

# PSD: Liechtenstein's balancing act between Europe and Switzerland

Unlike Switzerland, the EEA member Liechtenstein must implement the EU Commission's Payment Services Directive (PSD) in its entirety. This entails a trend towards a division of the common "payment traffic area" with Switzerland into two payment regions.

Starting in November 2009, the directive will create a new legal basis for domestic payment traffic, which differs from the existing norms for payment transfers to and from Switzerland. In certain cases, payments between these two countries can subsequently no longer be viewed as domestic payment traffic. This is a challenge for Liechtenstein, since technically, all payment transfers are conducted through Switzerland, but legally, European norms apply that can depart from existing Swiss regulations.

## All EU/EEA currencies affected

The PSD defines future rules governing payments. It must be implemented into the national legislation of EU member states by November 1, 2009. The states of the European Economic Area, including Liechtenstein, will also implement this legal act into their national legislation and thus be considered member states in the legal sense of the directive. The directive's goals are the advancement of a standardized single market, the elimination of legal and technical obstacles, as well as standardized regulation of payments. The PSD also serves as the legal basis for the creation and completion of a standardized single euro payments area (SEPA). Unlike the SEPA, the PSD applies not only to payments in euros but also to payments in all currencies of the EU/EEA area.

## Currency contract between Switzerland and Liechtenstein

In 1924, Switzerland and Liechtenstein agreed to a customs contract that led to a tight integration of the two countries in customs-related questions. Among other things, this led to a lack of a border control between Switzerland and Liechtenstein; this is executed on the border to Austria by Swiss border guard institutions. Starting in 1924,

Liechtenstein also used Swiss francs as currency. The Principality of Liechtenstein then signed a currency contract with Switzerland on the use of the Swiss franc as its official currency in 1980. The currency contract thus established in law the common currency and common payment traffic area already in practice. Also, the currency contract fundamentally defined the role of the Swiss National Bank in relation to Liechtenstein. Thanks to the currency contract, banks based in Liechtenstein enjoy the same legal status as Swiss banks as regards access to the interbank payment system SIC for Swiss francs.

## Implementation of the EU directive in Liechtenstein

In order for the PSD to be implemented in time, the Liechtenstein Bankers Association (LBV) established a task force at an early stage that consists of representatives of the LBV and its member banks. Its task is to ensure a standardized implementation in the banks as well as a knowledge transfer among the banks. The government of Liechtenstein, for its part, conducted a multi-level period of consultation that closely involved market participants, starting in July 2007. The parliamentary debates are planned to take place in June and September 2009, so that nothing should prevent the Law Concerning Payment Services (ZDG) from taking effect in a timely manner starting November 1, 2009.

## Payments in francs subordinate to PSD regulations

Liechtenstein itself has no payment traffic infrastructure. The banks in Liechtenstein are bound to the Swiss infrastructure and are treated as "domestic" financial institutes in this system. Now, however, the PSD requires that internal, domestic payment transfers in Liechtenstein be conducted according to other rules than those according to which cross-border "domestic" payment transfers with



Will the border between Switzerland and Liechtenstein remain invisible in the future?

Switzerland are currently conducted. During the period of consultation, questions pertaining to the application and execution had to be clarified. These clarifications determined that internal (Liechtensteinian) payments in Swiss francs were subordinate to the rules of the PSD. The decisive factor is that both payment service providers are based in Liechtenstein. Moreover, the analyses showed that because of the currency contract, banks based in Liechtenstein can continue to be treated like Swiss banks as regards access to SIC in the future. A need for action and assessment was found in service contracts and technical rules and regulations that are obligatory for all participants in the system, regardless of the respective financial institute's domicile.

#### **Relationship between bank and customer**

The implementation of the PSD has consequences for the contractual relationship between Liechtenstein-based banks and payment services users. For example, new, comprehensive information requirements are to be introduced by payment service providers. Furthermore, a distinction can be made between consumers and businesses in order to adjust the payment service provider's obligations according to the payment service customers' security needs. Simultaneously, new terms are being introduced that differ from the current/previous system (including new terms for authorized and unauthorized payments, among others) and individual payments and payments pertaining to basic agreements.

#### **Further action**

In the coming weeks, the LBV task force will analyze the necessary legal adjustments in the contractual relationships that affect bank customers and prepare a suggestion.

The necessary brochures will also be prepared; in June, a detailed article will appear in the Liechtenstein Bankers Association's "Bankenmagazin". Legal questions concerning the Swiss system operator SIX Interbank Clearing will be clarified by the SIX Group Legal Service and by the legal task force of the Swiss Payments Council (SPC). SIX Interbank Clearing and the Swiss Payments Council committee PaCoS will evaluate technical directives and conditions for participation in LSV<sup>+</sup> for possible changes required. The Swiss National Bank is closely involved in these proceedings. <

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