



# The Association of Corporate Treasurers

## Comments in response to ***Payment Services Directive: a consultation document***

H M Treasury, July 2006

September 2006

### **The Association of Corporate Treasurers (ACT)**

Established in the UK in 1979, The Association of Corporate Treasurers is a centre of excellence for professionals in treasury, including risk and corporate finance, operating in the international marketplace. It has over 3,600 members from both the corporate and financial sectors, mainly in the UK, its membership working in companies of all sizes.

The ACT has 1,500 students in more than 40 countries. Its examinations are recognised by both practitioners and bankers as the global standard setters for treasury education and it is the leading provider of professional treasury education. The ACT promotes study and best practice in finance and treasury management. It represents the interests of non-financial sector corporations in financial markets to governments, regulators, standards setters and trade bodies<sup>1</sup>.

### **General**

The ACT welcomes the opportunity to comment on this matter. Our members are involved in making payments within Europe, so our comments are coming from their perspective of corporate customers of the payment institutions.

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Contact details are provided at the end of this document.

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<sup>1</sup> See [http://www.treasurers.org/technical/resources/manifesto\\_sept2005.pdf](http://www.treasurers.org/technical/resources/manifesto_sept2005.pdf)

## Overview

Your consultation notes that the Payments Services Directive has been taking shape over a long time scale and included five official drafts before the Commission recommended the Directive and passed it on to the Council of Ministers and European Parliament. The ACT has been following all these stages and has already contributed to the discussions on policy and drafting through feedback to HM Treasury and the Commission or via the European Associations of Corporate Treasurers. In recent weeks the shape of the directive has evolved significantly from the Commission adopted version, and therefore this response is probably not the appropriate place to make detailed drafting points.

The ACT believes the PSD is a helpful piece of legislation which will certainly go a long way towards resolving some of the key problems identified with the EU payments systems, namely fragmentation across the EU, inefficiencies and uncertainties in the current systems, and lack of competition. Although we have concerns over some of the details in the Directive, we are supportive of the overall purpose and direction of the proposals.

We know the HM Treasury has been active in consulting with all sides of payments industry and making representations through the various European channels. We appreciate that active engagement.

## Options

The ACT would recommend your option 3 to support the general thrust of the EC proposal but push for change in some areas.

You explain that the UK Government is keen to create a proportionate regulatory regime for payment institutions given that payments are seen to be a low risk activity. To an extent payment activities are low risk but it is still worth remembering that even if a payment institution does not actually take deposits it will have substantial intra day exposures prior to settlement, and if some payments are rejected or somehow misrouted those exposures can extend overnight and longer.

The ACT has largely been considering the PSD from a customer's operational point of view. The concepts of introducing certain minimum standards expected on timings for payments, on certainty over the information that will be passed with a payment, certainty over charges etc are all very much welcomed. However in the PSD's earlier form many of these processes were not going to apply for payments over Euro 50,000 which would have nullified large parts of the benefit of uniformity. We understand that the Euro 50,000 limit is no longer going to be applied and we welcome this.

We have accepted that the Euro 150 maximum liability protection for wrong payments is aimed more at retail customers and need not apply to corporates. However Article 48

attempts to ensure that liability for fraudulent payments is correctly and fairly allocated and should be drafted to cover corporates rather than excluding them. We understand that through various proposed amendments this clause is likely to apply to corporates but with the ability of the corporate customer and its bank to agree otherwise. We support this as a workable compromise.

## Specific questions

*(From section 4.8)*

*Do the rights and obligations under Title IV pose any particular problems for the smooth execution of payments or create any unintended consequences?*

There remains a practical point on the definition of acceptance, being the time from which the clock starts ticking to calculate the D+3 days timetable. We believe this should relate to time of receipt of the payment instruction.

*Do stakeholders believe the Directive maintains an appropriate balance between user protection and the proportionate regulation of providers?*

Where a fraudulent transaction occurs and the customer can demonstrate that he has not been negligent in operating appropriate controls at his end of the transaction then liability should clearly rest with the payment service provider. We sincerely hope that the final accepted form of Article 48 will reflect this principle.

*Do stakeholders believe having a threshold of EUR 50,000, above which Titles III and IV of the Directive will no longer apply, is appropriate?*

It was never sensible to exclude payments over Euro 50,000 from a directive that was trying to create standardisation and harmonisation across all payments in Europe. We hope that the Euro 50,000 limit will be omitted from the final form of the Directive.

*Do stakeholders agree that the Directive, as drafted, will not have a disproportionate impact on small firms?*

We have no reason to believe that the Directive will have a disproportionate effect on small firms, however there is still a risk. We are thinking here about small firms that are users rather than the small firm providers that you are alluding to. In the form of the Directive currently being discussed in Parliament and the Council there are several places where companies may agree procedures that differ from the general PSD rules. This would normally be regarded as a helpful degree of flexibility. However for smaller firms who perhaps have less negotiating power with their bank / Payment Service Supplier, there is the risk that the bank will demand that the firms agree to certain exclusions from the PSD or go elsewhere for their banking business.

*Do respondents agree with our partial assessment of the benefits of the Directive? Are there any other significant benefits that we need to consider?*

In your discussions of the benefits and costs in appendix A you seem to concentrate largely on the payment service providers and just mention the users in passing. We believe that an improved process for cross border payments, and indeed increased competition on all payments will improve the quality and performance of all payment transactions over time. Some of these benefits may be small to start with but if the Directive acts as a precursor to improvements in the automation of the supply chain that applies around payments e.g. invoicing and remittance information, then the benefits to companies and business will be huge.

*Also, why and to what extent do you think the Directive will achieve its aims of creating an EU internal market in payments and removing legal and technical barriers to SEPA?*

Clearly the harmonisation of the legal framework for payments will facilitate the creation of SEPA which is definitely beneficial. How quickly the benefits of SEPA will come through is debatable, since existing organisations will already have put in place work around solutions to access domestic payments systems in all the countries in which they operate and for them the SEPA benefit of being able to make all payments from a single place will initially be less.

## **Other**

The ACT remains keen to follow the remaining stages of the Payments Directive and will aim to give further feedback to the Treasury as the drafting in Parliament and Council evolves. There is one additional point which we would like to highlight at this stage namely the suggestion that the requirement for Central Bank Reporting (CBR) of cross border payments which applies in several Member States, be removed. The administrative burden of analysing payments and reporting is a significant drag on the efficiency of cross border payments and detracts from the simplification and harmonisation objectives of the Directive. We strongly urge the Government to work towards removal of CBR across Europe.

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