?			
Answer			
<p>In the context of the transposition workshops, the Commission services are closely following the transposition process in all the Member States. All of them have been required to provide information about their transposition plans. The information received is updated regularly, on the basis of the oral and written updates provided by Member States. On this basis, the Commission services have prepared a graph showing Member States plan for adoption and entry into force of the national measures implementing the obligations of the PSD: http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm.</p> <p>This graph shows that, according to the current plans, the PSD should be implemented on time in all Member States and the required national measures should enter into force on the same date (1 November 2009) in the absolute majority of them. This would contribute to avoid any problem related to asymmetric transposition.</p>			

Relevant provisions	Article 39(a)	Question no	97
Date of question	27.6.2008	Date of answer	6.10.2008
Issue			
Payer – Identification			
Question			
Please specify, how to interpret the phrase 'where appropriate' and what kind of payer's data should be submitted to the payee.			
Answer			
'Where appropriate' refers in particular to Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds which lays down rules concerning information on the payer that has to accompany funds transfers in order to ensure full traceability.			

Relevant provisions	Article 4(14)	Question no	98
Date of question	1.7.2008	Date of answer	6.10.2008
Issue			
Payment accounts – Acquiring			
Question			
Can an acquirer perform its regular payment services to the merchant without opening a payment account for the merchant, especially if any incoming funds are forwarded to the merchant within one business day?			
Answer			
In most of the cases, the payment service provider of the merchant runs payment accounts. However, even in a case where there is no payment account, the same rules for execution time, value dating and availability apply (see Article 70 which refers to Article 69 which, in turn, refers to Article 73).			

Relevant provisions	Article 4(14)	Question no	99
Date of question	1.7.2008	Date of answer	6.10.2008
Issue			
Payment accounts – Versus giro accounts			
Question			
What will be the regulatory difference for a user between the payment account and a traditional deposit-taking 'giro account' offered both by a bank?			
Answer			
Funds held on a payment account run by a credit institution can constitute a deposit and consequently be used by the credit institution for a variety of risk-taking activities, including providing credit. Under Article 3(1) of the Directive on deposit guarantee schemes (DGS, 1994/19/EEC) "...no credit institution authorised in that Member States pursuant to Article 3 of Directive 77/780/EEC [preceding the CRD] may take deposits unless it is a member of such a scheme" precisely because a credit institution is defined by taking deposits.			

Relevant provisions	Article 52(3)	Question no	100
Date of question	2.7.2008	Date of answer	6.10.2008
Issue			
Charges – ATM surcharging			
Question			
In case the national regulator does not restrict the right of surcharging, does this mean that surcharging cannot be restricted any more by the card issuer and the payment scheme?			
Answer			
Yes, it would be up to the payee to decide whether to ask for a charge or offer a reduction to the payer. The payment scheme cannot prevent its payment service users (payees) from doing so.			

Relevant provisions	Article 70	Question no	101
Date of question	7.7.2008	Date of answer	6.10.2008
Issue			
Availability of funds – No payee account at the receiving bank			
Question			
Does the bank have to make available payment amounts to clients who are not account holders of the bank or is this article intended to be applied only between PSPs where it has been agreed that an account is not necessary at the payees PSP?			
Answer			
This provision was meant to deal with situations where the payee does not have an account with the payment service provider concerned which is the case, e.g., in money remittance business.			

Relevant provisions	Article 62		Question no	102
Date of question	7.7.2008	Date of answer	6.10.2008	
Issue				
Payment transactions – Initiation				
Question				
<p>What is the meaning/difference of 'payments transaction initiated by payee' or 'payment transaction initiated through a payee'? Are some card transactions considered to be 'payments initiated by or through a payee'? E.g. card transactions where a fixed amount is reserved, and then later on an exact amount is debited from the card, but the user has not given authorisation for this exact amount (e.g. payments for car rentals etc.)?</p>				
Answer				
<p>A transaction initiated by the payee is a transaction which is initiated by the payee without interaction of the payer, such as a direct debit transaction (the utility company decides on when the payment order is sent to its PSP).</p> <p>A transaction initiated through the payee is a transaction which is initiated by the payer through the payee, typically a card transaction (the cardholder authorises and initiates the payment at the point of sale through the terminal which connects the merchant with his acquirer).</p>				

Relevant provisions	Article 69(1)	Question no	103
Date of question	7.7.2008	Date of answer	6.10.2008
Issue			
Maximum execution time – Paper-initiated transactions			
Question			
For execution time – are payments initiated via paper orders in branch offices considered to be paper-initiated transaction, and hence be allowed to have an extra business day of execution?			
Answer			
Payments initiated via paper orders are considered to be paper-initiated transactions. In such cases, the execution time can be extended by a further business day.			

Relevant provisions	Article 52	Question no	104
Date of question	7.7.2008	Date of answer	6.10.2008
Issue			
Charges – SHARE, BEN and OUR			
Question			
<p>Is it correct that payments in all local EU currencies (not only in euro), if there is no currency exchange involved in transaction, have to be with option SHARE only? PSD Article 52 states that payment type should be SHARE when there is not a currency conversion.</p> <p>a) How to handle outgoing BEN/OUR payments? When a client of a bank sends a payment transaction of the types OUR or BEN, there will be a currency conversion if the payee's account is in another currency than that of the payment. But if the payee's account is in the same currency as the payment, there will not be a currency conversion. Hence the latter payments would be non-compliant according to the PSD(!?) However, sender's bank can not know which currency the receivers account is in. How could the PSD be followed in this matter?</p> <p>b) Incoming BEN/OUR payments. If there is a BEN payment coming in for a payment which does not include a currency conversion – how to handle it? Should the receiving bank reject it with reference to non-PSD compliance?</p>			
Answer			
<p>In general, this provision introduces the 'SHARE' principle for all kind of payment transactions. However, this provision has to be interpreted from the payer's point of view, i.e. the SHARE principle applies when there is no currency conversion on the payer's side.</p>			

Relevant provisions	Article 62	Question no	105
Date of question	7.7.2008	Date of answer	6.10.2008
Issue			
Charges – Debiting fees from accounts			
Question			
Are fees for payment services (and fees for individual payment transactions) which the PSP are debiting directly from the client's account considered to be payment transactions in scope of the PSD. And if so, are they considered to be payments initiated by a payee?			
Answer			
Such operation is not considered as a separate payment transaction since it is linked to the execution of a payment transaction.			

Relevant provisions	Article 3(g)	Question no	106
Date of question	7.7.2008	Date of answer	6.10.2008
Issue			
Scope – Cheques			
Question			
The assumption is that transactions involving cheques are out of scope, irrelevant if it is a domestic or international cheque. Does that assumption hold good (even for international cheques that are sent as an electronic transaction to the foreign bank and then printed at the foreign bank)?			
Answer			
The PSD does not apply to paper cheques as mentioned in Article 3(g)(i), (ii) and (vi).			

Relevant provisions	Article 68(1)(c)	Question no	107.1
Date of question	10.7.2008	Date of answer	6.10.2008
Issue			
Maximum execution time – Scope			
Question			
Scope, Article 68(1)(c): How to define where the currency conversion takes place and whether or not the cross-border transfer takes place in euro (both a clarification of the principle as applicable to card payment transactions as well as some examples would be welcomed)?			
Answer			
Article 68(1) does not apply to cross-border transfer in any non-euro currency. It only applies to such transfers where there is a currency exchange into euro and the cross-border transfer itself is in euro.			

Relevant provisions	Article 69(1)	Question no	107.2
Date of question	10.7.2008	Date of answer	6.10.2008
Issue			
Maximum execution time – Card transactions			
Question			
Can the Commission services confirm that Article 69(1) does not apply to card transactions (being transactions initiated through the payee), i.e. that the merchant can agree the total execution time with the acquirer (i.e. both the time between initiation of the transaction by the merchant and transmission of the payment order by the acquirer to the issuer as well as the time between receipt of the payment order by the issuer and when the acquirer makes the funds available to the merchant on a payment account)?			
Answer			
Paragraph 1 applies to push-transactions only. For pull-transactions, Paragraph 3 lays down more specific rules taking into account the special nature of such transactions. Card transactions have to be executed within the time limits agreed between the payee and his payment service provider (contractual freedom).			

Relevant provisions	Article 70	Question no	107.3
Date of question	10.7.2008	Date of answer	6.10.2008
Issue			
Maximum execution time – Availability of funds for card transactions			
Question			
<p>We understand from the text that in the case of card payments, an acquirer who does not hold a payment account for a certain contracted merchant is still subject to making available the funds to that merchant. What remains unclear to us is what the time frame is for making those funds available to the merchant – is it the same time frame that would apply if the merchant did have a payment account with his acquirer? The reference to Article 69 is not clear to us, as Article 69 refers to the settlement between the issuer and the acquirer; Article 69 then refers to Article 73 for the time frames to be respected by the acquirer for making available the funds to the merchant – so does Article 73 also apply in the above described case (whereby the acquirer does not hold the payment account of the merchant) without any additional time allowed for the acquirer to transfer the funds he received to the payment account of the merchant (sitting at another payment service provider)?</p>			
Answer			
Yes. See Questions No 98 on Article 4(14) and No 107.2 on Article 69(3).			

Relevant provisions	Article 49(2)	Question no	108
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Currency conversion – Scope of application			
Question			
Article 49(2) enshrines the principles of transparency and choice for cardholders in relation to Dynamic Currency Conversion (DCC). Could you clarify whether Article 49(2) covers both POS and ATM transactions?			
Answer			
<p>Article 49 provides that, where a dynamic currency conversion (DCCI) service is offered prior to the initiation of the transaction and where that service is offered at the point of sale or by the payee, the party offering the service must provide full details of the exchange rate and charges before the initiation of the transaction.</p> <p>The provision under Article 49(2) applies where two cumulative conditions are met. The second of these conditions is subjective and refers to the 'point of sale' or the payee. Therefore, DCC at ATMs is not covered by Article 49. However, payment service providers may grant more favourable terms to payment service users in accordance with Article 86(3). Therefore, nothing impedes ATM providers to supply this information voluntarily.</p>			

Relevant provisions	Article 52(2)	Question no	109
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Charges – SHARE principle			
Question			
<p>We understand that Article 52(2) mandates the SHARE charging model for credit transfers and direct debits only. Indeed, the sharing of the costs and revenues to operate a four-party payment card scheme takes place mainly through an inter-bank balancing mechanism, which is not covered by the PSD, as acknowledged by Recital 41. Accordingly, could you confirm that Article 52(2) does not apply to card payments?</p>			
Answer			
<p>In general, this provision introduces the 'SHARE' principle for all kind of payment transactions. Recital 41 clarifies that the special characteristics of certain types of payments have to be taken into account, e.g. for card payments the cardholder continues to pay the annual cardholder fee to the issuer, while the merchant continues to pay the merchant fee to the acquirer. Recital 41 further states that "the provisions on the amount transferred or any charges levied have no direct impact on pricing between payment service providers or intermediaries."</p>			

Relevant provisions	Article 52(3)	Question no	110
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Charges – Surcharging			
Question			
Our understanding is that Article 52(3) allows surcharging in principle, unless Member States explicitly decide otherwise. It is however unclear whether Article 52(3) only applies to point-of-sale (POS) transactions, or whether it also covers ATM transactions. Accordingly, we would invite the Commission to confirm the scope and meaning of Article 52(3).			
Answer			
Article 52(3) only deals with POS transactions, as in the case of ATM transactions the payer and the payee are typically the same person.			

Relevant provisions	Article 58	Question no	111
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Notification of unauthorised or incorrectly executed payment card transactions			
Question			
<p>At first sight, the period of 13 months granted to the cardholder to notify his service provider seems at odds with the notion of 'without undue delay' referred to in Articles 56(1)(b) and 58. Moreover, allowing the cardholder to dispute a transaction within a timeframe up to 13 months after the transaction would be unworkable from a scheme management perspective and would require significant systems changes. We understand that this 13 months' period was meant to address the situation of providers sending out yearly statements. In order to avoid any abuse of such provision, we would invite the Commission services to clarify the concept of 'without undue delay'. In this respect, it should be confirmed that a payment service provider may legitimately assume that a cardholder has become aware of an unauthorised transaction as soon as he/she receives his/her statement and, accordingly, has an obligation to notify the unauthorised use without undue delay upon such receipt. In case of monthly statements, the notification should thus occur well before the 13 months' deadline, e.g. within one month of receiving the statement.</p>			
Answer			
<p>The interpretation of 'without undue delay' will depend on the specific circumstances and has to be examined on a case-by-case basis. Existing national and/or case law could be taken into account.</p> <p>The two conditions are cumulative: the payer must notify without undue delay on becoming aware of the unauthorised transactions and, in any case, within a 13 month period.</p> <p>The interpretation that the payer should only have one month after the reception of his account's statement is not line with the Directive.</p>			

Relevant provisions	Article 59(2)	Question no	112
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Payment transactions – Evidence on authentication and execution of card transactions			
Question			
<p>Article 59(2) appears to suggest that the use of PIN is not, prima facie, evidence that the cardholder authorised a disputed transaction. Should the payment instrument not be reported as lost, stolen or compromised, we however believe that the use of PIN should be considered as sufficient proof? In addition, it is unclear how to prove that certain 'fast pass-through' transactions (e.g. contactless, toll ways, parking garages, etc.) were authorised by the payer. In our view, and in line with Article 54(2), the framework contract could explicitly stipulate that the use of a PIN is the agreed form of consent, and that 'fast pass-through' transactions of a low value are considered as authorised by the actual usage of the card as acknowledged by the cardholder in the contract, subject to the card not being reported stolen, lost or compromised. Could you confirm this interpretation? Should the Commission disagree, we would welcome guidance as to what type of evidence would need to be produced to successfully demonstrate that the payer has authorised the transaction.</p>			
Answer			
<p>In the case where the payment service user denies having authorised a transaction, the use of a PIN is not a sufficient proof: the PIN might have been caught at the same time as the card data in the case of a fraud.</p> <p>According to Article 42(2)(a) and (c) as well as (4)(a), the payment service provider and the payment service user agree in the framework contract about the main characteristics of the payment service, the form of and procedure for authorising payment transactions and the means of communication (including technical requirements) for the transmission of information. However, the parties can not agree in the framework contract to exclude PIN based transactions from the scope of this provision.</p>			

Relevant provisions	Article 62		Question no	113
Date of question	11.7.2008	Date of answer	6.10.2008	
Issue				
Payment transactions – Refunds for card transactions				
Question				
We understand that Article 62 covers card transactions in the event of 'no shows', damages to a rented car, mini-bar charges, etc. We would welcome guidance as to 1) what other types of card transactions (if any) fall within the scope of this right of refund and 2) what constitutes an 'unreasonably high amount'.				
Answer				
1) Article 62 covers all 'pull' transactions for which the payer has given his consent without knowing the exact amount of the transaction beforehand, such as for hotel or car reservations even when the card has been shown. 2) This will depend on the specific circumstances and has to be examined on a case-by-case basis.				

