New Payment System Act in the Czech Republic

On 13 January 2018, the new Payment System Act (Act No. 370/2017 Coll.) came into effect, replacing Act No. 284/2009 Coll., on Payment Systems. With the adoption of the new Payment System Act, the Czech Republic transposed into law Directive (EU) 2015/2366 on payment services in the internal market of 25 November 2015 ("Revised Payment Service Directive" or "PSD2"). The purpose of the new payment directive is to respond to the technological progress made since the adoption of Directive 2007/64/EC of the European Parliament and of the Council ("PSD1") to facilitate and accelerate payments without compromising security and thus strengthening the internal market for payment services in the EU.

One of the main downsides of the old regulation was the possibility for national legislators to regulate some areas of payment services differently from the provisions of PSD1 by including various exemptions from the directive that were ambiguous and too general, which thus created barriers to innovation and the entry of new players into the market.

The new regulation of payment services at the EU level is mainly aiming to improve legal certainty by limiting exemptions from the application of PSD2, facilitating the introduction of innovations in the area of payment services, avoiding security risks and ensuring greater consumer protection. Below we briefly outline the main innovations introduced into Czech law by PSD2.

New payment service providers

The new Payment System Act introduces new entities authorized to provide payment services. Payment services can now also be provided by postal license holders if their licenses explicitly include authorization to provide postal money order delivery services.

A wholly new entity, defined as the account information service provider ("AISP"), will also be authorized to provide payment services. The authorization to provide payment account information services allows the AISP to access the accounts that clients have at different account providers. The AISP, as a different entity from the provider maintaining the payment account, will be entitled to share information related to the payment account via the Internet.

Authorization to operate this service may be granted by the Czech National Bank to banks, payment institutions, credit unions or electronic money institutions, in addition to being granted to a newly regulated AISP. This service is intended to
improve the ability of account users to maintain an overview of their financial situation by finding information on all of their accounts in "one place".

**Major changes in the process of transfer of financial means**

A new indirect payment order service has been introduced where, for example, a payment order is initiated at the request of the payment service user with respect to a payment account held at another payment service provider. This service enables a payment account owner to carry out a transfer of funds by entering a money transfer order by a third party (the payment initiation service provider, "PISP"), who then submits the order on behalf of the payment account owner to the payee who manages the payment account of the owner.

Furthermore, the blocking of funds in the context of a card-based payment transaction, which has not yet been legislatively solved, is explicitly regulated in PSD2 and in the new Payment System Act. It is newly established that in the context of a payment transaction to which the payer's payment order is sent and initiated by the payee and whose exact amount is not known beforehand, the payer's provider may block the funds on the payer's account only if the payer has given consent to the exact amount of the funds to be blocked. The payer's provider is required to release the amount corresponding to the blocked funds as soon as it becomes aware of the actual amount of the transaction, at the latest upon receipt of the payment order. The purpose of this adjustment is to avoid situations where the payer was not informed of the blocking of the funds on the payment card or has not given consent to it.

The Payment System Act also introduces a new obligation to make online payments subject to so-called "strong authentication". A combination of at least two authentication elements is required at the moment at which the payment transaction is entered: (i) information known only to the users of payment services (such as login password or similar data); and (ii) an item in the possession of the user of the payment service (typically a mobile phone); or (iii) biometric data (such as fingerprint, or scan of the eye). While so-called strong verification through a combination, for example, of login password and text message received via the user's mobile phone is already being used by most payment service providers, using new technologies based on biometric data should now also be offered to users.

**Protection of customers**

The new Payment System Act also increases the protection afforded to customers by decreasing the customer's liability for an unauthorized transaction.
from EUR 150 (approx. CZK 3,817) to EUR 50 (approx. CZK 1,272). This does not apply where customers act fraudulently or in cases of breach of duty as a result of gross negligence.

**Some other changes introduced into Czech law by the new Payment System Act**

PSD2 itself covers so-called "one leg" transactions, transactions in a currency other than the euro or a national currency of one of the member states. However, this does not really constitute any change as the previous act regulating payment systems from 2009 contained a wider geographic range and also covered transactions in foreign currencies.

For small-scale payment service providers and small-scale issuers of electronic money, the system for obtaining authorisation has changed from one based on registration to one where providers are required to apply for a license. For this reason, we expect an increase in the number of administrative proceedings for the granting of licenses. The authorization requirements are also extended. Small-scale payment service providers will no longer be entitled to provide payment initiation services or account information services.

**Conclusion**

New legislation regulating payment services may open the door to the market for new entities and allow existing providers of payment services to adapt to new conditions and use new technologies.

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