

# National differences

*More than just a legal underpinning of SEPA, the Payment Services Directive is an issue for banks, corporates, market infrastructures, regulators and non-bank payment providers.*

*Words: Heather McKenzie*

**With only 14 months to go until the deadline for the implementation of the Payment Services Directive, the industry remains confused about its implications, which will require changes to systems, information flows and market practices.**

The PSD, approved by the European Parliament in April 2007, provides the legal foundation for the creation of a European Union-wide single market for payments. It aims to establish a modern and comprehensive set of rules applicable to all payment services in the EU. The target is to make cross-border payments as easy, efficient and secure as domestic payments within a member state. The Directive also seeks to improve competition by opening up payment markets to new entrants, which in theory will foster greater efficiency and cost reduction. At the same time, the Directive provides the necessary legal platform for the Single Euro Payments Area. By 1 November 2009, all EU member states must have transposed the Directive into national law.

Simon Newstead, head of financial institutions advisory group, global transaction services, at The Royal Bank of Scotland, says there is confusion about how much the PSD covers: "It is more than just a legal underpinning of SEPA. The PSD is an issue for banks, corporates, market infrastructures, regulators and non-bank payment providers." Moreover, the PSD covers all EU currencies, not just the euro.

The main source of confusion for the payments industry is in the transposition of the PSD into national law. A number of derogations have been negotiated by member states and until each country has adopted the PSD, it is unclear just how consistent implementation of the PSD will be.

Ruth Wandhofer, vice-president, Emea cash management, global transaction services at Citi, says

that because there have been some differences in interpretation of the PSD during the transposition phase, the payments industry may end up with "a number of PSDs, some of which will look similar while others look different, depending on the country's legal system and attitude towards consumer protection".

The PSD is a very big challenge and is very ambiguous, she says. While it was initially intended to provide the legal basis for SEPA by removing legal fragmentation across Europe in key areas such as refunds rules for direct debits, the PSD very quickly became a wide-ranging and ambitious legislative project, aimed at uniting a number of objectives far beyond the initial legal underpinning of SEPA.

"The final PSD combines the definition of fully-fledged conduct of business rules capturing information requirements, as well as rights and obligations of payment service users and providers, with the definition of a prudential regime for non-bank payment providers, so-called payment institutions. For the sake of clarity and legal coherence the prudential regulation for non-banks should have been considered as a separate legislation, similar to the E-money or Banking Directive."

Newstead says there are more than 20 instances within the PSD text where individual countries can implement differently. "For example, member states will have the right to decide whether or not to insist that bank statements are provided in paper form. Each of the derogations within the text was negotiated into it, so we know there will be some variation and where these variations will be. Ideally of course, we'd prefer to have consistent interpretations of the PSD, but we can plan for the derogations."

This is also the view of Alan Koenigsberg, head of international ACH and in-country treasury services at

JPMorgan Chase. “I don’t think the uncertainty over derogations of the PSD is stopping banks from planning for the PSD. The basics of the PSD are well understood, but the difficulties will come in getting a full understanding of the national variances. JPMorgan is preparing products and customer services for all of the new legal conditions and we realise there may be some last minute realignments.”

For banks such as Citi, RBS and JPMorgan the PSD poses a great challenge. Says Wandhofer: “The more presence a bank has in Europe, the more challenges it will face because the PSD will look quite different at a national level – there will be fragmentation.”

The EC has set up a PSD Transposition Group, which it says will compare approaches in member states in order to highlight any “imperfections” at an early stage and provide “a better and consistent understanding of the PSD provisions”. The group comprises representatives from national regulators and regular meetings are held with representatives from the payment industry. RBS, says Newstead, is doing what it can to encourage consistent implementation of the PSD across the member states. “To paraphrase [former US Secretary of Defense] Donald Rumsfeld, the bigger issue is the ‘unknown unknowns’,” he says. “We all know in the industry that within the final text there are a range of definitions and phrases that are open to interpretation. So it is very important to understand there are ambiguities and that we get consistent interpretations. The EC’s transposition group is looking at this and the industry is very involved in the work to reach a common understanding on these issues. If this doesn’t happen, we could end up with a more complex compliance burden than was originally intended.”

Despite these concerns, there are opportunities. Koenigsberg says the Directive will create “a truly harmonised legal environment across Europe and facilitate business operations for all banks and their customers operating in different countries”. The increasing regulation around payments makes it more expensive to be involved in the payments business and some of the smaller players are likely to outsource payments to banks like JPMorgan, he says. The outsourcing play is one that appeals to many of the larger payments banks. Says Koenigsberg: “Outsourcing is a natural progression in most industries, as organisations seek to gain efficiencies. Some banks don’t regard regulatory or mandatory obligations as outsourceable, but they can outsource the operations behind these obligations.”

Within the payments industry, says Newstead, there are some institutions that view the PSD as solely a compliance issue and nothing else. However, in the longer term, there are possibilities and positives that should come out of the exercise. “The PSD will facilitate SEPA and will help the market move to more modern payment systems and types. Over time, the PSD should help the industry to realise a number of efficiency benefits and as it is pro-competition, it will help banks and other providers offer services in a wider range of countries.”

Simon Bailey, director of payments at Logica, says if banks get it right, the PSD will offer the ability to consolidate channels and offer new products. In March,



Ruth Wandhofer, Citi

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Logica issued the results of a survey conducted with international cash management banking alliance Ibos Association into the implementation of the PSD. The report found that the complex impact of the PSD on multi-country and multi-product banking groups is likely to result in acceleration of the process of consolidation and industrialisation of the back office. Banks with an agreed strategic view of the role of payments within their business “may be able to exploit specific changes in the market for commercial gain”.

Among these changes are the requirements for transparent pricing and clear business service level agreements, clearing and settlement options and models enabling new choices for banks, and emerging competitive and supply models for payments processing services from within and outside the banking industry. Logica says forward-thinking banks have the opportunity to exploit these changes for long-term commercial gain. “In the context of today’s current pressures on the banking industry, payments remain a potentially profitable, fee-earning service that attracts cash balances. Furthermore, where efficiency and flexibility is built into compliance programmes, changes can generate improved returns for banks that are able to model the impact on their business, operations and technology,” says the report.

Bailey says price transparency could become the basis for more effective product management, leading to pricing and bundling services that are common in the telecoms industry, where suppliers offer services such as “friends and family” billing.

“Many banks are treating the PSD as a box-ticking compliance exercise,” says Bailey. “But if a bank views it as a competitive issue and knows what its customers want and can target services at a compelling price, why wouldn’t it do this?”

Bailey also sees outsourcing as a likely growth area. “There will be some banks that will think given the tasks of complying with SEPA credit transfers and direct debits along with the implementation of ISO 20022 standards, that the PSD is the last straw. They are likely to outsource some, if not all, of their payments processing.”

Koenigsberg reckons there is still “a lot of work and organisational calories to be burned to make sure the industry can run a safe and sound payments environment for its customers”. But he feels that despite all of the concerns about the uncertainty and final legal interpretations, the banking industry has the ability to execute on programmes like the PSD. There are many, both inside and outside of the industry, that will be hoping he is right. **BT**