Relevant provisions	Article 66(2)	Question no	114
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Irrevocability – Charge backs			
Question			
<p>Recital 39 suggests that the irrevocability principle does not affect the chargeback procedures and rules in the event of a dispute between the payer and the payee. In such a case, the reimbursement of the payer would be considered to be a new payment order. To avoid any doubt, could the Commission services confirm that the principle of irrevocability does not conflict with other legal or contractual rights such as a cooling off or chargeback rights, in line with the objectives pursued by the PSD to increase consumer protection as well as to protect the integrity of the card scheme and to promote the security of the card transactions? Could the Commission services also clarify that, in accordance with the principle of full harmonization, Member States can no longer rely on the irrevocability principle as set out in Article 66 to prohibit chargeback rights?</p>			
Answer			
<p>Recital 39 refers to cases of 'charge back', where the payment service provider reimburses the payer with the amount of the execution of the executed payment transaction in the event of a dispute between the payer and the payee. In such cases, the irrevocability provision under Article 66 does not affect chargeback rights which have to be considered as separate payment transactions.</p>			

Relevant provisions	Article 69	Question no	115
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Maximum execution time – Card transactions			
Question			
<p>We understand Article 69(3) as requiring the acquirer to transmit the transaction data to the issuer within the time limits agreed with the merchant. It is however far from clear if – and if so, how – the rest of Article 69 applies to cards. We believe that Article 69 should be interpreted in the light of Recital 43 which acknowledges the principle of contractual freedom for card transactions and refers to an explicit agreement between the service provider and the payer. On that basis, the issuer is required to credit the acquirer's account within the time limits explicitly agreed with the cardholder. In view of the confusion surrounding this article due to the complexity of the cards business, we invite the Commission to confirm that:</p> <ol style="list-style-type: none"> 1) the acquirer must transmit the transaction data to the issuer within the time limits agreed with the merchant; and 2) the issuer must credit the acquirer's account within the time limits explicitly agreed with the cardholder? 			
Answer			
<p>As for the first part of the question, please refer to the answer provided for Question No 107.2 on Article 69(1).</p> <p>As for the second part, the Directive does not govern any time limit for the crediting of the payee's payment service provider's account (in case there is one) and it is therefore left up to the payment service providers to agree on the clearing and settlement procedures.</p>			

Relevant provisions	Article 28(1)	Question no	116
Date of question	11.7.2008	Date of answer	6.10.2008
Issue			
Access to payment systems – Impact on card schemes rules			
Question			
<p>Our understanding is that Article 28(1) allows a payment scheme to continue to apply its access criteria and risk management policies and procedures to applicants, as well as make normal competitive decisions, in so far as those criteria, policies and decisions are aimed at legitimate business interests including enforcement of trademark rights and safeguarding against specific risks (settlement, operational and business) and thus at protecting the stability and integrity of the scheme, and provided that those rules apply irrespective of the status of the applicant. Could you confirm that our understanding is correct?</p>			
Answer			
<p>Yes, it is possible for payment systems to define access criteria (such as collaterals, operational quality or security standards, etc.) as long as they are objective, non discriminatory and proportionate.</p>			

Relevant provisions	Article 16	Question no	117
Date of question	15.7.2008	Date of answer	6.10.2008
Issue			
Cross-border credit – Refund period			
Question			
Article 16 provides that cross border credit 'shall be repaid within a short period which shall in no case exceed twelve months'. Could you please give some details about how this time period is calculated and how the refund could satisfy this requirement? (e.g. would a total refund of a revolving credit be sufficient even if the credit line is still ongoing?) Thank you very much in advance.			
Answer			
The payment service user needs to repay the full amount of the debt by the end of the twelve month period at the latest.			

Relevant provisions	Article 2(2)	Question no	118
Date of question	23.7.2008	Date of answer	6.10.2008
Issue			
Scope – Payment services in private currencies			
Question			
<p>Article 2(2) stated that payment services of funds which are not nominated in euro or a currency of a Member State are not subject to the regulations of Titles III and IV of the PSD. So Barter schemes or Local Exchange Trade Systems (LETS), where payments are made in private currencies, are waived. But are these kinds of private currency payment providers subject to the requirements of Part II of the PSD? Do these providers need a status as payment institution if they are offering payment services mentioned in the Annex even if the requirements of Titles III and IV are not relevant? Should these questions mentioned above be answered in a different way if these private currency based payment services are made within a closed loop (not redeemable in euro) or made within a open loop system (redeemability in euro)?</p>			
Answer			
<p>Only payment service providers under Article 1 can carry out the payment services listed in the Annex. However, the Directive does not apply for carrying out any of the activities listed under Article 3. If LETS corresponds to one of the following activities, the PSD rules would not apply:</p> <ul style="list-style-type: none"> – Article 3(d), payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity – or Article 3(k), services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services. 			

Relevant provisions	Article 38	Question no	119
Date of question	30.7.2008	Date of answer	6.10.2008
Issue			
Payment transactions – References for card transactions			
Question			
<p>Article 38(a) requires the payer's payment service provider to provide "a reference enabling the payer to identify the payment transaction" On a credit card statement, a transaction is usually identified by – date of transaction – name of merchant – city of merchant – country of merchant – sales amount and currency (plus possible applicable charges). Would these dates satisfy the information requirements as they already provide a reference to the transaction? If not, would a separate reference number have to be invented, even though this number is not known to the cardholder, does not appear on his sales slip, does not therefore aid him in balancing his account etc., merely to satisfy Article 38(a)?</p>			
Answer			
<p>Card transactions would be covered by Article 47. The main objective here is to ensure that the payer can easily identify the transactions concerned. If the transaction is usually identified by the date of transaction, the name of the merchant, the city of the merchant, the sales amount and currency, it seems in line with the directive, without having to add another new reference.</p>			

Relevant provisions	General	Question no	120
Date of question	30.7.2008	Date of answer	6.10.2008
Issue			
Scope – Billing and settlement plans			
Question			
<p>In the business of airline ticket distribution to clients, the International Air Transport Association (IATA) represents airline companies. IATA also accredits travel agencies and has developed in many EU countries billing and settlement plans (BSP) to collect the amounts of airline tickets sold by accredited travel agencies and to transfer these amounts to its airline company members. BSP ensure the counting and the settlement of the accounts between airline companies and the accredited agents. The BSP execute the following operations: invoicing and calculation of the amounts to be credited to travel agencies by a credit institution in charge of the settlements; repartition of these amounts for settlement between the different airline companies (executed by the credit institution). The credit institution in charge of the settlements is mandated by the BSP to execute the above functions. The BSP also mandate a data processing centre to receive and treat the sale notes sent by the travel agencies and to communicate the sums that need to be transferred to the credit institution. There are 230 airline companies that are members of IATA approximately and several hundreds of other airline companies that use BSP. On the agents' side, approximately 25 000 agencies or branches use the BSP in Europe. For Europe, BSP have handled transactions between airline companies and travel agencies for an amount of USD 89 billion in 2007. BSP are moreover paid commissions by airline companies (transaction commission) and by travel agencies (annual and monthly commissions).</p> <p>1) Could you indicate whether BSP are covered by Directive 2007/64 on payment services, as a payment institution that would carry out one of the activities listed in the Annex (services enabling cash to be placed on and to be withdrawn from a payment account? money remittance?)</p> <p>2) Could you confirm that BSP do not fall into the negative scope under Article 3 of the directive, in particular under Paragraphs h and j?</p>			
Answer			
<p>It will depend on whether BSP enters into possession of the funds to be transferred. If they do not enter into possession of the funds, BSP would fall under Article 3(j) and would not need to become a payment service provider under Article 1. In cases BSP use a credit institution to handle all funds transfers (as it seems to be for BSP at present), it would benefit from this exemption. If, however, they enter into possession of funds, BSP will have to become a payment service provider under Article 1.</p> <p>It should be pointed out that Article 88 provides for transitional arrangements for entities that have commenced their activities before 25 December 2007 in order to give them some time to adapt.</p>			

Relevant provisions	General		Question no	121
Date of question	30.7.2008	Date of answer	6.10.2008	
Issue				
Payment transactions – Swift message standards				
Question				
<p>Currently cross-border payments are handled through Swift standards (MT103/MT202) where in charge codes are SHA/BEN/OUR. PSD governs this traffic as well. Does PSD provide any guideline or introduce a new charge code to identify cross border payments within euro area and apply so that full amount is paid to the beneficiary without deducting the charges?</p>				
Answer				
<p>According to Article 52(2) of the directive, 'where a payment transaction does not involve any currency conversion, the payee shall pay the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider'. This means that the SHA option is now compulsory for the transactions that do not involve any currency conversion.</p> <p>According to Article 67, 'the payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers shall moreover transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred. However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.'</p>				

Relevant provisions	Article 52(3)	Question no	122
Date of question	4.8.2008	Date of answer	6.10.2008
Issue			
Charges – Surcharge prohibition for ATM transactions			
Question			
Based on Article 52(3) the prohibition of 'surcharging' of POS transactions (additional charge of the retailer to the cardholder) will be no longer allowed. Is this article also applicable to ATM transactions where today surcharging (by the ATM provider/owner to the cardholder for providing cash) is also often not allowed?			
Answer			
<p>Article 52(3) does only concern charges (or reductions) requested by the payee. As the definition of 'payee' under Article 4(8) ("a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction") does not cover the ATM provider, Article 52(3) does not apply to ATM transactions.</p> <p>However, in case a charge for the use of a given payment instrument through an ATM is requested, prior information has to be provided in accordance with Article 50(2) so that the payment service user has not doubt on it prior to the payment transaction.</p>			

Relevant provisions	Article 86(1)	Question no	123
Date of question	5.8.2008	Date of answer	6.10.2008
Issue			
Charges – Full harmonisation			
Question			
<p>Could you please confirm whether it would be in compliance with Article 86(1) if we enclose the below indicated provision into the national legal act transposing PSD: "Payment service provider shall not charge payment service user for making a contribution in cash for the payment transaction."?</p>			
Answer			
<p>Charges form a substantial part of any contract and thus have to be accepted by the payment service user. The Directive does not interfere in the pricing policy applied by payment service providers. Therefore, payment service providers are entitled to charge for the provision of payment services listed in the Annex, but not for:</p> <ul style="list-style-type: none"> – the fulfillment of the "harmonized requirements needed to ensure that necessary and sufficient information is given to the payment service users with regard to the payment service contract and the payment transactions" (Recital 21); – the corrective and preventive measures under Title IV, unless otherwise specified in this Title (see Article 53(1)). 			

Relevant provisions	General		Question no	125
Date of question	7.8.2008	Date of answer	6.10.2008	
Issue				
Payment services – Regular occupation				
Question				
<p>Could you please explain the meaning of the preamble item No 6? Should it be interpreted in the way that PSD is applicable only in cases when provision of payment services corresponds not less than half/is the main activity of the entity? Could you indicate the provision(s) of the PSD corresponding to the above-mentioned preamble item?</p>				
Answer				
<p>Recital 6 has to be read in conjunction with Article 1(2). According to this provision, the Directive lays down rules for payment service providers "in relation to the provision of payment services as a regular occupation or business activity".</p>				

Relevant provisions	General		Question no	128
Date of question	28.8.2008	Date of answer	6.10.2008	
Issue				
Entry into force – EFTA States				
Question				
About the other three countries of EFTA (Iceland, Liechtenstein, Switzerland), are they going to transpose the PSD? When?				
Answer				
The extension of the scope to EEA EFTA Member States is for the moment still pending the decision of the EEA Joint Committee, whose preparation has already started. All new Community legislation in areas covered by the EEA is indeed integrated into the Agreement through an EEA Joint Committee decision and subsequently becomes part of the national legislation of the EEA EFTA States.				

Relevant provisions	Article 3(i)	Question no	129
Date of question	10.9.2008	Date of answer	4.11.2008
Issue			
Scope – Collective investment undertakings			
Question			
Could you please indicate what was the basis and motivation for the exclusion of the collective investment undertakings from the scope of the directive (2007/64/EC)?			
Answer			
As stated in Recital 6, it is not appropriate for this new legal framework "to be fully comprehensive. Its application should be confined to payment service providers whose main activity consists in the provision of payment services to payment service users". Article 3(i) excludes from the scope of the Directive any kind of services "related to securities assets servicing", including explicitly those carried out by collective investment undertakings as the main purpose of these transactions is to make an investment, and not to make a payment transaction as defined in Article 5(4) for the purposes of the Directive.			

