

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 2

#### *Common provisions*

#### *Article 35*

#### **Access to payment systems**

1 Member States shall ensure that the rules on access of authorised or registered payment service providers that are legal persons to payment systems are objective, non-discriminatory and proportionate and that they do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

Payment systems shall not impose on payment service providers, on payment service users or on other payment systems any of the following requirements:

- a restrictive rule on effective participation in other payment systems;
- b rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants;
- c restriction on the basis of institutional status.

2 Paragraph 1 shall not apply to:

- a payment systems designated under Directive 98/26/EC;
- b payment systems composed exclusively of payment service providers belonging to a group.

For the purposes of point (a) of the first subparagraph, Member States shall ensure that where a participant in a designated system allows an authorised or registered payment service provider that is not a participant in the system to pass transfer orders through the system that participant shall, when requested, give the same opportunity in an objective, proportionate and non-discriminatory manner to other authorised or registered payment service providers in line with paragraph 1.

The participant shall provide the requesting payment service provider with full reasons for any rejection.

### *Article 36*

#### **Access to accounts maintained with a credit institution**

Member States shall ensure that payment institutions have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis. Such access shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner.

The credit institution shall provide the competent authority with duly motivated reasons for any rejection.

### *Article 37*

#### **Prohibition of persons other than payment service providers from providing payment services and duty of notification**

1 Member States shall prohibit natural or legal persons that are neither payment service providers nor explicitly excluded from the scope of this Directive from providing payment services.

2 Member States shall require that service providers carrying out either of the activities referred to in points (i) and (ii) of point (k) of Article 3 or carrying out both activities, for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of EUR 1 million, send a notification to competent authorities containing a description of the services offered, specifying under which exclusion referred to in point (k)(i) and (ii) of Article 3 the activity is considered to be carried out.

On the basis of that notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in point (k) of Article 3 where the activity does not qualify as a limited network, and inform the service provider accordingly.

3 Member States shall require that service providers carrying out an activity referred to in point (l) of Article 3 send a notification to competent authorities and provide competent authorities an annual audit opinion, testifying that the activity complies with the limits set out in point (l) of Article 3.

4 Notwithstanding paragraph 1, competent authorities shall inform EBA of the services notified pursuant to paragraphs 2 and 3, stating under which exclusion the activity is carried out.

5 The description of the activity notified under paragraphs 2 and 3 of this Article shall be made publicly available in the registers provided for in Articles 14 and 15.