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Soulhier Bunch, Cabinet d'avocats d'affaires basé à Paris et Lyon

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France transposes the european directive on payment services

France is required to transpose the Directive 2007/64/EC of November 13, 2007 on payment services in the internal market before November 1, 2009.

This has been done with the publication of the Order no. 2009-866 dated July 15, 2009.

The Directive on payment services provides the legal framework necessary for the implementation of a single European market in payment services. It aims to establish a set of complete and detailed rules applicable to all payment services in the European Union. Its goal is to render cross-border payments as easy, efficient and safe as those payments carried out within a Member State, as well as to strengthen competition by opening payment services markets to new service providers thereby allowing greater efficiency and a reduction in costs.

According to the terms of the Order no. 2009-866, the French government's decisions in transposing the Directive are structured around the following principle points:

Payment services and payment institutions:

Articles 3, 4 and 5 of the Order modify the rules that currently apply in France concerning payment services by introducing a category of services that will no longer be reserved solely for credit institutions. Essentially, it concerns wire transfer, direct debit and money remittance operations, services enabling cash to be placed on or withdrawn from a payment account, and the operation of a payment account (defined as "an account held in the name of one or more payment service users which is used for the execution of payment transactions"). The payment account held by a credit institution must be used exclusively to carry out payment services, with the exception of taking deposits.

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The scope of the Order is limited to payment services in Euros or the currency of the European Union and carried out between two payment service providers located within the European Economic Area.

Payment services may now be provided by credit institutions as well as by a new category of service providers referred to as “payment institutions”.

Payment institutions should receive authorization from the Committee of credit institutions and investment companies, on the advice of the *Banque de France*. They will be subject to less stringent regulatory obligations with, for example, the requirement of an initial minimum capital between EUR 20,000 and EUR 125,000 versus EUR 1,000,000 for credit institutions (Articles L. 522-6 through L. 522-13 of the French Monetary and Finance Code). Under certain conditions, payment institutions may also provide ancillary services and grant credit, except for overdrafts and discount operations (Article L. 522-1 of the French Monetary and Finance Code).

With the creation of this new type of payment institution, new actors should be able to enter the market to propose payment services, which will ultimately favor competition and the reduction in costs in payment methods.

Consumer protection:

In general, consumers will benefit from the provisions in force within their Member State, even if they use an authorized institution in another Member State. When one of the contracting parties is a consumer, the contract that is entered into is governed by the laws of the country where the consumer habitually resides.

In concrete terms, a French user of payment services, in all cases, will receive the benefits set forth by French regulations on consumer protection. Nevertheless, if a user of payment services is not a consumer, the parties may contractually deviate from a large number of provisions of the Order.

Specifically, Article 5 of the Order defines the framework contract for payment services by using the provisions on deposit account agreements concerning, in particular, the signing of the agreement and the banks' obligation to inform clients on such issues as timeframes for the operation, exchange rates, and fees. The obligation to prepare annual fee statements is currently set forth by French law and is applicable to all payment service providers.

Further, the Order increases the responsibilities of payment service providers with regard to when the payment operation must be carried out, i.e. D + 1 between the moment the provider receives the payment order from the payor's service provider and the moment the credit appears in the account of the beneficiary's service provider. In other words, the funds must be immediately available to the beneficiary. Please note that this provision is public policy and therefore mandatory.

The Order no. 2009-866 dated July 15, 2009 will enter into force on November 1, 2009. The Decree no. 2009-934 dated July 29, 2009 details how the Order will be applied.

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