Relevant provisions	Article 28(2)(a)	Question no	130
Date of question	24.9.2008	Date of answer	4.11.2008
Issue			
Payment systems – Access to designated systems			
Question			
<p>The basis objective of the introduction of the Payment Institution license is to increase competition for Payment Services. The payment institutions should compete with the credit institutions (banks). Nevertheless, due to this Article 28(2)(a), the payment institutions do not have a guaranteed objective and non-discriminatory access to key European infrastructures as ACHs, PEACHs & Target – all under SFD (Settlement Finality Directive) Card Schemes like PIN, Bancontact/MisterCash, CB, ... that clear and settle through a system under SFD. Other Card Schemes (like VISA & MasterCard) that could (and will most probably) clear and settle through systems under SFD. In the future payment institutions will thus have to get such accesses through banks, their main competitors, for any type of Payment Service they would like to provide (SCT, SDD, cards). This is clearly not a level playing field. It could be argued that small banks also use larger banks for accessing key infrastructure, but this is their choice, based on a cost/benefit analysis, and not based on a regulation.</p> <p>What are the plans of the Commission services to achieve a true level playing field in this area?</p>			
Answer			
<p>As stated in Recital 16, Article 28(1) of the Payment Services Directive provides for the open access to payment systems. Payment services providers that are legal persons will then have access, on a non-discriminatory basis, to the technical infrastructure necessary to process payment transactions, as long as those payment systems are not internal systems of banking groups or designated under the Settlement Finality Directive 98/26/EC (as provided by its paragraph 2(a)).</p> <p>However, it should be pointed out that the Settlement Finality Directive (SFD) is currently being revised. It is therefore up to the co-legislators to decide whether they keep this legal situation or not.</p>			

Relevant provisions	Article 8(1)(a)	Question no	131
Date of question	24.9.2008	Date of answer	4.11.2008
Issue			
Fixed overheads – Calculation			
Question			
Could you clarify how 'fixed overheads' are calculated, mainly in the case of a hybrid payment institution?			
Answer			
<p>Fixed overheads include expenses which do not vary as a result of output volume or sales revenue, e.g. rent, insurance, office expense, etc. The evaluation of the specific expenses to be taken into account should follow general accounting standards.</p> <p>For hybrid payment institutions, only the expenses that are related to payment services should be taken into account.</p>			

Relevant provisions	Article 8(1)(c)	Question no	132
Date of question	24.9.2008	Date of answer	4.11.2008
Issue			
Relevant indicator – Components			
Question			
<p>Can you give a definition of each component of the 'relevant indicator', mainly in the case of a hybrid payment institution? In particular, is 'interest income' the interests earned by the payment institution on the users funds that it temporally owns for the duration of the payment? As a PI is not expected to pay the payee before it gets the funds from the payer, how can it bear 'interest expense' on its activity? Are 'commission and fee received' gross or net – fi, in the acquisition of card transactions, does it include the Interchange Fee (paid de facto by a merchant to the card issuer) or only the part of the commission that is kept by the payment institution? What can be 'other operating income' for a non-hybrid payment institution?</p>			
Answer			
<p>'Interest income' means the interests that are received by payment institutions from the investments they have made (be they made from the users funds or not). 'Interest expense' means the interests that payment institutions pay either to their creditors or to their users (in the case where their funds would stay on their payment accounts). The 'commissions and fees received' should be expressed in gross (otherwise, a reference to commissions 'paid' would have been inserted into the provision). 'Other operating income' are any other kind of income, in the case of non hybrid payment institution, they may be linked to payment services or to the ancillary services in Article 16.</p>			

Relevant provisions	General	Question no	135
Date of question	2.10.2008	Date of answer	4.11.2008
Issue			
Payment transactions – Card transactions			
Question			
<p>Throughout the PSD the terms 'initiated/transmitted by the payer' and 'initiated/transmitted by or through a payee' is used to distinguish rules for different groups of payment services. These terms are introduced in Recital 43: "For all other payments [other than payment orders initiated by the payer], such as payments initiated by or through a payee, including direct debits and card payments..." From this it seems that the concepts 'initiated by the payer' and 'initiated by or through a payee' should be thought of as being mutually exclusive in the context of application of the PSD. And that card payments belong to the second group by definition. Is this a correct interpretation? That is, that although most card payments by nature in practice are initiated by the payer through the payee, providers of card payment services should not have to comply with both the rules for 'payments initiated by the payer' and the rules for 'payments initiated ... through a payee' – only the latter? Or more specifically: Providers of card payment services should not have to comply with: 1) both the first and the second sentence in Article 67(3) – only the second sentence; 2) both Articles 75(1) and 75(2) – only with Article 75(2); 3) Article 46. Is this correct? Are articles/rules beginning with the phrase 'initiated by the payer' applicable to card payments?</p>			
Answer			
<p>The different concepts used in relation to the initiation of payments in the directive shall be understood in the following way:</p> <p>'Payment transactions initiated by the payer' mean payment transactions where the orders are directly sent by the payer to its PSP, e.g. credit transfers.</p> <p>'Payment transactions initiated by the payee' mean payment transactions where the orders are sent by the payee on the basis of a prior general authorisation by the payer, e.g. direct debits.</p> <p>'Payment transactions initiated through the payee' mean in reality payment transactions initiated by the payer through the payee, e.g. card payments.</p> <p>In the case of card payments, providers therefore have to comply with the rules concerning 'payment transactions initiated through the payee'.</p> <p>In any case, where the provision does not contain any specific reference to how a payment transaction is initiated, it has to be understood as applying to any payment transaction.</p> <p>With regard to the specific articles mentioned:</p> <ol style="list-style-type: none"> 1) We confirm that only the second sentence in Article 67(3) applies to card payments. 2) We confirm that Article 75(1) does not apply to card payments (Article 75(2) applies). 3) Article 46 does not apply to card payments. 			

Relevant provisions	General		Question no	136
Date of question	7.10.2008	Date of answer	4.11.2008	
Issue				
Scope – Limited network				
Question				
In the case of a chain (e.g. retail – like Marks & Spencer) which has a closed loop/limited use Gift Card, but with no specific financial permits and which does not have the backing of a financial institution or bank, are there any specific laws in regard to cross-boarder vs. domestic limits per card (money)? If so, could you please refer to the specific law/laws?				
Answer				
According to Article 3(k), the Payment Services Directive does not apply to services based on instruments which can only be used in a limited way either within a limited network of service providers or for a limited range of goods or services such as store cards which can only be used for payments in a specific shop or a chain of stores. However, as no authorisation is required, the chain will not be allowed to provide such service outside its home Member State. If it wishes to do so, it would need to seek the appropriate authorisation under national law.				

Relevant provisions	Article 1(1)	Question no	137
Date of question	13.10.2008	Date of answer	4.11.2008
Issue			
Application to EEA branches of non-EEA credit institutions			
Question			
<p>Please explain how and to what extent the PSD applies to EEA branches of a non- EEA based credit institution. The PSD imports the definition of 'credit institution' from Directive 2006/48/EC which clearly includes, given the context in which it is used, both EEA established and non-EEA established credit institutions. Can we conclude that the PSD therefore permits EEA branches of non-EEA credit institutions to perform payment services under the directive without having to establish a legal entity within the EEA?</p>			
Answer			
<p>In light of the clear wording of Articles 2 and 29 of the Payment Services Directive and the fact that its Article 1(1) only refers to credit institutions and not to branches of third-country credit institutions, it has to be concluded that branches of third-country firms which are located within the EEA and want to provide payment services, can only carry out payment services if they fit into one of the categories of payment service providers set out in Article 1 of the Directive. In practical terms, this means that the Directive obliges branches of third-country credit institutions to take one of the legal forms foreseen in Article 1(1) of the Directive in order to be allowed to provide payment services in the EEA (e.g. become a payment institution within the meaning of Article 1(d), i.e. establish a company in the EEA and subsequently apply for an authorisation under Article 10 of the Directive once it has been implemented into national law).</p> <p>Furthermore, it should be pointed out that Article 1(a) of the Directive refers to the definition of 'credit institutions' under Article 4(1)(a) of Directive 2006/48/EC, without making any reference to Articles 38–39 of the latter.</p>			

Relevant provisions	Article 2(1)	Question no	138
Date of question	13.10.2008	Date of answer	4.11.2008
Issue			
Meaning of 'provided within the Community' for the purposes of Article 2(1)			
Question			
What is the test to determine where payment services are provided for the purpose of Article 2(1) ("This Directive shall apply to payment services provided within the Community.")?			
Answer			
The territorial scope of the Payment Services Directive is determined by Article 299 of the EC Treaty.			

Relevant provisions	General	Question no	139
Date of question	21.10.2008	Date of answer	4.11.2008
Issue			
Transactions – EEA currency			
Question			
Will relevant articles in Titles III and IV also be applicable to payment transactions in the local currency of the EEA Member State, or will they still only be applicable to payment transactions in one of the EU currencies?			
Answer			
Titles III and IV will also be applicable to payment transactions in the currency of the EEA Member States.			

Relevant provisions	Article 19		Question no	140
Date of question	24.10.2008	Date of answer	4.11.2008	
Issue				
Record keeping – 'Appropriate records'				
Question				
Clarity of what is meant by 'appropriate records' within Article 19 (in Title II).				
Answer				
The expression 'appropriate records' refers to information produced by payment institutions in accordance with the requirements laid down in the provisions of Title II.				

Relevant provisions	Article 68(2)	Question no	141
Date of question	24.10.2008	Date of answer	20.11.2008
Issue			
Maximum execution time – Currencies			
Question			
<p>Clarity requested in relation to which 'other payment transactions' are intended to be covered by this article and the implications of the phrase 'unless otherwise agreed' in this article. Article 68(1) clearly identifies the type of payment transactions that are covered by the section on execution time and value date. Article 68(2) appears to extend this to 'other payment transactions unless otherwise agreed between the payment service user and his payment service provider'. Clarification is sought as to what is intended to be included in other payment transactions. Does this article only apply to payments in Member State currencies (refer to Article 2(2))? How should agreement between the PSU and PSP be evidenced?</p>			
Answer			
<p>According to paragraph 1, Section 2 of Title IV shall apply to the transactions mentioned in this paragraph. For all other payment transactions in an EU currency, the parties have contractual freedom within the framework of paragraph 2, i.e. for intra-Community payment transactions the maximum execution time is D+4. The maximum execution time is one of the elements being part of the framework contract (see Article 42(2)(e)).</p>			

Relevant provisions	Article 16(1)(b)	Question no	142
Date of question	3.11.2008	Date of answer	20.11.2008
Issue			
Payment systems – Operation			
Question			
<p>If the payment institutions can do operation of any kind of payment systems or if the Member States can restrict in the implementation law to the operation of payment systems other than those mentioned in Article 28(2).</p> <p>Can a payment institution engage in the activity of operation of payment systems designated under the SFD or the reference in Articles 16(1)(b) to 28 prohibits this?</p>			
Answer			
<p>A payment institution is entitled to engage in the activity of operation of a payment system, provided that it fulfils the access criteria of the system, established in conformity with Article 28(1)(a) and the payment system is not one of those mentioned in paragraph 2 of the same provision. In this context, Member States have the right to limit access to systemically important systems in accordance with Directive 98/26/EC on settlement finality in payments and securities settlement systems, as stated in Article 28(2)(a) and Recital 16.</p>			

Relevant provisions	Article 4(23)	Question no	143
Date of question	9.11.2008	Date of answer	20.11.2008
Issue			
Definitions – Payment instrument			
Question			
<p>In your answer with question number 34, as published in previous FAQs, you state: 'This definition is meant to cover physical devices (such as cards or mobile phones) and/or set of procedures (such as PIN codes, TAN codes, digipass, login/password, etc) which a payment service user can use to give instructions to his payment service provider in order to execute a payment transaction...' Are internet banking solutions that use these procedures also covered under this definition?</p>			
Answer			
<p>If such procedures were used for internet banking solutions, they would be covered as well by the definition of payment instrument.</p>			

Relevant provisions	Article 4(23)	Question no	144
Date of question	9.11.2008	Date of answer	20.11.2008
Issue			
Definitions – 'National payment transaction'			
Question			
<p>In several articles, the PSD states the term 'national payment transaction'. Could you clarify what type of transactions are to be seen as national payment transactions? 1) A payment transaction where both the payer's PSP and payee's PSP are located in the same Member State; 2) A payment transaction where both the payer and the payee are resident in the same Member State; 3) A payment transaction where all the participants (PSUs and PSPs) are located/resident in the same Member State. 4) Any other?</p>			
Answer			
<p>The element which is relevant for determining what constitutes a 'national payment transaction' is where the payment service has been offered to the respective payment service users. For example, a Swedish cardholder using his card issued by a Swedish bank for making a purchase from a Belgian merchant; this would be a cross-border transaction; however, if a French payment service provider offers its services, e.g. a payment card, via a branch in Belgium to Belgian residents and the Belgian customer makes a purchase from a Belgian merchant, this would be a national transaction, irrespective of where the merchant's payment service provider is located.</p>			

Relevant provisions	Article 73	Question no	145
Date of question	13.11.2008	Date of answer	20.11.2008
Issue			
Value date – Currency conversion between the euro and the Member State currency			
Question			
In case amount is received in euro by the beneficiary's bank in a Member State outside the euro area and the beneficiary's account is in the currency of the Member State, must the value date of crediting of the amount in the currency of the Member State to the beneficiary's account be the same as when the beneficiary's bank received the euro payment to its euro account in euro?			
Answer			
As stated in Article 68(2), Article 73 is not at the disposal of the parties, i.e. the rules on value dating apply to any payment transaction.			

