



10 key novelties you should know

On 17 April 2018 the Lithuanian Parliament adopted the laws¹ transposing the 2nd Payment Services Directive. The newly adopted laws also address the inaccuracies detected in the practice of application of the current legislation.

1. Two new services, namely, the payment initiation service (**PIS**)² and the account information service (**AIS**)³, were added to the payment services list. .

Requirements for access to payment accounts when providing the PIS and/or SIP were introduced, e.g., payment service providers (**PSP**) providing account services will be obliged to ensure open standards of communication with the PIS and AIS providers. The European Banking Authority (**EBA**) will set the mandatory technical and activity requirements for an interface ensuring open standards of communication.

Persons seeking to provide PIS and/or AIS and obtain activity licences will be required to meet the set requirements, e.g., PSP intending to provide only PIS will be required to hold an initial capital of at least EUR 50'000; furthermore, PSP that will provide PIS and/or AIS must have a professional civil liability insurance cover or any other equivalent security for their liability, etc.

2. It was entrenched that PSP will have to implement a system of risk mitigation measures and control mechanisms whereby the operational and security risks related to the payment services provided by them would be managed. Such system will have to comprise effective incident management procedures, including management and detection of operational and safety incidents. PSP will be obliged to assess the appropriateness of these measures on a yearly basis and inform the Bank of Lithuania to this effect.

More detailed recommendations on ensuring security and operational and security risk management will be provided in the EBA guidelines.

¹Law amending Law on Payments, Law amending Law on Payment Institutions, Law amending Law on Electronic Money and Electronic Money Institutions.

²Payment service when, at the request of the payment service user, the bank transfer order is initiated from the payment account opened in other payment service provider's institution.

³Payment service, where consolidated information about one or several payment accounts held by a payment service user in another payment service provider's institution or several payment service providers' institutions is provided via Internet.

3. It was established that PSP will have to apply strong customer authentication when accessing the account remotely: an electronic payment transaction is initiated, or other actions (which may be related to the risk of payment fraud) are performed remotely. When applying strong customer authentication, the PSP will have to comply with the technical standards approved by the European Commission⁴.
4. It was entrenched that persons seeking to obtain a payment institution (**PI**) and electronic money institution (**EMI**) licence would be obliged to submit additional documents related to security incidents, access to non-public payment data, business continuity arrangements, security policy, as well as to perform at least some of its activities in the Republic of Lithuania.
5. The composition of initial capital and calculation of equity of PI and EMI are now as much as possible approximated to the capital requirements applicable to banks under Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms. At least 75 % of Tier 1 capital of PI and EMI will have to be in the form of Common Equity Tier 1 capital and Tier 2 capital must be less than one third of Tier 1 capital.
6. The PI and EMI management system was simplified – the supervisory board and the management board will be optional.
7. The maximum amount of losses incurred by the payer due to a lost or stolen payment instrument was reduced to EUR 50 (from EUR 150). The payer should not incur any losses where he was not in a position to become aware of the loss, theft or misappropriation of the payment instrument before the execution of the payment transaction, except for the cases where the payer has acted fraudulently.
8. The PSP responsibilities in the event of a delayed payment transaction were specified (until now only the responsibilities related to non-executed and improperly executed payment transactions were specified) – the customer (a payer or a payment recipient) should not incur any losses due to the delayed payment transaction.
9. Taking due account of the fact that now it is quite difficult now for PI and EMI to open payment accounts in credit institutions that are needed for their business, the right of PI and EMI to use the services of credit institutions, i.e. the right to open a payment account, was set in the Law on Payments. It was established that a credit institution, when adopting a decision regarding the opening of a payment account, must observe the principles of objectiveness, non-discrimination and proportionality, and in the event that it has refused to open a payment account for the PI or the EMI the credit institution shall immediately notify the Bank of Lithuania to this effect, specifying the reasons for such rejection.
10. PSP liability for non-observing the requirements has been toughened – new amounts of monetary fines are established; and a new monetary fine calculation base was introduced for legal entities (up to 10 % of total annual revenue), while a fixed amount of up to EUR 50'000 was established for private individuals. Additionally, the supervising authority has been provided with the possibility of imposing a fine of up to EUR 100'000 on a legal entity where it is difficult or impossible to determine total annual revenue of the legal entity, or where the total annual revenue of the legal entity is less than EUR 1'000'000.

⁴ Draft: <https://www.eba.europa.eu/documents/10180/1761863/Final+draft+RTS+on+SCA+and+CSC+under+PSD2+%28EBA-RTS-2017-02%29.pdf>.

EFFECTIVE DATES

- The recast Law on Payments will come into effect on **1 August 2018**, save for the exemptions specified therein, e.g., the provisions on the open interface connection between the account servicing PSP and PIS and/or AIS, the provisions on strong customer authentication will come into effect after the lapse of 18 months from the adoption of relevant delegated legal acts regarding the given issues by the European Commission.
- The Law on Payment Institutions and the Law on Electronic Money and Electronic Money Institutions will come into effect on **1 August 2018**.
- PI and EMI which have got the licences issued by the Bank of Lithuania must, no later than by **1 November 2018**, apply to the Bank of Lithuania and submit documents certifying that the institution meets the additional requirements set for obtaining an activity licence. Where the required information is not provided by the date specified, the Bank of Lithuania will be entitled to apply the sanctions provided for in the legislation.



HAVE ANY QUESTIONS? PLEASE CONTACT US.



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