

Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)

## TITLE II

### PAYMENT SERVICE PROVIDERS

#### CHAPTER 1

##### *Payment institutions*

##### *Section 2*

##### *Other requirements*

##### *Article 19*

#### **Use of agents, branches or entities to which activities are outsourced**

1 Where a payment institution intends to provide payment services through an agent it shall communicate the following information to the competent authorities in its home Member State:

- a the name and address of the agent;
- b a description of the internal control mechanisms that will be used by the agent in order to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849, to be updated without delay in the event of material changes to the particulars communicated at the initial notification;
- c the identity of directors and persons responsible for the management of the agent to be used in the provision of payment services and, for agents other than payment service providers, evidence that they are fit and proper persons;
- d the payment services of the payment institution for which the agent is mandated; and
- e where applicable, the unique identification code or number of the agent.

2 Within 2 months of receipt of the information referred to in paragraph 1, the competent authority of the home Member State shall communicate to the payment institution whether the agent has been entered in the register provided for in Article 14. Upon entry in the register, the agent may commence providing payment services.

3 Before listing the agent in the register, the competent authorities shall, if they consider that the information provided to them is incorrect, take further action to verify the information.

4 If, after taking action to verify the information, the competent authorities are not satisfied that the information provided to them pursuant to paragraph 1 is correct, they shall refuse to list the agent in the register provided for in Article 14 and shall inform the payment institution without undue delay.

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5 If the payment institution wishes to provide payment services in another Member State by engaging an agent or establishing a branch it shall follow the procedures set out in Article 28.

6 Where a payment institution intends to outsource operational functions of payment services, it shall inform the competent authorities of its home Member State accordingly.

Outsourcing of important operational functions, including IT systems, shall not be undertaken in such way as to impair materially the quality of the payment institution's internal control and the ability of the competent authorities to monitor and retrace the payment institution's compliance with all of the obligations laid down in this Directive.

For the purposes of the second subparagraph, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation requested pursuant to this Title, its other obligations under this Directive, its financial performance, or the soundness or the continuity of its payment services. Member States shall ensure that when payment institutions outsource important operational functions, the payment institutions meet the following conditions:

- a the outsourcing shall not result in the delegation by senior management of its responsibility;
- b the relationship and obligations of the payment institution towards its payment service users under this Directive shall not be altered;
- c the conditions with which the payment institution is to comply in order to be authorised and remain so in accordance with this Title shall not be undermined;
- d none of the other conditions subject to which the payment institution's authorisation was granted shall be removed or modified.

7 Payment institutions shall ensure that agents or branches acting on their behalf inform payment service users of this fact.

8 Payment institutions shall communicate to the competent authorities of their home Member State without undue delay any change regarding the use of entities to which activities are outsourced and, in accordance with the procedure provided for in paragraphs 2, 3 and 4, agents, including additional agents.

#### *Article 20*

#### **Liability**

1 Member States shall ensure that, where payment institutions rely on third parties for the performance of operational functions, those payment institutions take reasonable steps to ensure that the requirements of this Directive are complied with.

2 Member States shall require that payment institutions remain fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.

#### *Article 21*

#### **Record-keeping**

Member States shall require payment institutions to keep all appropriate records for the purpose of this Title for at least 5 years, without prejudice to Directive (EU) 2015/849 or other relevant Union law.