Relevant provisions	Article 42(3)(b)	Question no	146
Date of question	18.11.2008	Date of answer	18.12.2008
Issue			
Payment accounts – Interest			
Question			
<p>Question:</p> <p>a) Is interest on payments account in scope of these articles?</p> <p>b) If having a variable interest rate on these accounts, our understanding is that this interest rate must be based on a reference interest rate. In the definition of reference interest rate, the PSD states that the interest rate should come "from a publicly available source which can be verified by both parties to a payment service contract".</p> <p>Can this reference interest rate be a rate which is supplied by the bank, as long as this rate is published 'publicly' on e.g. a website, or must the reference interest rate come from an independent source (i.e. LIBOR, ECB rate etc.)?</p>			
Answer			
<p>a) Yes</p> <p>b) Article 42(3)(b), in conjunction with the definition of 'reference interest rate' under Article 4(20) can be interpreted as requiring a publicly available 'index or base'. Typically, this comes from independent sources such as LIBOR, Euribor or ECB rates.</p>			

Relevant provisions	Article 73 – Credit Val		Question no	147
Date of question	18.11.2008	Date of answer	20.1.2009	
Issue				
Card transactions – Availability of funds				
Question				
<p>The question relates to the 'last leg' of a card transaction – when the payment has been cleared in the network, and the payment amount is transferred from networks to the payee's (merchant's) PSP and then to be transferred to the payee (merchant). When the merchant's payment service provider has received the money from the network, must the payment amount then be credited immediately to the merchant, or is this time negotiable between merchant and merchant's payment service provider ('contractual freedom')?</p>				
Answer				
<p>Article 73(1) states that "The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after the amount is credited to the payee's payment service provider's account." Therefore, in our view, the parties can not agree on another time for the availability of funds.</p>				

Relevant provisions	General	Question no	148
Date of question	18.11.2008	Date of answer	20.1.2009
Issue			
One-leg payment transactions – Intermediary banks			
Question			
<p>Suppose a payment transaction comes into the EU from an extra-EU (or EEA) country (e.g. US). This transaction is received by one (or more than one) PSP that acts as an intermediary (e.g. as a correspondent bank). The question is whether the PSD lays down specific requirements for the intermediary PSP(s) for these types of transactions. If yes, what articles apply?</p>			
Answer			
<p>With the exception of Article 73, Titles III and IV of the Payment Services Directive only apply where both the payer's payment service provider and the payee's payment service provider are located in the Community (Article 2(1)).</p> <p>In the case of incoming payment transactions where the payer's payment service provider is located outside the EEA, the payment service provider of the payee will have to apply Article 73, provided that the transaction has been made in euro or in the currency of a Member State outside the euro area (Article 2(2)) and taking into account the national law of the Member State where the payee's payment service provider is located.</p> <p>However, because the Payment Services Directive mainly governs the payment service user/payment service provider space, none of its provisions, including Article 73, would apply to the reception by an intermediary of an incoming payment from outside the EU.</p>			

Relevant provisions	General		Question no	149
Date of question	21.11.2008	Date of answer	18.12.2008	
Issue				
One-leg payment transactions – Currency				
Question				
Given that the CHF (Swiss Francs) is the currency unit of Liechtenstein (an EEA country), is it enough to consider that a payment issued in CHF is subjected to the rules of the Directive, or is it necessary, for the payer's bank, to verify whether the beneficiary's bank is in Switzerland or in Liechtenstein?				
Answer				
In that case, for the application of Titles III and IV of the PSD (with the exception of Article 73 which applies in any case), the payer's payment service provider will have to verify whether the payment service provider of the payee is located or not in Liechtenstein.				

Relevant provisions	Article 4(14)	Question no	150
Date of question	21.11.2008	Date of answer	18.12.2008
Issue			
Payment account – Saving accounts			
Question			
Question 25 quotes: "However, saving accounts where the holder can place and withdraw funds without any additional intervention or agreement of his payment service provider should be considered as payment accounts within the meaning of the PSD." My question is: What would be exactly considered as an 'additional intervention or agreement'?			
Answer			
A saving account where the holder can place funds whenever he wants, without having to sign a new contract for each new placement, and is also able to withdraw funds whenever he likes without any restrictions (e.g., penalties for not having respected the term agreed or administrative charges) should be considered as payment accounts for the purposes of the PSD. In the case of the fixed term deposits, once the payment service user has made a lump sum deposit, he cannot make any withdrawals from the account until maturity without incurring in loss of interest or other penalties as agreed in the contract (e.g., closure of the account).			

Relevant provisions	Article 74(1)	Question no	151
Date of question	24.11.2008	Date of answer	18.12.2008
Issue			
Unique identifier – Execution of a payment order			
Question			
Where it says "If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier" can this please be clarified? We would like the industries view on this article, is it being used to drive account primacy through legislation?			
Answer			
The PSD does not oblige the payee's payment service provider to check the concordance between the unique identifier and the name of the payee mentioned on the payment order (see Paragraph 3 of this provision).			

Relevant provisions	Article 28(1) & Recital	Question no	152
Date of question	24.11.2008	Date of answer	18.12.2008
Issue			
Access to payment systems – Technical infrastructures			
Question			
<p>The main objective of the PSD is to generate more competition in payment markets by removing market entry barriers and guaranteeing fair market access so as to ensure a level playing field for all payment services, whether they emanate from credit institutions (banks) or from payment institutions (non-banks). A payment institution/non-bank that wants to establish a new European alternative payment card system, and therefore be guaranteed fair market access, necessarily requires access to the incumbent bank's OLTB (On-line To Bank) payment authorisation infrastructure under the same objective, non-discriminatory and proportionate conditions. OLTB/Real-time payment authorisation allows electronic 'access' to the bank account deposits of a customer, assuming of course the customer has first authorised such access. Without access to the banks' (owned and/or used) OLTB payment authorisation infrastructure, a new entrant payment institution seeking to set up a new payment system can not operate (without itself becoming a full-blown retail bank and taking deposits), which would seem directly to frustrate a key purpose of the PSD (i.e. promoting inter-system competition between different payment systems, including via payment institutions that do not take deposits). Access to payment systems pursuant to Article 28(1) thus includes necessarily access to the components thereof, notably the payment systems' technical infrastructure, including the OLTB payment authorisation infrastructure used by the banks under objective, non-discriminatory and proportionate conditions. In addition, access denial would impede payment institutions from providing and executing the payment services that they have been authorised to provide in accordance with Articles 4(3)–(4) and 10 of the PSD and that are set out in the Annex to the PSD. Indeed, to provide the payment services contemplated in the Annex to the PSD, a payment institution necessarily requires access to the payer's and the payee's respective bank accounts. In light of the above, does the Commission concur that the obligation to provide 'access to payment systems' within the meaning of Article 28(1), read in conjunction with Articles 4(3)–(4) and 4(6) and Recital 16 of the PSD, includes the obligation to give access at objective, non-discriminatory and proportionate conditions to the technical infrastructure of these payment systems, which in its turn includes the On-line To Bank (OLTB) payment authorisation infrastructure used by the banks?</p> <p>Does the obligation to provide 'access to payment systems' within the meaning of Article 28(1) includes the obligation to give access at objective, non-discriminatory and proportionate conditions to the technical infrastructure of these payment systems, including the On-line To Bank (OLTB) payment authorisation infrastructure used by the banks?</p>			
Answer			
<p>We confirm that Article 28 of the Directive aims at opening existing payment systems to any payment service provider that are legal persons, including newcomers such as payment institutions so that they can compete effectively with other existing payment services providers on the payment market. As stated in Recital 16, "any payment service provider competing in the internal market (should thus be) able to use the services of the technical infrastructures of payment systems under the same conditions". Article 28 thus provides payment institutions with a right of access to the technical infrastructures of payment systems as long as they are legal persons and as long as this does not compromise the integrity and stability of the payment system itself. Such technical infrastructures may include authorisation networks set up by banks. Systematically important payment systems designated under the Settlement Finality Directive 98/26/EC, internal group systems and three-party systems are however excluded from the scope of this article.</p>			

Relevant provisions	Article 16	Question no	153
Date of question	27.11.2008	Date of answer	27.1.2009
Issue			
Payment institutions' activities – Granting credit			
Question			
<p>In what cases is a payment institution allowed to grant credit for a period exceeding 12 months? According to us, Title II of PSD establishes a single license for payment institutions regarding prudential requirements. This allows them to provide payment services throughout the Community under the same conditions, including those laid down by Article 16 as regards the granting of credits related to a payment service for a maximum duration of 12 months. However, the requirements of Article 16(3) only apply to services performed under the European passport. Firstly, this means that the limitation to a 12 month period does not apply to strictly national services (i.e. non cross-border activities). Secondly, it does not prevent payment institutions from granting cross-border credits related to a payment service for a duration exceeding 12 months if they comply with the national provisions on licensing requirements and on consumer credit of the Member State in which they are planning to offer such credits. The single european license is indeed to be understood as a suppletive legal framework.</p>			
Answer			
<p>With regard to the duration of credit granted by payment institutions, Article 16(3) states that payment institutions can not grant credit exceeding 12 months for cross-border activities under Articles 10(5) and 25.</p> <p>When a payment institution only grants credit in the home Member State, this 12 months' limit will not apply. The national legislator remains free to regulate the duration of the credit, if it wishes so. If, however, the payment institution asked for an additional licence in the host Member State, it would be able to grant credit in accordance with the conditions on duration laid down in the law of that Member State.</p>			

Relevant provisions	Article 16	Question no	155
Date of question	9.12.2008	Date of answer	20.1.2009
Issue			
Payment accounts – Positive balances (funds)			
Question			
<p>Payment accounts can only be used for payment transactions. Funds received should not constitute a deposit or e-money (Article 16). Are there any limitations for the period for holding customer's funds on a payment account run by a payment institution? Can users hold a running balance in the medium-term on these accounts like on traditional current accounts run by credit institutions? Or are these accounts more or less working accounts, with a maximum execution time (D+3 and D+1 after January 2012) which limits the period of holding the users funds on its payment account? Following this interpretation the deliverance of the funds to the payee should be made by a transfer to an account of the user usually run by a credit institution (for storage) or to another payment service provider (for payment). So positive balances (if any) on these payment accounts are allways very short-term. Which interpretation regarding the limitations of holding positive balances on payment accounts run by payment institutions is correct?</p>			
Answer			
<p>The maximum execution time provisions in Section 2 of Chapter 3 of Title IV limit the period for holding customer's funds; consequently, payment institutions can only accept customer's funds on a payment account with an order for executing a payment transaction or a series of payment transactions to be executed on a given date (e.g., direct debits or standing orders where it is necessary to place funds on a payment account in advance of the execution of the payment transaction). In principle, the funds should not remain under the control of the payment institution longer than is necessary due to operational and technical reasons which should be determined in accordance with the main characteristics of each payment service.</p>			

Relevant provisions	Article 3(g)(v)	Question no	156
Date of question	9.12.2008	Date of answer	20.1.2009
Issue			
Scope – Exclusion of paper-based vouchers			
Question			
Article 3(g)(v) states that the PSD does not apply to transactions based on paper-based vouchers. Given the clarity of this provision, can a Member State decide to include anyway in the scope of the PSD paper-based vouchers?			
Answer			
As stated in Recital 6, it is not appropriate to apply this legal framework to paper-based vouchers, which are explicitly mentioned by Article 3(g)(v). Therefore, while the PSD shall not apply to them, Member States remain free to decide about the legal framework.			

Relevant provisions	Recital 6	Question no	157
Date of question	9.12.2008	Date of answer	20.1.2009
Issue			
Scope – Exclusion of vouchers, be they paper-based or not			
Question			
Recital 6 of the PSD states that the directive does not apply to vouchers, be they 'paper-based vouchers or cards'. Can we conclude that the intention of the legislator was to exclude vouchers (such as meal vouchers, gift checks or Chèques Emploi Service Universels) from the scope of the PSD, whatever their format (added effect of Articles 3 g) v) and 3 k))?			
Answer			
Specific purpose payment instruments, which only have a limited usage, such as store cards, petrol cards, membership cards, public transport cards and meal vouchers do not fall within the scope of the PSD, whatever their format (paper-based vouchers, cards or other instruments), in accordance with Article 3(k). If these specific purpose payment instruments were to develop and do not longer fulfil the criteria set out in Article 3(k), they would fall under the relevant provisions of the Directive. Furthermore, instruments which can be used for purchases in stores of listed merchants should not be exempted as such instruments are typically designed for a network of service providers which is continuously growing.			

Relevant provisions	Article 3(k)		Question no	158
Date of question	9.12.2008	Date of answer	20.1.2009	
Issue				
Scope – Limited network				
Question				
<p>Article 3(k) states that the PSD does not apply to "services based on instruments that can be used to acquire goods or services only (...) under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services". The concepts of 'limited network of service providers' or 'limited range of goods or services' are not defined in the PSD. Can Member States set quantitative thresholds to determine what will be considered as a 'limited network of service providers' and a 'limited range of goods or services'?</p> <p>In particular, can Member States interpret the concept of 'limited network of service providers' with the sole criterion of a certain number of points of sale accepting the vouchers and/or interpret the concept of 'limited range of goods or services' with the sole criterion of the volume of transactions executed, when the PSD refers to qualitative criteria relating to the specialisation of the network and/or the goods and services covered? If yes, can Member States set thresholds so low that they could empty the possibilities of exclusions granted by the legislator?</p>				
Answer				
<p>Article 3(k) can not be interpreted as requiring a limited range of products and services and a limited network of services providers: these criteria are not cumulative. Taking into account the full harmonisation approach of the directive, Member States should refrain from setting quantitative thresholds (such as the number of merchants rendering the same kind of services or any monetary threshold) to determine the scope of the limited network in the domestic law implementing this provision. Such interpretation would go beyond what was intended by the legislators.</p> <p>Therefore, as Article 3(k) does not specify any conditions or criteria for the determination of what 'limited' means, this will have to be determined on a case by case basis.</p>				

Relevant provisions	General		Question no	159
Date of question	10.12.2008	Date of answer	20.1.2009	
Issue				
Payment of taxes by citizens using some bank services				
Question				
<p>In Italy it is possible to pay some taxes through a bank. The type of payment it is called F23 or F24 (the name of the form used). The citizen goes to the bank, fills the form with the code of the tax, the date of the payment, the amount etc. and give it to the bank paying with cash or authorizing a debit on his own checking account. The bank gives him the receipt of the payment.</p> <p>The bank at the end of the due date, send a file to the Italian authority of taxes (Agenzia delle entrate) with the details of the payments received (per each payer), and simultaneously send a wire transfer with the total of all the payment of that day to the Italian Central Bank where the authority has an account (with a SWIFT message, formally known as MT 103 with the settlement made thanks to TARGET).</p> <p>This kind of payment is in the scope of the PSD? For example the citizen has to receive all the information of Title III before and after the payment, and he/she has all the rights and duties of Title IV, e.g. for refund, revoke etc.</p>				
Answer				
Yes, this kind of payments falls into the scope of the PSD. Therefore, Titles III and IV apply to them.				

