

Banking - Austria

Aims of EU Payment Services Directive

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Aims of EU Payment Services Directive

The EU Payment Services Directive (2007/64/EC) was implemented in Austria through the enactment of a new federal Payment Services Act and amendments to several banking and financial market laws, which became effective on November 1 2009. Before implementation of the EU Payment Services Directive, each EU member state organized its payment services market separately. Therefore, the directive establishes "a modern and coherent legal framework for payment services" in terms of safety and efficiency within the European Union (the Single Euro Payments Area).

In general, the rules of the EU Payment Services Directive are obligatory. Only where the payment services user is not a 'consumer' according to the meaning contained in the directive may the parties agree on different terms. The directive provides for not only a single legal framework, but also transparency and greater protection for consumers. EU member states were obliged to implement the directive without diverging rules by November 2009.

Key Provisions of Payment Services Act

The Austrian Payment Services Act establishes a legal base for payment institutions alongside credit institutions. The act provides an exhaustive list of permitted activities for payment institutions. The commercial performance of a payment institution triggers a requirement for a licence issued by the Financial Market Authority. In addition, payment institutions with an EU licence can provide payment services in Austria either through a branch or through the freedom to provide services (ie, the EU single passport).

Pursuant to the granted licence, besides payment services, a payment institution may also:

- provide certain closely related and ancillary services;
- operate payment systems; and
- grant credits related to payment services, provided that the credit must be repaid within less than 12 months and is not given from funds received or held for the purpose of executing payment services.

Some business operations, such as the taking of deposits from users, are reserved for credit institutions.

Payment and credit institutions are obliged to provide the payment services user with several pieces of information within a framework contract, such as details about the payment services, fees and interest. This information can be provided on the institution's homepage, in an information brochure or in the account statement. Changes to the framework contract must be announced at least two months before they are due to take effect. In turn, the payment services user is entitled to refuse to accept the framework contract and can terminate it free of charge without notice.

If a payment order is executed in accordance with the unique identifier appearing on the instruction, the payment is deemed to have been executed correctly with regard to the payee, even if the identifier does not correspond to the name of the payment recipient. If the unique identifier used by the payment services user is incorrect, the payment services provider shall not be liable for non-execution or defective execution of the payment transaction. The Single Euro Payments Area credit transfer scheme rulebook

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defines the international bank account number and the bank identifier code as 'unique identifiers'. Payment services providers are not obliged to compare this information with additional information provided by the payment services user (eg, the name of the payee).

The payment services provider is liable for the correct execution of the payment order of the payment services user. In case of unauthorized or incorrect transactions, the payment services provider must refund the transferred amount plus fees, provided that there is no fault on the part of the payment services user. In addition, the payment services user may claim damages caused by an incorrect transaction.

If the payment services user causes an incorrect transaction by gross negligence or intent, it is liable for damages of the payment services provider, which in case of slight negligence is limited to €150 for consumers.

The payment services user is entitled to terminate the contract within one month. On the other hand, the payment or credit institution must observe a notice period of two months for termination of the contractual relationship with consumers.

Transition Period, Debit and Credit Value Date

A payment services provider must ensure that the transferred amount is credited to the payee's account at the latest by the end of the day following the receipt of the transfer order. The Payment Services Act stipulates a transition period until 2012, during which the transaction may take three to four days. Orders given at the end of a business day may be handled as orders of the following business day.

The value date on the payer's account must be no earlier than that of the real debit (the debit value date). The amount must be at the payee's immediate disposal at the latest one day after it is credited to the account of the payee's payment services provider. The value date of payment transactions for the payee's payment account must be no later than the business day on which the amount is credited to the account of the payee's payment services provider (the credit value date).

Miscellaneous Provisions

In addition, the Payment Services Act stipulates rules regarding:

- claims for reimbursement of payment transactions initiated by or through the payee;
- the revocability of transactions;
- the prohibition on refraining from deducting charges from the transferred amount;
- a payment institute's bankruptcy;
- data protection; and
- the Financial Market Authority's right of supervision.

International Aspects

The EU Payment Services Directive and the Austrian Payment Services Act lay down detailed rules regarding, among other things, the execution of payment transactions and the liability of payment services providers. These rules can also apply to transactions where only one payment services user or provider is located within the European Union. Therefore, payment providers outside the European Union must bear in mind that several provisions of the EU Payment Services Directive and its implementation within the European Union are also applicable to transfers between the European Union and third countries. For further details see the following table.

| Application of provisions regarding credit/debit value date of transactions | Transfer to EU member state | | Transfer to third country | |
|---|---|--------------------------------------|---|--------------------------------------|
| | EU or European Economic Area (EEA) currency: ⁽¹⁾ | Other currency: | EU or EEA currency: | Other currency: |
| Transfer from EU member state | Payment Services Act applies to both credit and debit value date. | Payment Services Act does not apply. | Payment Services Act applies regarding debit value date only. | Payment Services Act does not apply. |
| Transfer from third country | EU or EEA currency: | Other currency: | All currencies: | |
| | Payment | Payment | Payment Services Act does not | |

| | | | |
|--|--|------------------------------|--------|
| | Services Act applies regarding credit value date only. | Services Act does not apply. | apply. |
|--|--|------------------------------|--------|

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Endnotes

(1) The euro, the Bulgarian lev, the Czech koruna, the Danish krone, the Estonian kroon, the UK pound, the Hungarian forint, the Icelandic krona, the Latvian lat, the Swiss franc (Liechtenstein), the Lithuanian litas, the Norwegian kroner, the Polish zloty, the Romanian leu or the Swedish krona.

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