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"I" ITEM NOTE

From: Presidency

To: Permanent Representatives Committee (Part 1)

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC

- State of play

I. INTRODUCTION

1. The Commission's proposal for a Directive of the European Parliament and of the Council on Payment Services in the Internal Market was transmitted to the Council on 25 July 2013. The new proposal constitutes a revision of the Payment Services Directive that is currently in force.
2. The Hellenic Presidency was the one that started work on the dossier by examining the proposal in the Working Party on Financial Services at six meetings (26 February, 25 March, 28 April, 20 May, 2 June and 18 June 2014).

3. During the discussions and in order to take into account Member States' concerns, the Hellenic Presidency incorporated delegations' comments and suggestions in the form of draft amendments to the text of the proposal.
4. The position of the European Parliament is still outstanding. The European Economic and Social Committee and the European Central Bank delivered their opinions, respectively on 11 December 2013 and 5 February 2014¹.

II. STATE OF PLAY

5. In general, Member States welcome the aim of the Commission's proposal to further harmonise, refine and update legislation on payment services and payment institutions. There is a large measure of agreement on several core issues but a number of provisions are still under debate.
6. Subject matter and scope

The proposal for a Directive has expanded the scope of payment services to take account of market innovation. The introduction of new types of services went along with corresponding conditions that were further specified and enhanced by Member States on the basis of a risk-based approach. Member States reviewed the applicable exemptions from the scope of the Directive with a view to updating them in the light of more recent developments and regulatory experience gained from existing legislation. A number of exemptions are still under debate.

¹ doc. 8759/14

Furthermore, the geographical scope of many provisions is under discussion, as some Member States are in favour of its expansion to encompass payment legs that relate to transactions to/from jurisdictions outside the EU. There is no common view on which provisions could apply in expanded scope and at what level of refinement they could be detailed according to the type and currency of transactions. In that context, the Presidency suggested a simplified approach that would avoid excessive administrative burdens for both the authorities and the supervised entities.

7. Authorisation and supervisory requirements

Authorisation and supervision requirements for payment institutions were reviewed in the light of the hitherto regulatory experience with PSD I with a view to addressing challenges from newly introduced institutions offering so-called “payment initiation services”. There was common understanding of the need to enhance cross-border cooperation of authorities with the involvement of host authorities (the extent of the latter being still debatable), as well as addressing new types of payment institutions with certain specific provisions. Certain modalities in the cooperation between home and host supervisory authorities are still under discussion. In that context, a role for the European Banking Authority was introduced, although its extent and mediation potential still need to be refined.

The waiver regime applying to payment institutions was revisited by the Commission's proposal with the aim of limiting existing national discretion, but hitherto discussions point to the Member States' wish to maintain national discretion possibilities.

8. New types of payment services

The introduction of 'payment initiation services', mainly in the context of e-commerce, was endorsed by Member States, as they acknowledged the need for regulation to fit new market developments in this area. However, the description of the services and the conditions under which they would be provided were strongly debated. In general, Member States favoured the introduction of further conditions and security requirements in the provision of payment initiation services and sought to ensure transactions' safety and sufficient protection of the funds in consumers' payment/bank accounts.

The concept of "payment initiation service" was discussed and revised, whereby Member States explored different ideas and options in the context of the design of a future payments landscape. As technology evolves, Member States recognised the need to set up monitoring mechanisms and to provide for further adaptation and refinement of the rules. In general, Member States pursued containment of the concept of payment initiation with a view to ensuring efficient regulation and supervision. In that context, they found it suitable to describe the service in a way that would exclude holding of users' funds and sharing of payers' personal re-usable credentials for online banking. Member States pointed towards defining the service on the basis of the execution of specific individual transactions, thus containing the possibility of accessing payers' payment accounts via the provision of the payment initiation service. On the other hand, Member States refrained from extending regulation to any service that does not explicitly entail a payment transaction. In that context, there were doubts on the need to regulate account information and aggregation services under the Payment Services Directive - although some concerns remain as regards the need to apply rules for the protection of customers' data involved in such services.

The discussions have shown that more refined technical requirements and specifications for the nature and provision of the services can be addressed via secondary measures of a more or less binding character; thus the involvement of the European Banking Authority was introduced in several provisions.

9. Access to payment and settlement systems

The existing framework continues to apply as regards payment and settlement systems designated under the Settlement Finality Directive, as the idea of opening such systems to payment institutions as equivalent participants should entail additional requirements for them. As regards three-party schemes, the proposal's approach to remove their status of exemption from non-discrimination rules is under debate.

10. Use of bank accounts by payment institutions

Member States sought to ensure that payment institutions could have bank relationships so as to be able to conduct their business. In that context, there was support for a provision that would address the problem of payment institutions' non access to bank accounts in some Member States.

11. Rights and obligations of the users of payment services

Member States questioned the proposal's attempt to change certain terms of use of payment services and expressed preference for maintaining the existing PSD1 terms (e.g. as regards the refund right in direct debits). On the other hand, rights and obligations were complemented by new provisions adjusted to the introduction of the new types of payment services. In that context, the issues of customer authentication and use of personal security credentials were addressed, as well as the allocation of liabilities in case of losses and unauthorised transactions. In addition, the proposed revision of the payer's maximum liability was debated.

III. CONCLUSION

12. Against this background the Permanent Representatives Committee is invited to:

- take note of the progress achieved with regard to the Proposal;
 - invite the incoming Italian Presidency to continue work on the basis of the progress made by the Hellenic Presidency in order to reach an agreement on a general approach in the near future.
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