Relevant provisions	Article 73(1)	Question no	160
Date of question	10.12.2008	Date of answer	20.1.2009
Issue			
Maximum execution time – Currency conversion & incoming payments			
Question			
<p>How to deal with a transaction that involves a currency conversion (e.g. the payee's bank receives euro, but the amount needs to be credited in Swedish crown – SEK)? As you know, if the bank of the payee wants to apply a spot rate, avoiding to get the risk of the fluctuation of the currency rate, it may buy SEK on the Foreign Market, where the settlement of the transaction needs 2 working days. In which way the bank can be compliant with the need to ensure that amount of the payment transaction is at the payee's disposal immediately after that amount in euro is credited on the Settlement Account of the bank. In fact the amount in SEK is available to the bank after 2 working days, when the Foreign Market transaction is settled.</p>			
Answer			
<p>When the currency of the transaction is euro and the currency conversion is carried out in a Member State outside the euro area into the currency of that Member State, Article 68(1)(c) applies. Consequently, the rules on maximum execution time laid down in Article 69, which refers to Article 73, applies.</p>			

Relevant provisions	Article 3(m)	Question no	163
Date of question	15.12.2008	Date of answer	20.1.2009
Issue			
Scope – Omnibus nostros accounts			
Question			
<p>The PSD and framework contracts appear to be intended to protect consumers/PSUs. We will be applying the PSD to our relationships with our client base. However, we have a model whereby we open an omnibus account with other PSPs in other countries.</p> <p>We are a PSP, and hold omnibus nostros (held in our name) at other PSPs; does the PSD apply to this type of relationship?</p>			
Answer			
<p>According to Article 3(m), the Payment Services Directive does not apply to payment transactions carried out between payment service providers, their agents or branches when they are executed 'for their own account'.</p>			

Relevant provisions	Article 4(15)	Question no	164
Date of question	18.12.2008	Date of answer	27.1.2009
Issue			
Private currencies			
Question			
Funds are defined as banknotes, coins, scriptural money and e-money. Are private issued currencies (denomination not in euro or in a national state issued currency) issued as notes, scriptural money or e-money included into the definition of 'funds'?			
Answer			
Private currencies can be included in the definition of funds if they take the form of banknotes, coins, scriptural money or e-money. Whether they are denominated in euro or a currency of a Member State outside the euro area does not matter since the definition does not refer to specific currencies. However, Titles III and IV of the directive will not apply to them if they are not denominated in euro or in the currency of a Member State outside the euro area, as stated in Article 2(2).			

Relevant provisions	Article 64(2)	Question no	165
Date of question	18.12.2008	Date of answer	27.1.2009
Issue			
Point in time of receipt – Direct Debit			
Question			
In your answer to Question no 81 you state that Article 64(2) applies also to direct debits. In that case, could the due date be the point in time of receipt for the purposes of Article 69(3) and the agreed date for the purposes of Article 66(4)?			
Answer			
Yes, the due date is the agreed day referred to in both Article 64(2) and Article 69(3).			

Relevant provisions	Article 69(3)	Question no	166
Date of question	18.12.2008	Date of answer	20.5.2009
Issue			
Maximum execution time – Direct debit			
Question			
Can the Commission confirm that applying Articles 69(3), 73(1) and 73(2) to direct debits means a 'same day' execution on the due date for all participants (payee, payee's PSP, payer, payer's PSP)?			
Answer			
<p>The transmission of the payment order to the payment service provider of the payer must enable, the execution of the payment transaction (the direct debit) on the agreed due date.</p> <p>Article 69(3) sets rules on the transmission of a payment order to the extent that they must be executed on a given date. It provides that, for a direct debit, the payee and his payment service provider have to agree on time limits for transmission of the payment order, so that the settlement has to occur at the date which has been agreed between the payer and the payee.</p> <p>As stated above, the period for transmission of the payment order by the payment service provider of the payee to the payment service provider of the payer is the one agreed between the payee and his payment service provider. This means that the point in time of receipt of the payment order is deemed to be the agreed due date (Article 64). On that date, the account of the payer is normally debited, but nothing impedes the payment service provider of the payer to grant more favourable terms for the debit of his account pursuant to the last subparagraph of Article 86(3).</p> <p>According to Article 69(1), after the point in time of receipt (i.e on the due date), the payment service provider of the payer must ensure that the amount of the payment transaction is credited to the payee's payment service provider by the end of the next business day (D+1) (or D+3 until 2012). The amount must be at the payee's disposal immediately after it is credited to the payee's payment service provider's account (Article 73(1)).</p>			

Relevant provisions	Article 52(3)	Question no	167
Date of question	19.12.2008	Date of answer	27.1.2009
Issue			
Compatibility non-discrimination rule of card providers and surcharging			
Question			
<p>The so-called non-discrimination rule is currently included in the scheme rules of credit card companies. It prevents users, i.e. retailers from charging different fees for the use of different credit cards at the point of sale. This means, for instance, that a retailer cannot charge more for a payment with an Amex card than for a payment with a VISA card. In view of the possibility for retailers to surcharge (as foreseen in Article 52(3)) it is still unclear to us, in how far the scheme rules of credit card providers are compatible with this possibility to surcharge (in case it is implemented into national law). Will the scheme rules be illegal under the new legislation or will credit card providers continue to be allowed to impose such a rule also in the future? This question is of utmost importance to retailers who would like to be able to inform their customers which price differences exist for the various payment methods. In addition it is crucial for retailers to have legal certainty on this point, as the terminals at the point of sale would have to be programmed accordingly. This process would at least take a year.</p>			
Answer			
<p>The non-discrimination rule prohibits merchants who accept credit cards from imposing a surcharge on customers who pay by credit card or allowing a discount in return for payment in cash. Allowing surcharging or rebates for the use of a specific payment instrument is a way to promote transparency and competition.</p> <p>However, Article 52(3) provides that Member States can decide to forbid or to limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments. This restriction by a Member State may be warranted in view of abusive pricing or pricing which may have a negative impact on the use of a certain payment instrument. Consequently, the non-discrimination rule can only continue to apply in those countries that chose the above mentioned option. For all other Member States, however, the card scheme rules have to be changed.</p> <p>Finally, it should be stressed that this provision does not give to Member States the possibility to ban rebates.</p>			

Relevant provisions	Article 74	Question no	168
Date of question	19.12.2008	Date of answer	27.1.2009
Issue			
Correction of payments with incorrect details			
Question			
<p>In the PSD it mentions that we must inform customers when altering the details on the instruction and can not do so without their permission. Can we put a clause in the Terms and Conditions in regards to payments that need repairing, we have a lot of payments that come to us with incorrect details and we repair these for the customer and put in the correct details. Is this possible? Or will we have to send the payment straight back?</p>			
Answer			
<p>According to Article 74, "if the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction. However, the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction." Payment service providers may moreover grant more favorable terms to payment service users, according to Article 86(3). This means that nothing impedes payment service providers to repair payments which have incorrect details and offer this as a service to their clients. Payment service providers do not necessarily have to send the payments back.</p>			

Relevant provisions	Article 45	Question no	173
Date of question	6.1.2009	Date of answer	27.1.2009
Issue			
PSP Termination rights in event of default			
Question			
<p>The termination rights granted to PSPs under the article appear to require a minimum of two months notice to the user regardless of whether the user is in breach of the framework contract or the PSP is simply terminating as of right. For instance, a user could be nine months delinquent with payments under the contract but still be entitled to an extra two months notice under this article before the contract could be terminated. The article seems to partially address this difficulty in 45(5) which allows parties to use provisions of national law to declare the framework contract 'unenforceable or void'. However, rendering a contract unenforceable or voiding it is legally somewhat different from termination, is it the intention of the clause to broadly define what is meant by 'unenforceable' or 'void' so as to include such provisions as Article 54 of the Irish Consumer Credit Act, which allows a creditor under a consumer contract to 'determine' (terminate) it in the event of breach provided a proper notice period has been followed, or must the terms 'void and unenforceable' or their exact legal equivalent be used?</p>			
Answer			
<p>Article 45 sets out the terms under which payment service users and payment service providers may terminate contracts. Its fifth paragraph has to be read along the lines of Recital 29, the second sentence of which prescribes that "this Directive should be without prejudice to the payment service provider's obligation to terminate the payment service contract in exceptional circumstances under other relevant Community or national legislation, such as legislation on money laundering and terrorist financing, any action targeting the freezing of funds, or any specific measure linked to the prevention and investigation of crimes".</p>			

Relevant provisions	Article 36(2) & 42(3)(b)–(c)	Question no	174
Date of question	15.1.2009	Date of answer	27.1.2009
Issue			
Information requirements – Exchange rate			
Question			
<p>There are conflicting statements surrounding notification of foreign exchange rates and/or reference rate (e.g. from Reuters), and/or calculation of said rate (e.g. 1% margin from prevailing Reuters rate at time of payment authorisation) for transactions.</p> <p>Do PSPs have to deliver the actual foreign exchange rate for the payment before the payer commits to making that payment? Or is it acceptable to provide either an approximate, or provide the actual rate after the payment has been transacted? How does the requirement change if the transaction is submitted as a 'Single Payment Transaction' or via a 'Framework Contract'?</p>			
Answer			
<p>For single payment transactions payment service providers have to provide (or make available):</p> <ul style="list-style-type: none"> – before the payment transactions: the actual or reference exchange rate to be applied, Article 37(1)(a) – after the payment transactions: the exchange rate used or a reference to it, when different from the rate already provided, as stated in Articles 38(d) and 39(d). <p>For framework contracts payment service providers have to provide:</p> <ul style="list-style-type: none"> – before the payment transactions: the exchange rate to be applied to or, if reference rate is to be used, the method of calculating the actual interest and the relevant date and index or base for determining such exchange rate, Article 42(3)(b) – after the payment transactions: the exchange rate used in the payment transaction, Articles 47(1)(d) and 48(1)(d). 			

Relevant provisions	Articles 42, 47 & 48	Question no	175
Date of question	20.1.2009	Date of answer	12.5.2009
Issue			
Charges – Breakdown			
Question			
It is a common practice to offer bundled prices to merchants. To what extent is it required to show the amounts of the charges in the contract, in the transaction overview? Is it sufficient, f.e. to split off the interchange (it is a common practice to offer bundled prices (%) to the merchant).			
Answer			
Article 42(3)(b) provides that the payment service user has the right to receive prior information on "all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of any charges". A similar provision can be found in Articles 47(1)(c) – information to the payer after execution of the payment transaction – and 48(1)(c) – information to the payee after execution. The terms 'where applicable' seems to only cover the situation where, e.g. the payment service user pays an annual or monthly fee for a package of payment services linked, e.g. to a payment account, provided that any payment service user can obtain the different payment services separately. This provision aims to facilitate maximum transparency through the largest breakdown possible so that the payment service user can compare prices of the payment services offered.			

