

Bulgaria enacts the Payment Services Directive 2 Key Changes to Payment Regulations in Bulgaria

On 9 March 2018, the Second Payment Services Directive (“PSD 2”) was implemented in Bulgaria, as mandated by the new Payment Services and Payment Systems Act (“Act”).

The Act brings significant changes to existing regulations for payments services. As a result of this new regulatory environment, companies will need to assess the impact of the changes to their businesses, and quickly usher in changes to comply with the new rules.

We have closely examined the most important changes and how they have been implemented in Bulgaria. Here are the key points.

New services and players

One major change introduced by PSD 2 and the Act is the introduction of the following new payment services, such as the: (i) **payment initiation services** (PIS), which relates to the initiation of a payment from a payer’s account held at another payment service provider; and (ii) **account information services** (AIS), which provides consolidated information with one or more payment service providers on one or more payment accounts held by the payment service user.

Companies providing any of the above services will need to become authorised (in case of PIS) or registered (in case of AIS). Providers of PIS and AIS enjoy more relaxed requirements (eg they are not required to own funds), but both will need to hold professional indemnity insurance covering the territories in which they offer services.

Furthermore, according to the Act, entities carrying out PIS or AIS will need to apply for authorisation or registration before 9 June 2018 (ie within three months of the date the Act came into effect.) These companies will be restricted from providing services if they fail to apply for authorisation or registration by the deadline, or if their application for authorisation or registration has been rejected.

Expanded scope of regulation

The scope of the Act is expanded, and will apply to payment transactions in:

- EU currencies where only one of the payment service providers is located in the EU (ie the so-called “one-leg out” payment transaction)
- Non-EU currencies where only one of the payment service providers is located in the EU, in respect to payment transactions carried out in the EU.

When the user is not a consumer, the parties may opt to derogate from certain requirements in the Act, such as information charges, payer liability for unauthorised transactions, PSP liability for non-execution, and defective or late execution of payments and transactions.

Businesses will need to comply with the relevant requirements of the Act for all transactions that fall within its scope.

Exclusions from the Act

Generally, the Act has been more restrictive than PSD 2. Bulgarian lawmakers have not used the option under PSD 2 to exempt from regulation (fully or partially) individuals or companies that provide payment services where the transaction’s total annual volume does not exceed EUR 3 million.

Narrowing exemptions under the Act

Some of the existing exemptions available under PSD 1 have been narrowed or clarified, and notification requirements for some exemptions have been introduced. As a result, businesses will need

to determine whether the exemptions still apply or whether they will be required to notify the regulator - the Bulgarian National Bank (“BNB”).

Commercial Agent Exclusion

Payment transactions are only applicable where the commercial agent is (i) acting on behalf of one of the parties – the payer or the payee, or (ii) acting for both parties, but does not have possession of the funds at any time.

ATM exclusion

ATM withdrawals remain excluded. ATM operators, however, will be obliged to provide customers with information on withdrawal charges before and after the transaction.

Limited Network Exemption

The new Act narrows and clarifies limited network exemptions. Limited networks are payment transactions based on payment instruments that can be used in a limited way, such as: (i) in a limited network of service providers; (ii) to acquire a very limited range of goods or services; or (iii) where the payment instruments are issued by a public authority for specific social or tax purposes to acquire specific goods and services for specific social or tax purposes.

Entities relying on this exclusion will need to notify the regulator, the BNB, if the value of all executed transactions during the preceding 12 months exceeds EUR 1 million. Notification should include a description of the services.

Electronic Communication Network Exemption

The PSD 2 amends existing exclusions related to payment transactions by providers of electronic communication networks or services. Exclusions include the: (i) purchase of digital content or voice-based services regardless of the device used and charged to the related bill (eg music, ring-tones); or (ii) purchases of tickets or charitable activities performed from or via an electronic device, and charged to the related bill. These exclusions apply provided that the value of a single transaction does not exceed specified limits.

For the existing legislation, entities relying on this exclusion shall notify the BNB of the services provided and present an annual audit report, attesting that the activity complies with exclusion limits.

Authorisation for payment and e-money institutions

The requirements for granting and maintaining authorisation for payment institutions have not substantially changed. These requirements remain prudential, including initial and on-going capital requirements proportionate to the risk related to the payment services provided, and the safeguarding of client's funds.

Additional requirements for the licensing of payment and e-money institutions include the adoption of internal rules and procedures, which aim to ensure appropriate security for the payment services, and enhance customer protection. Such procedures include incidents management and reporting procedures, and the regulation of sensitive data related to payments and security policy.

Increased Security and Customer Authentication

PSD 2 introduces various requirements to ensure appropriate level of security for payment services (funds and data protection), and to secure fair competition among all payment service providers.

According to PSD 2, the European Banking Authority is mandated to develop various guidelines and regulatory technical standards (RTS) on the implementation of PSD 2, including technical standards on strong customer authentication, and common and secure communication (RTS on SCA and CSC).

While most of the guidelines and RTS have been developed, the RTS on SCA and CSC has not yet been finalised and will come into play 18 months after their publication in the Official Journal of the EU. By that time, the Act will specify that payment service providers shall not impede or prevent services related to PIS and AIS. This is an important note for banks as failure to give third-party providers access to the bank account where the customer provided its consent may be seen as an anti-competitive practice in breach of EU antitrust rules. In this regard, at the end of 2017 the EC and local competent authorities carried out unannounced inspections in the banking sectors of certain EU member states for allegedly excluding fintech companies from providing financial services.

Furthermore, payment service providers are required to apply SCA in certain cases, including online access to user payment accounts. SCA includes three levels of user authentication. The European Banking Authority has drafted detailed RTS for SCA, which is now pending approval by the EC.

Sanctions

The Act levels sanctions for non-compliance in key areas, such as non-compliance of provisions under the Act, and non-compliance of various regulations, such as No. 2015/847, No. 924/2009, No. 260/2012, No. 2015/751 and Regulation 2016/1011. Sanctions vary depending on whether the breach is committed by an individual or company, and the type of payment service provider. The sanctions for violating Regulation 2016/1011 regarding interest rate benchmarks can be fines of up to 10% of total annual turnover or EUR 1 million.

Transitional provisions

All authorisations issued to payment service providers, e-money institutions, and payment systems operators under the repealed legislation will continue to be in force. The Act will also apply to pending administrative procedures before the BNB.

Payment service providers will have a six-month grace period after the new Act comes into force to comply with the new provisions, and to provide the BNB with documents and information proving that they have updated their organisational structure, risk reporting and risk-management procedures, internal controls (including internal audits), and AML and terrorist-financing prevention measures. They must also update within the same period their internal surveillance and security procedures, data collection and data-processing systems.

The Act specifies that entities may operate under only one licence (ie either as an e-money institution or a payment institution.) As a result, entities holding licenses for electronic money and for payment institutions must notify the BNB within one month from the Act's entry into force, and identify the licence they wish to keep. The BNB will then terminate the irrelevant licence. If the entities fail to notify the BNB within the specified time, the BNB will automatically terminate their payment services licence, and they will continue to operate under the EMI licence.

If you have any questions about the implementation of PSD 2 in Bulgaria, we would be happy to assist you - Desislava Vasileva, Ivan Gergov and Konstantin Stoyanov.