

The PSD - impact on branches of non-EEA credit institutions

When the European Commission published its most recent answers to questions on the Payment Services Directive (2007/64/EC – the PSD) on 4 November 2008, the answer provided to Question 137 caused concern. The Commission’s answer suggests that European Economic Area (EEA) branches of non-EEA credit institutions would need to become licensed payment institutions to provide payment services. This interpretation could seriously impact branches of non-EEA credit institutions operating in the EEA.

Question 137: the PSD and EEA branches of non-EEA credit institutions

Question 137 requested an explanation of how, and to what extent, the PSD applies to EEA branches of non-EEA credit institutions.

The PSD indicates that credit institutions are already considered to be payment service providers and are therefore exempt from having to obtain a licence as a “payment institution” (see PSD Article 1(1)(a)). The PSD imports the definition of “credit institution” from the Banking Directive (2006/48/EC). This directive defines a “credit institution” as “an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account”.

The European Commission’s response: narrow interpretation

In response to Question 137, the Commission has taken a very narrow reading of the PSD and takes the position that a non-EEA credit institution acting through its EEA branch does not qualify as a credit institution under the PSD.

The Commission notes that Article 1(1) only refers to “credit institutions” and not explicitly to EEA branches of non-EEA credit institutions. The Commission concludes that if EEA branches of non-EEA credit institutions intend to provide payment services, they will need to fit into one of the other categories of payment service providers set out in Article 1(1). The Commission suggests, for example, that an EEA branch of a non-EEA firm could become a “payment institution”. This would involve establishing a company in the EEA and subsequently applying for an authorisation under the PSD once it has been implemented into national law.

Key Issues

Question 137: the PSD and EEA branches of non-EEA credit institutions

Narrow interpretation

Status of the Q&A's

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Status of the Q&A on the PSD

The Commission's answers in the Q&A document represent the considered views of the Commission services. It is important to note that the answers do not have the formal status of a Commission Communication and they do not constitute a binding interpretation of the law. The Q&A do not prejudge the position that the Commission might decide to take on the same matters if developments, including Court rulings, were to lead it to revise some of the views expressed.

There will likely be further debate on this issue and there may be scope for further clarification.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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