Relevant provisions	Article 35	Question no	176
Date of question	20.1.2009	Date of answer	15.4.2009
Issue			
Information requirements – Single payment transactions			
Question			
Do information requirements in Articles 36, 37 and 39 also apply to a cash withdrawal from a non-own bank ATM? In this case, do these articles apply only to information which is not already given to the cardholder in the framework contract by his card issuer?			
Answer			
<p>According to Article 35(1), the provisions on single payment transactions (Chapter 2 of Title III) only apply to payment transactions which are not covered by a framework contract.</p> <p>Cash withdrawals from an ATM which does not belong to the network of the payment service provider, would fall under Article 35(2). According to this provision, the payment service provider of the ATM which does not belong to the network is not obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider (= card issuer).</p>			

Relevant provisions	Article 65	Question no	177
Date of question	20.1.2009	Date of answer	15.4.2009
Issue			
Payment transaction – Refusal (reject/return)			
Question			
Do credit transfer exceptions fall under the PSD scope? In that case, which are the relevant provisions for reject and return transactions? For example: 1) before settlement, should the reject transaction be considered a a refusal under Article 65 by the payer's PSP? 2) after settlement, should the payee's PSP charge the payer's PSP, which in turn charges the payer, if the return reason is the payee's account number not existing?			
Answer			
<p>Yes, credit transfer exceptions fall under the PSD.</p> <p>1) Before settlement, a reject could be considered as a refusal under Article 65 if it comes from the originator bank.</p> <p>2) The answer will depend whether the error comes from the user or from one of the payment service providers (PSP). If the error comes from the user that has provided an incorrect unique identifier, then the PSP will not be liable for non execution or defective execution of the payment transaction, in accordance with Article 74(2). In such a case, "the payment service provider may charge the payment service user for recovery if agreed in the framework contract". However, if the error comes from the payment service providers involved in the transaction, they will be liable in accordance with Article 75 and will not be allowed to charge their users for it. With regard to the question asked, whether the payee's payment service provider may charge in such case the payer's payment service provider, the PSD does not cover it as it is a matter for the interbank space.</p>			

Relevant provisions	Article 66(3)	Question no	178
Date of question	21.1.2009	Date of answer	15.4.2009
Issue			
Revocability of payment orders – Direct debit			
Question			
<p>In a direct debit agreement, how can the payer revoke the payment order at the latest by the end of the business day preceeding the day agreed for debiting the funds if the payment order given by the payee is, according to Article 64(2), received by the bank on the agreed day? Considering that consent for direct debit is usually given by the payer through a mandate, does the cancelation of the payment order referred to above mean the revocation of the mandate or just the revocation of a one-time payment under the mandate?</p>			
Answer			
<p>Article 64(2) clearly states that the point in time of receipt is deemed to be the agreed date for the purposes of Article 69, i.e. for the provisions on execution time. As for the revocability, Article 66(3) lays down specific rules on how a payer may revoke the payment order in case of a direct debit. This revocation concerns a direct debit transaction which is covered by a mandate, be it a recurrent direct debit transaction or a one-off payment, and does not affect the mandate itself.</p>			

Relevant provisions	Article 29	Question no	179
Date of question	21.1.2009	Date of answer	15.4.2009
Issue			
Provision of payment services – Money remittance			
Question			
<p>A client of ours is not currently required to be FSA regulated. His business is Money Transference (so for example clients wanting to send money to relations overseas deposit £ with him and he deposits the local currency with their relations).</p> <p>Will he need to be FSA regulated post 1.11.2009 the PSD coming into force?</p>			
Answer			
<p>The PSD guarantees fair market access to new players. Among the six categories of payment service providers recognised by this directive, a new category (namely, the 'payment institutions') has been created for all providers which are not connected to taking deposits (credit institutions) or issuing electronic money (electronic money institutions). Getting authorisation as a 'payment institution' is subject to a set of strict and comprehensive conditions, including sound and proportionate prudential requirements under Title II of the PSD. This licensing regime is valid for the entire EU territory so the fully licensed payment institution gets the right to passport its services, including, where applicable, those of money remittance; see Point 7 of the Annex, Article 4(13) and Recital 7.</p> <p>In addition, Article 26 of PSD provides for a waiver regime whereby natural or legal persons unable to meet all those strict conditions may nevertheless carry out payment services in the Member State where they have their head office or legal residence (so no passport activities), after having been duly registered. This waiver regime aims to "bring all persons providing remittance service within the ambit of certain minimum legal and regulatory requirements" (Recital 15 of the PSD). Furthermore, Article 88 provides for some transitional provisions for legal persons and financial institutions having started their payment activities before 25 December 2007.</p> <p>Last but not least, Article 29 of the PSD bans carrying out payment services (including 'money remittance', see point 6 of the Annex) without an appropriate licence or registration. Therefore, only the six categories of payment services providers listed in Article 1(1) of the PSD, waived natural or legal persons under its Article 26 and persons explicitly excluded from the scope of the directive can carry out payment services, including money remittances.</p>			

Relevant provisions	General		Question no	180
Date of question	28.1.2009	Date of answer	15.4.2009	
Issue				
Payment transactions – Money remittance and full amount principle				
Question				
<p>If a payment is sent through a payments system, paid through an accounting system and handed to the customer in cash. Is this in scope?</p> <p>We receive a swift payment from our customer, cancel out of our payments system and a copy is sent to another department to debit manually through an accounting system. The customer who is not one of ours walks into a branch is verified against their passport and receives their funds in cash in the currency they were sent. The questions I have surrounding this scenario are: 1) Is this in scope? 2) If so, then can the charge be deducted from the amount before handing to the customer or does the full amount need to be given and then the charge requested from the customer? 3) Presumably, there is no need to produce a credit advice as no account is being credited?</p>				
Answer				
<p>1) Yes, this is in the scope, as it is a money remittance service, covered by Point 6 of the Annex of the PSD.</p> <p>2) According to Article 67(2), the user and the payment service provider may agree that the payment service provider deducts its charges from the amount transferred before crediting it to the payee.</p> <p>3) In such a case, in accordance with this provision, the full amount of the payment transaction and charges shall be separated in the information given to the payee.</p>				

Relevant provisions	Article 63	Question no	182
Date of question	29.1.2009	Date of answer	15.4.2009
Issue			
Refund – Direct debit			
Question			
<p>From reading some articles on newspapers, it would seem that this new law should help me as a consumer but it will cause huge problems as entrepreneur with regards to the use of Direct Debits. Various persons and bank clerks said to me that this law will oblige banks to give immediate availability of funds for direct debits, even though debtor has 8 weeks for requiring a refund. The problem (if I have understood correctly) is that banks will not sell some kind of direct debits to small/medium corporates as they do not want to run the risk to give money to a creditor and then receive a refund from the debtor bank that the bank might not re-debit to the creditor, because, for example, the creditor has no availability of funds (someone talked to me about sepa direct debit, but I am not sure of the name, where the creditor bank can not oppose to a refund claim). Do you think that the law will lead to such issues, that is that some/all kind of direct debits instruments will not be sold to small medium corporates because of credit risk issues? Is correct what I described or I misunderstood something?.</p>			
Answer			
<p>According the second subparagraph of Article 73(1), the payment services provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after the amount is credited to the payee's payment service provider's account.</p> <p>However, as stated in Recital 36, the PSD lays down "rules for a refund to protect the consumer when the executed payment transaction exceeds the amount which could reasonably have been expected. Payment service providers should be able to provide even more favourable terms to their customers and, for example, refund any disputed payment transactions".</p> <p>In accordance with Article 62, debtors (= payers) will have a right of refunds for direct debits within a 8-week period, in the event where the authorisation given by the payer did not specify the exact amount of the payment transaction and where the amount of the transaction at the end exceeds the amount the payer could reasonably have expected. Debtor's bank will then be allowed to recover the amount of the refund from the creditor's bank which will also be allowed to recover this amount from the creditor, in accordance with the terms and conditions concluded with him.</p>			

Relevant provisions	Articles 52(2) & 67(1)	Question no	183
Date of question	29.1.2009	Date of answer	15.4.2009
Issue			
Charges – 'BEN' and the full amount principle			
Question			
<p>In the answer to Question 104 it was clearly established that the compulsory use of Share charging is determined by the absence of a currency conversion on the the sending side. This indicates that a customer transferring euro from a pound sterling account can be permitted to choose the 'BEN' or 'OUR' charging option. Article 67(1) prohibits an intermediary bank from deducting a charge from a payment. In the event that an intermediary bank receives a payment with 'BEN' indicated can it assume that a currency conversion occurred on the sending side and that it is permitted to deduct its charge from the payment before transmission to the next bank in accordance with current banking practice.</p>			
Answer			
<p>No, as clearly stated in Recital 40, "it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred".</p>			

Relevant provisions	Article 3(m)	Question no	184
Date of question	29.1.2009	Date of answer	15.4.2009
Issue			
Payment transactions between payment service providers – Message types			
Question			
In the article, it states that 'payment transactions carried out between payment service providers, their agents or branches for their own account' are not in scope. Does this mean that MT 200/202 message types are excluded from the whole of PSD or only where the transaction is sent for their own account? Does the PSD only apply to MT 103 type messages?			
Answer			
<p>The PSD deliberately does not consider the format of payment transactions for the application or non-application of any of its provision.</p> <p>The only relevant criteria for the interpretation of Article 3(m) is whether payment service providers, their agents or branches exchange payment transactions for their own account (which would be excluded from the scope) or whether the payment transactions are covered by a contract with a payment service user, in which case they would fall within the scope of the PSD.</p>			

Relevant provisions	Article 66(4)	Question no	185
Date of question	2.2.2009	Date of answer	15.4.2009
Issue			
Direct debits – Irrevocability			
Question			
In your answer to Question 165 you state that the direct debit due date is the agreed day referred to in Article 64(2). Can the Commission confirm that, in case of direct debits the payee, as payment service user, under Article 66(4), may revoke a payment order at the latest by the end of the business day preceding the due date?			
Answer			
Yes: Article 66(4) refers to the 'payment service user' which, in accordance with the definition under Article 4(10), includes both the payer and the payee.			

Relevant provisions	General	Question no	187
Date of question	9.2.2009	Date of answer	15.4.2009
Issue			
Definitions – Payment accounts when pass-books are in operation			
Question			
<p>Many building societies in the United Kingdom operate savings accounts with a pass-book. The pass-book is always presented before a cash withdrawal or a credit transfer is permitted although the account can be funded at any time by D/Ds and standing orders. The pass-book is made up-to-date when the customer visits a branch. No statements are issued. For the purposes of the PSD should this type of savings account be treated as a payment account?</p>			
Answer			
<p>As far as the holder of the saving account is able to place or withdraw funds whenever he/she likes, this is to be considered as a payment account for the purposes of the PSD, independently of whether the saving account is operated with a pass-book/bank-book or not.</p>			

Relevant provisions	General		Question no	188
Date of question	10.2.2009	Date of answer	15.4.2009	
Issue				
Transposition				
Question				
<p>The transposition website of the Commission indicates the progress of the implementation of the PSD in 29 countries (including the 27 EU Member States). To my information the PSD is also applicable to Iceland and Switzerland. Does the fact that both countries are not included in the table mean that they still haven't started with the implementation procedure?</p>				
Answer				
<p>Switzerland is not an EEA country; therefore, it has no legal obligation to implement the PSD. We would kindly invite you to consult the document 'More detailed information of the transposition plans of the Member States' which has been recently added to our website (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/plans_en.pdf). Page 5 of this document contains information about the state of play in Iceland.</p>				

Relevant provisions	Article 66	Question no	189
Date of question	11.2.2009	Date of answer	15.4.2009
Issue			
Irrevocability of payment order – Payment card recurring transactions			
Question			
<p>In our view, payment card recurring transactions do not amount to 'direct debits', mainly for the following reasons: they do not fully operate like direct debits, they will not follow the SEPA direct debit rules, they use a card number and the card transaction process, as any other card transactions. Accordingly, card recurring transactions will be subject to Article 66(2), which applies to 'payment transactions initiated by or through the payee', rather than Article 66(3), which contains an exception applicable to direct debits only. Could the Commission confirm that the above interpretation is correct?</p>			
Answer			
<p>We can confirm the interpretation that the revocability of card transactions falls under Article 66(2), while Article 66(3) constitutes a <i>lex specialis</i> for direct debit transactions.</p>			

Relevant provisions	Article 65	Question no	190
Date of question	16.2.2009	Date of answer	15.4.2009
Issue			
Card transactions – Declinement (purchases, cash advances) and prior information			
Question			
<p>It is common practice for credit card issuers to accept or decline individual transactions (purchases/cash advances) based on real-time assessments of the customer's credit risk and the risk that the transaction may be fraudulent. Thus customers may have transactions declined even if they are not in breach of their Terms and Conditions. Is it sufficient to inform customers at a POS terminal or ATM that their transaction is declined, giving as the reason just the standard MasterCard or Visa response code displayed on the terminal's screen?</p>			
Answer			
<p>According to Article 65 the payment service provider shall inform the payment service user "in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 69", i.e., the maximum execution time, when they refuse a payment order. In addition, the payment service provider should give the reasons for the refusal, if possible. Therefore, informing the payment service user in the way described in the question seems to be sufficient from the PSD perspective.</p>			

Relevant provisions	Article 44(1)	Question no	191
Date of question	16.2.2009	Date of answer	15.4.2009
Issue			
Card transactions – Credit/spending limits			
Question			
<p>Are changes to a credit card's credit limit/spending limit regarded as changes to the framework contract, and if so, are they subject to the 2 month notification period in 44(1)?</p> <p>Credit card issuers generally reserve the right to vary a customer's credit limit, either upwards for temporary or permanent credit limit increases, or downwards if the issuer suspects the customer has an increased risk of default. Especially for credit limit decreases, the credit limit may have to be decreased before informing the customer. Can framework contracts be worded so that such credit limit changes can take place without requiring a two month notification period?</p>			
Answer			
<p>Article 42(2)(f) provides that the framework contract governing the relations between the payment service user and his payment service provider can include a provision on whether there is a possibility to agree on the spending limits for the use of a given payment instrument. Then, Article 55(1) provides for the possibility to agree on the actual spending limits. Consequently, a two months notice would only be necessary when the possibility to have spending limits has not been foreseen in the framework contract.</p>			

Relevant provisions	Articles 47(2) and 48(2)	Question no	192
Date of question	17.2.2009	Date of answer	15.4.2009
Issue			
Information – Individual payment transactions under framework contract			
Question			
<p>Are monthly statements with details showing payments excluding charges covered by this Article? The charges are only calculated and applied quarterly. This affects business accounts within our area e.g. regular CHAPS payments. Although charges are accrued, these are not known until the quarterly statement with the charges is produced.</p>			
Answer			
<p>The aim of the information requirements laid down in Articles 47(1) and 48(1) is to ensure that, respectively, the payer and the payee receive information on individual payment transactions without undue delay.</p> <p>Articles 47(2) and 48(2) state that a framework contract may include a condition that, among other information, the information mentioned in the question (on charges) to be given respectively to the payer and to the payee after each payment transaction is to be provided or made available periodically at least once a month. It would not be in line with the PSD to make this information available only on a quarterly basis.</p> <p>Furthermore, Member States have the option to require payment service providers to provide information on paper once a month free of charge.</p>			

Relevant provisions	Article 37(1)(a)	Question no	194
Date of question	19.2.2009	Date of answer	24.4.2009
Issue			
Information requirements – Foreign exchange rates			
Question			
<p>The earlier response to question on Articles 36(2) & 42(3)(b)–(c) doesn't appear to provide the clarity sought on exactly what level of detail is required to support the provision of foreign exchange rates. Perhaps examples of proposed Customer advice (amongst other elements of detail that would be provided in relation to the transaction) will help clarify the Directive's requirement on detail:</p> <p>Option 1: Before the transaction (at 9.45): 'The EUR/GBP rate is 0.9000'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9000'.</p> <p>Option 2: Before the transaction (at 9.45): 'The EUR/GBP rate is 0.9300 as provided by Reuters'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9007'. (Since the market has moved by 0.0200 between the customer asking what the rate was and committed to making the payment transaction, and the bank has applied a 1 % spread).</p> <p>Option 3: Before the transaction (at 9.45): 'The EUR/GBP rate is 1% below that provided by Reuters at the time you commit to the transaction'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9007'. (Since the market has moved by 0.0200 between the customer asking what the rate was and committed to making the payment transaction, and the bank has applied a 1 % spread).</p> <p>Option 4: Before the transaction (at 9.45): 'The EUR/GBP rate is derived from Reuters'. After the transaction (at 10.15): 'The actual rate applied to the payment is 0.9007'. Of the above, which are considered correct PSD approaches?</p>			
Answer			
<p>As a general rule, if the payment service provider announces a rate to the payment service user (Options 1 and 2), it has to apply the announced exchange rate to the payment transaction. Option 1 is therefore possible, but not Option 2 where a rate is announced and a different one is finally applied.</p> <p>Now, if a conversion needs to be made between currencies with continuously changing rates, it might be easier for the payment service provider to indicate to its client that it will use the rate provided by X (plus a possible commission) as indicated in Options 3 and 4. Furthermore, the payment service provider has to inform the payment service user of the actual rate that has been applied after the execution of the payment transaction.</p>			

Relevant provisions	Article 28	Question no	195
Date of question	20.2.2009	Date of answer	15.4.2009
Issue			
Access to payment systems – Payment institutions passporting by way of freedom to provide services or right of establishment			
Question			
<p>I want to confirm that:</p> <p>a) the non-discrimination and access right applies equally to PIs authorised in the Member State where the payment scheme is based, as they would to PIs authorised in other Member States. If for example, a PI in one (home) Member State wished to become a member of a payment scheme in another (host) Member State, the host Member State payment scheme could not discriminate and treat the PI in a different manner to the way it treats local host Member State authorised PIs.</p> <p>b) It would also be useful to know if this would require passporting into the host Member State by either freedom to provide services or right of establishment.</p>			
Answer			
<p>a) Yes.</p> <p>b) Yes.</p>			

Relevant provisions	Title IV, Article 52	Question no	196
Date of question	20.2.2009	Date of answer	15.4.2009
Issue			
Transaction – Field 71A:OUR on Target II payments			
Question			
<p>Under PSD (Title IV, Article 52) it refers to charging practices. It states that "Where a payment transaction does not involve any currency conversion, Member States shall require that the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider." We need to understand if this applies to Target II payments. In other words, today there is a high volume of Target II traffic in Europe where instructions contain Field 71A:OUR on the MT103. This allows beneficiary banks to claim charges back from the remitting banks. Is the directive ruling that going forward banks will not be allowed to use Field 71A:OUR on Target II payments?</p>			
Answer			
<p>According to Article 3, the PSD does not apply to payment transactions carried out between payment service providers for their own account, as well as payment transactions carried out within a payment system. However, payments processed for customers are covered by the directive. This means that it will not be possible to indicate the OUR option any longer for payment transactions covered under the directive, which do not involve any currency conversion. For these transactions, the SHARE principle applies in accordance with Article 52(2).</p>			

Relevant provisions	Article 69	Question no	197
Date of question	2.3.2009	Date of answer	15.4.2009
Issue			
Direct Debit due dates			
Question			
Article 69 of the PSD makes reference to the agreed due date of Direct debits through a Payment account. Bearing mind that a Direct Debit file would not contain details of a due date, does the responsibility for ensuring payments are made on an agreed date lie with the Direct Debit originator or the payers Payment Service Provider?			
Answer			
Article 69(3) provides that, for a direct debit, the payee and his payment service provider have to agree on time limits for transmission of the payment order, so that the settlement can occur at the due date indicated in the message.			

Relevant provisions	General		Question no	199
Date of question	10.3.2009	Date of answer	15.4.2009	
Issue				
Payment transactions – Credit reimbursements				
Question				
<p>The agreement between the Bank and a Client is based on the fact, that the Client is obliged to keep sufficient balance on his/her current account maintained by the Bank as of the due date of each loan installment in order to enable the set-off. There is no separate agreement on execution on direct debit(s). From the technical point of view, the loan's installments in this form do not reflect the relationship between the Bank and the Client in accordance with PSD, but rather reflects the relationship based on the Loan Agreement, hence between the creditor and debtor.</p> <p>The Bank provides the loans to its Clients. Based on the Loan Agreement, the outstanding balance of the Bank's Loan Receivable is paid in regular installments in the form of the set-off against the outstanding balance at the current account of the Client maintained by the Bank. Shall such set-off be considered as a payment service/payment transaction in accordance with the annex to the PSD?</p>				
Answer				
Yes, from the sending side, the regular payments of a loan are to be considered as payment transactions under the PSD. Therefore, Titles III and IV would apply.				

Relevant provisions	Article 73(1)	Question no	201
Date of question	15.3.2009	Date of answer	15.4.2009
Issue			
Value date – Future payment transactions			
Question			
<p>How should the service provider of the beneficiary handle incoming payments (MT103) in EEA currencies received on 04-03-09 before cut-off and with value date 05-03-09: Are they allowed to credit the beneficiaries account on 04-03-09 with value date 05-03-09 or should they wait till 05-03-09 and credit the beneficiaries account on 05-03-09 with value 05-03-09. Please notice that they will not credit beneficiaries account before they get the funds themselves otherwise they will lose money. On the other hand I prefer to be informed as soon as possible.</p>			
Answer			
<p>Assuming that your question refers to future payment transactions, Article 64(2) states that if the payment service user initiating a payment order and his payment service provider agree that the execution of the payment order shall start on a specific day, the point in time of receipt for the purpose of Article 69 is deemed to be the agreed date.</p> <p>In your example, this would mean that if it has been agreed between the payment service user and his provider that the execution of the payment order shall start on 05-03-09, then this has to be the starting point of the execution.</p> <p>If, however, such an agreement does not exist, the execution of the payment transaction has to start on 04-03-09.</p> <p>In any case, the second subparagraph of Article 73(1) clearly states that the amount of the payment transaction has to be at the payee's disposal immediately after the amount is credited to the payee's payment service provider's account. In this context, Recital 45 in fine also states that "specifically, the use of value dating to the disadvantage of the user should not be permitted".</p>			

Relevant provisions	Article 62(1)	Question no	202
Date of question	18.3.2009	Date of answer	24.4.2009
Issue			
Payment transactions –Difference between direct debit and payment transaction initiated by a payee			
Question			
In your answer to Question 102, you mention a direct debit transaction as an example of transaction initiated by the payee. What is the difference which characterises the direct debit in relation to a transaction initiated by the payee and why this article gives different legal treatment to these two types of transactions? We would appreciate another example (except direct debit) of payment initiated by the payee.			
Answer			
Article 62 covers situations where the authorisation to execute a payment transaction given by the payer did not specify the exact amount of the payment transaction and where the amount of the transaction at the end exceeds the amount the payer could reasonably have expected. In such cases, the payer is granted a right of refund in order to protect the payer. Since this article only applies to the cases mentioned above, the payer is not granted a refund right for all transactions initiated by or through the payee.			

Relevant provisions	Article 68(2)	Question no	203
Date of question	19.3.2009	Date of answer	24.4.2009
Issue			
Execution time – Intra-community transactions			
Question			
Can you confirm that for intra-community transactions even after 1.1.2012 the execution time can be maximum 4 days with agreement of the user and his provider (regardless of paper-initiated or electronic transactions)?			
Answer			
<p>Rapid payment is essential for a modern and properly functioning economy. Today, several Member States' legislations already provide that national payments must be made by the end of the next business day (the so-called 'D+1' rule) and some even make payments the same day. If some payment service providers in those Member States can already provide such rapid payments profitably, there is no good reason why other payment service providers should not also be able to provide such rapid payment.</p> <p>However, the PSD recognises that some payment service providers need time to upgrade existing products and systems. Therefore, up to 1 January 2012, the PSD allows parties to agree on a maximum execution time of 'D+3' for credit transfers. Furthermore, the PSD allows the parties to agree on an extra business day for paper-initiated payment transactions.</p> <p>According to Article 68(1), Section 2 of Title IV shall apply to the transactions mentioned in this paragraph (D+1 from 1 January 2012):</p> <ul style="list-style-type: none"> – euro currency payment transactions, both national and cross-border within the EU/EEA; – national payment transactions in the currency of the Member State concerned; – certain payment transactions involving currency conversion between the euro and the currency of a non-euro Member State. <p>Before 1 January 2012, a payer and his/her payment service provider may agree on a maximum period of 3 business days.</p> <p>For all other payment transactions in an EU currency within the EU/EEA, the parties have contractual freedom within the framework of Paragraph 2 of the same provision, i.e., for intra-Community payment transactions the maximum execution time would be D+4.</p>			

Relevant provisions	Article 73	Question no	204
Date of question	20.3.2009	Date of answer	12.5.2009
Issue			
Value date – Non-EEA currencies			
Question			
<p>Article 2 states Titles III and IV shall apply to payment services made in euro or the currency of a Member State outside the euro area. So in the context of Article 2, how should the currency of the transaction be understood in relation to Article 73? If for example, a payment from the US involves a USD: EUR conversion and this takes place in US, is the currency of the transaction deemed to be USD or EUR? Similarly, if the USD: EUR conversion takes place in say, France, what is the currency of the transaction then – EUR or USD?</p>			
Answer			
<p>In relation to Article 73, when the conversion takes place outside the EEA and the transfer of this transaction is executed in EUR, the transaction would be deemed to be a EUR transaction for which Article 73 would apply.</p> <p>In the second case, where the currency conversion from USD to EUR takes place on the recipient side within the EEA, the payment transaction is deemed to be executed in USD and therefore does not fall within the scope of the PSD, in accordance with Article 2(2).</p>			

Relevant provisions	Article 75	Question no	205
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Liability – Allocation of responsibilities between payment service providers			
Question			
<p>Article 75: "Where a payment order is initiated by the payer, his payment service provider shall (...) be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 69(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction."</p> <p>Article 47: "The payer's payment service provider should assume liability for correct payment execution, including, in particular the full amount of the payment transaction and execution time, and full responsibility for any failure by other parties in the payment chain up to the account of the payee." Is the liability of payer's payment service provider up to the account of the payee according to Article 47 or up to the payee's payment service provider according to Article 75? Which of the statements is wrong?</p>			
Answer			
<p>Article 75(1) allocates the responsibilities between the payment service provider of the payer and that of the payee for push transactions (initiated by the payer). The payer's payment service provider is responsible for the execution of the whole payment transaction "...unless he can prove to the payer..." that the payee's payment service provider has received the amount of the payment transaction. Only in such case, the payment service provider of the payee becomes liable to the payee for the correct execution of the payment transaction. A similar principle applies to pull transactions (initiated by or through the payee) under Article 75(2).</p>			

Relevant provisions	Article 38	Question no	206
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Information – Exchange rate			
Question			
<p>Article 38: Information for the payer after receipt of the payment order "Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in Article 36(1), the following information: (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with Article 37(1)(d), and the amount of the payment transaction after that currency conversion."</p> <p>a) Is it possible for the payer's payment service provider to make available to the payer the exchange rate after the execution of the payment in the case when the exchange is made at payee's premises?</p> <p>b) Is it possible to provide as information 'at National Bank's exchange rate' or 'at Bank's daily exchange rate'?</p>			
Answer			
<p>a) Article 38 governs the relation between the payer and his payment service provider. By contrast, Article 39 applies to the relation between the payee and his payment service provider. Therefore, the payment service provider of the payer is not obliged to provide him with information on the exchange rate applied on the side of the payee.</p> <p>b) Under Article 37(1)(d), information on the actual or reference exchange rate to be applied to a single payment transaction which is not covered by a framework contract has to be provided or made available to the payment service user. Therefore, it would be sufficient to provide as information 'at National Bank's exchange rate' or 'at Bank's daily exchange rate' as long as it comes from a publicly available source (see Article 4(18)).</p>			

Relevant provisions	Articles 68(1) & 69(1)	Question no	207
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Maximum execution time – Currency conversion			
Question			
<p>Example from EBA's guide 'Banks preparing for PSD': Possible scenarios of execution time for EU/EEA currencies (page 12, Scenario B): We have 2 payments:</p> <ul style="list-style-type: none"> • Denmark→Italy (DKK→EUR) • Italy→Denmark (EUR→DKK) <p>The execution time will be D+1 (until 2012: D+3 and + 1 day if initiated on paper) if the conversion takes place in Denmark.</p> <p>What execution time will be applied if the conversion will take place in Italy? Why not the same execution time?</p>			
Answer			
<p>When the currency conversion is carried out in the Member State inside the euro-area and the cross-border transfer does not take place in euro, Article 68(2) applies.</p> <p>The reason why there is a possible longer maximum execution time for the abovementioned non-euro cross-border payments is that euro cross-border payment infrastructures are more developed thanks to the SEPA initiative.</p>			

Relevant provisions	Article 73	Question no	208
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Value date			
Question			
<p>Article 73: "The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account."</p> <p>What is the interval of time that defines the word 'immediately'? As long as the word is subjective and relative we would like to clarify the meaning and understanding which will be used in out-of court and in court resolution.</p>			
Answer			
<p>Immediately means, in the context of Article 73, the point in time when the payee's payment service provider has all the information necessary to credit the amount on the payee's account.</p>			

Relevant provisions	Article 4(20)	Question no	209
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Definitions – Micro-enterprises			
Question			
<p>"Member States should have the possibility to provide that micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, should be treated in the same way as consumers."</p> <p>Can Member States refer to the definition within national legislation (in our case Law no. 346/2004) or are they obliged to refer to the definition of Commission's Recommendation 2003/361/EC of 6 May 2003?</p>			
Answer			
Member States are obliged to refer to the definition of microenterprise under Commission's Recommendation 2003/361/EC of 6 May 2003.			

Relevant provisions	Article 75	Question no	210
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Defective execution			
Question			
Please provide all possible examples of 'defective execution' according to Article 75.			
Answer			
<p>Defective execution covers, among others, the following examples:</p> <ul style="list-style-type: none"> – transfer not executed at all; – instead of requested transfer of EUR 1000, only EUR 100 transferred; – wrong recipient. – late execution of payment transaction (outside maximum execution time). 			

Relevant provisions	Article 62	Question no	211
Date of question	23.3.2009	Date of answer	15.4.2009
Issue			
Direct debit – Immediate refund			
Question			
<p>Article 62(b): "The amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case."</p> <p>Please provide the mathematic explanation including calculation method of the statement: 'the amount the payer could reasonably have expected'.</p>			
Answer			
This will depend on the specific circumstances and has to be examined on a case-by-case basis.			

Relevant provisions	General		Question no	212
Date of question	23.3.2009	Date of answer	15.4.2009	
Issue				
Liability – Gross negligence				
Question				
<p>Recital 32: "In order to provide an incentive for the payment service user to notify, without undue delay, his provider of any theft or loss of a payment instrument and thus to reduce the risk of unauthorised payment transactions, the user should be liable only for a limited amount, unless the payment service user has acted fraudulently or with gross negligence."</p> <p>Please provide concrete examples of 'gross negligence'. Why the 'loss' is not within the definition of 'gross negligence'?</p>				
Answer				
<p>The effect the legal provisions may have on the incentives of the contractual parties has to be taken into consideration. For instance, legislation should not through distorted incentives increase the likelihood of fraudulent behaviour of the legitimate payment service user, i.e., so-called first-party fraud. In this context, as stated in Recital 33, "in order to assess possible negligence by the payment service user, account should be taken of all the circumstances. The evidence and degree of alleged negligence should be evaluated according to national law".</p>				

Relevant provisions	Article 2(1)	Question no	213
Date of question	24.3.2009	Date of answer	24.4.2009
Issue			
Scope –Geographical application			
Question			
Will a payment institution be able to offer money remittance as payment service towards country outside the community? I mean, the payment services must be proposed within the community, but could the funds be sent abroad? Towards Africa for instance.			
Answer			
Yes, payment institutions authorised in accordance with Title II may send funds outside of the EEA when providing money remittance services. However, these payment transactions will not be covered by Titles III and IV of the PSD (with the exception of Article 73). Member States however have the possibility to choose to extend the scope of the PSD at national level if they wish.			

Relevant provisions	Article 63	Question no	215
Date of question	31.3.2009	Date of answer	20.5.2009
Issue			
Pull transactions – Refund rule			
Question			
The article grants the right of reimbursement within 8 weeks from the date the amount was debited. Does this right have to be granted also in case of national means of payment, considering also that many contracts signed so far by consumers do not contemplate a right of cancellation?			
Answer			
The PSD, once transposed into national law, will apply for all payment services listed in the Annex. These payment services include also existing products. In particular regarding the refund rules laid down in Articles 62 and 63, the European legislator took the decision to apply them to both existing national and future SEPA direct debits (SDD) in order to promote the rapid migration to SDD.			

Relevant provisions	Article 42(3)(b)	Question no	216
Date of question	1.4.2009	Date of answer	20.5.2009
Issue			
Information requirements – Interest rate			
Question			
<p>Interest rate on customer credits Article 42(3)(b) states the conditions for how to describe the interest rate in the framework agreement, and – as all framework agreement conditions – this is subject to the rules in Article 44 when it comes to changes. This is also the topic of Question 146, where your answer provides further explanation on how to interpret this. However, further explanation is needed as to which kind of interest rates this applies. There are two major types of interest rates: A. Rates for the interest paid by the bank to the customer on the customer's funds held by the bank; B. Rates for the interest paid by the customer to the bank for using a credit facility, such as a credit card or a account credit facility. For some payment accounts types only one type of interest is possible, such as most credit cards which only have interest of type B. For some both types are possible, .i.e. both negative and positive balances are possible and subject to interest, e.g. bank accounts with a credit facility. Article 30(3) states that the PSD shall be without prejudice to national measures implementing Directive 87/102/EEC – the Consumer Credit Directive – and to other relevant Community or national legislation regarding conditions for granting credit to consumers not harmonised by this Directive that are in conformity with Community law. The CCD and the corresponding national regulations mentioned, also states rules for how the interest rates of type B above should be updated with the customer. We ask you to confirm that Article 30(3) should be interpreted so that the rules always take precedence over the PSD and the national implementations of it, so that the interest rates of type B are exempt from the PSD. In short, the PSD rules on interest rate and reference interest rate in Article 42(3)(b) and the answer to Question 146, are only applicable for interest paid by the bank to the customer, and not for interest paid by the customer to the bank?</p>			
Answer			
<p>Article 42(3)(b) concerns all kind of interests linked to a payment account and/or a payment transaction. With regard to payment accounts, this provision covers both interest granted to the payment service user or interest to be paid to the payment service provider</p>			

Relevant provisions	Article 52(1)	Question no	217
Date of question	8.4.2009	Date of answer	20.5.2009
Issue			
Charges – Corrective and preventive measures			
Question			
Free corrective and preventive measures are only those mentioned in Article 55 (payment instruments blocked on PSP initiative) or also those mentioned in Article 56 (payment instruments blocked on payer initiative)?			
Answer			
<p>Payment service providers are entitled to charge for the provision of payment services listed in the Annex, but not for the fulfillment of the information obligations or corrective and preventive measures under Title IV, unless otherwise specified in this Title.</p> <p>Apart from some legal descriptions such as those in Articles 51, 53 or 64, the other provisions in Title IV are to be considered either preventive (e.g. Articles 55(2), 57(1), 58 and 79) or corrective (e.g. Articles 59–63, the liability provisions under Section 3 and the complaint provisions under Chapter 5).</p> <p>On the two specific provisions cited in the question, neither Article 55, nor Article 56 is mentioned in the first sentence of Article 52(1). Therefore, it is not possible to provide for any charge in conjunction with those provisions.</p>			

Relevant provisions	Article 73(2)	Question no	220
Date of question	20.4.2009	Date of answer	20.5.2009
Issue			
Value date – Cash withdrawals from an ATM			
Question			
In case of cash withdrawal from a bank ATM in a closing day, the cardholder's account will be booked by his bank for the amount of the transaction on the next banking business day. Is cardholder's bank allowed to debit with value date equal to the transaction date? This use of value dating should not be considered as a disadvantage of the user.			
Answer			
According to Article 73(2) of the PSD the debit value date cannot be earlier than the point in time at which the amount of the payment transaction is effectively debited to that payment account. Consequently, the debit value date has to be the day on which the account is debited and cannot be an earlier point in time (including bank holidays). Recital 45 clearly states that 'the use of value dating to the disadvantage of the user should not be permitted'.			

Relevant provisions	General (New answer)		Question no	221
Date of question	21.4.2009	Date of answer	8.6.2009	
Issue				
Scope – Issuing processing activities (New answer)				
Question				
Could you confirm if and on what grounds issuing-processing activities with acces to the funds would fall within the scope of the PSD?				
Answer				
Issuing of payment instruments is a payment service listed in the annex and as such covered by the directive. Processing activities are also covered by the directive if the provider enters into possession of the funds to be transferred. Only services provided by technical service providers without them entering at any time into possession of the funds to be transferred are excluded of the scope of the directive in accordance with Article 3(j).				

Relevant provisions	Article 60(1) (New answer)		Question no	223
Date of question	23.4.2009	Date of answer	8.6.2009	
Issue				
Unauthorised payment transactions – Immediate refund (New answer)				
Question				
<p>Our understanding is that the meaning of Paragraph 1, when read in conjunction with Article 59 (which provides for an obligation for a PSP to prove the authenticity of a disputed transaction), is that the requirement for an immediate refund to the payer applies only once an investigation into the disputed transaction has been conducted and the PSP has been unable to prove that payment was authorised. We would appreciate that you confirm this reading. Do you have any suggestion on how long an investigation should last?</p>				
Answer				
<p>This provision aims to achieve a fair balance between the liabilities of the payment service provider and the payer. When interpreting this provision, one has to consider the effects it may have on the incentives of the contractual parties. For instance, legislation should not through distorted incentives increase the likelihood of fraudulent behaviour of the legitimate payment service user i.e. so-called first-party fraud. Therefore, this provision has to be interpreted in such a way that it prevents highly unjustified claims:</p> <p>(1) If the payment service provider of the payer can exclude on a prima facie basis that the payer has acted fraudulently, it should refund the user immediately. If it does not refund the amount claimed, it would do so at its own risk.</p> <p>(2) In case of high suspicion of fraud, the payment service provider might take reasonable time to conduct an investigation. When the investigation shows that the payer acted fraudulently, the payer would bear all the losses relating the unauthorised transaction (in accordance with Article 61(2)). However, the payment service provider would risk a sanction if it does not act promptly and the investigation does not show that the transaction was unauthorised. The adequateness of the length of the investigation needs to be calibrated on a case by case basis, taking into account all the circumstances of the case.</p> <p>(3) As for the cases in the 'grey area' (e.g. the payer claims that he has not failed to keep the personalised security features of the payment instrument safe), Article 60(1) would grant an immediate refund right to the payer once the notification has been made in accordance with Article 58. Once the payer has been reimbursed, the payment service provider will then have the time necessary to look for evidence, in accordance with Article 59 (e.g. if after its search for proof, the payment service provider finds evidence showing that the payer failed to keep the personalised security features of the payment instrument safe, the payment service provider would be able to debit the amount mentioned in Article 61(1) from the payer's account).</p>				

Relevant provisions	Article 67(1) (New answer)		Question no	225
Date of question	28.4.2009	Date of answer	8.6.2009	
Issue				
Charges – BEN option (New answer)				
Question				
<p>BEN option instructed by payer to their payment services provider vs. stipulations of this Article If the only Article imposing specific costs division is 52(2), it would mean that when there is a conversion between currency of payer's account and transfer's currency, payer may instruct to their PSP any other instruction related to charges for execution of such instruction. When BEN option is requested how can PSP execute transfer to be compliant with payer's instruction and 67(1) of PSD and, in the same time, be able to get fee due to them?</p>				
Answer				
<p>Only in the case where a payment transaction does involve a currency conversion, Article 52(2) leaves up to the parties to decide about the distribution of cost rule. However, whatever the rule mandatory applied (SHA) or chosen (SHA, OUR or BEN) when there is this possibility, the full amount principle under Article 67 implies that the payment service provider of the payer, the payment service provider of the payee and any intermediary provider must transfer the full amount and refrain from deducting charges. In particular, as far as intermediary providers are concerned, Recital 40 clearly states that "it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred". However, the provisions in Title IV of the PSD outline the rights and obligations of payment service providers and payment service users and, therefore, apply to the relationship between them. Therefore, these provisions do not govern the payment service provider-to-payment service provider space.</p>				

Relevant provisions	Article 69(1) (New answer)		Question no	227
Date of question	4.5.2009	Date of answer	8.6.2009	
Issue				
Maximum execution time – Paper-based payment transactions (New answer)				
Question				
In this article it is stated, that "periods may be extended by a further business day for paper-initiated payment transactions". What are considered paper-initiated payment transactions? What about payment orders transmitted via email or fax?				
Answer				
Paper-initiated payment transactions are e.g. credit transfers for which the payment order has been established using a paper slip which is either directly handed over by the payer to his payment service provider during opening hours or put in a box provided by the payer's payment service provider (could also be outside opening hours). They could also include payment orders transmitted via email or fax when they require a paper handling action on the side of the payment service provider, e.g. a print-out.				

Relevant provisions	Article 52(2) (New answer)		Question no	229
Date of question	5.5.2009	Date of answer	8.6.2009	
Issue				
Charges – SHA principle (New answer)				
Question				
<p>Cost sharing for payments involving a currency conversion. Was there any particular reason why Article 52(2) did not also capture payments involving a currency conversion? It would have been rational to impose the SHA principle on the cost of the payment as such and, of course, leave the conversion cost with the payer or the payee, as the case may be. Is any action foreseen in this respect, e.g. guidelines issued by the competent authorities to regulate incoming and outgoing payments involving a currency conversion?</p>				
Answer				
<p>This provision aims to facilitate the straight-through processing of payment transactions. Only in the cases where a payment transaction does involve a currency conversion, Article 52(2) would leave up to the parties to decide about the distribution of costs' rule which should apply. In those cases, the legislator has preferred to leave certain room of manoeuvre because of the conversion procedure which implies further costs for one or both of the parties involved in the payment transaction. However, the legislation of the Member State where the payment transaction has been initiated may dispose the application of the SHA principle by default, which would mean that, subject to the contracting parties' agreement to the contrary, the SHA principle would apply even in the case of payment transactions involving currency conversion. On the other hand, Member States would not be able to impose OUR or BEN for payment transactions involving currency conversion.</p>				