

APPROVED
by Decision No 241-53
of the Director of the Supervision Service
of the Bank of Lithuania
of 29 February 2016

POSITION OF THE SUPERVISION SERVICE OF THE BANK OF LITHUANIA WITH RESPECT TO FUNDS HELD IN PAYMENT ACCOUNTS

The Supervision Service of the Bank of Lithuania (hereinafter – the Supervision Service), when analysing the payment services' market practice, noticed that financial market participants treat differently the content and functionality of the payment account, the possibility of keeping funds in the payment account for an unlimited term, or of keeping funds in the payment account longer than necessary for executing payment transactions.

Acting in accordance with Article 42(5) of the Law on the Bank of Lithuania, the Supervision Service has developed the position with respect to the functionality of payment accounts. In developing its position, the Supervision Service consulted the European Commission, analysed the answers of experts to arising questions regarding Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (hereinafter – PSD)¹. The position is aimed at all financial market participants and economic entities applying for the financial market participant's license.

It should be noted that this position may not be assessed as an official interpretation of legal acts.

Article 2(22) of the Law of the Republic of Lithuania on Payments (hereinafter – LP) defines the payment account as the account held in the name of one or more payment service users and used for execution of payment transactions. It should be noted that the PSD aims at regulating the provision of payment services. The setting up and the functionality of a payment account, as well as the keeping of funds in it essentially have not been discussed. For regulatory purposes a payment account is defined particularly widely to cover any payment accounts from and to which payment transactions can be executed (bank accounts, electronic money accounts (e-wallets), accounts opened by payment institutions, etc.)^{2,3 and 4}. Although accounts set up by different payment service providers for payment services users are generally called payment accounts and payment transactions executed from payment accounts are subject to provisions of the LP, the functionality of payment accounts opened by different payment services providers is different since it is laid down by legal acts regulating activities of such entities.

Payment service providers are credit institutions (including branches established in home member states by credit institutions whose registered office is in home or host member states), electronic money institutions, payment institutions, post office giro institutions which are entitled under national law to provide payment services, the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities, public, regional or local authorities of Member States when providing payment services not in their capacity as public, regional or local authorities.

Legal acts regulating activities of credit institutions entitle credit institutions to provide all financial services, unless this right is restricted by laws (Article 4(2) of the Law of the Republic of Lithuania on

¹ http://ec.europa.eu/finance/payments/docs/framework/transposition/faq_en.pdf and <http://ec.europa.eu/yqol/index.cfm?fuseaction=legislation.show&lid=7>

² <http://ec.europa.eu/yqol/index.cfm?fuseaction=question.show&questionId=33>

³ <http://ec.europa.eu/yqol/index.cfm?fuseaction=question.show&questionId=996>

⁴ <http://ec.europa.eu/yqol/index.cfm?fuseaction=question.show&questionId=998>

Banks, Article 4(1) of the Law of the Republic of Lithuania on the Central Credit Union, Article 4(1) of the Law of the Republic of Lithuania on Credit Unions); therefore, payment accounts opened by credit institutions are distinguished by the greatest functionality which may be limited by the business model of the credit institutions themselves or by laws.

Electronic money institutions are entitled to issue electronic money and provide payment services (Article 10(1) of the Law of the Republic of Lithuania on Electronic Money and Electronic Money Institutions). Given that electronic money is kept in electronic media, electronic money may be kept in a payment account opened by an electronic money institution only until redemption of electronic money; however, electronic money can also be used for making payments. Payments made in electronic money are subject to provisions of the LP regulating payment terms and liability of the payer and payment services provider as well as other provisions.

Payment institutions are entitled to provide only payment services; therefore, payment accounts set up by them have the lowest functionality – funds to the payment account set up by a payment institution may be paid only for executing particular payments and should not remain in the payment institution's payment account longer than required by operational and technical circumstances relating to the particular payment services⁵. Payment institutions can accept funds to the payment account set up by them only together with a payment order which should be executed within the time limits set in the LP (e.g., funds from the payment institution's payment account should be credited to the account of the payee's payment services provider no later than on the next working day or on the day agreed between the payment services user and the payment institution, except where the LP establishes otherwise) and take adequate measures to ensure that funds transferred by third parties to the payment account of the payment institution's client are held not longer than necessary for making payments. Only those funds held in the payment institution's payment account that meet the aforementioned conditions shall be considered to be placed for the provision of payment services. Where the aforementioned conditions are not met, funds held in the payment institution's payment account shall constitute deposits or other repayable funds or electronic money, but the payment institution may not provide such financial services (Article 4(5) of the Law of the Republic of Lithuania on Payment Institutions). In view of the foregoing, the payment institution must take measures to ensure that funds in the payment account set up by the payment institution are held not longer than necessary for the provision of payment services.

Functionality of payment accounts of other payment services providers depends on legal acts regulating activities of such payment services providers, their business specifics, but, in any case, payment services must be provided in compliance with requirements of the LP.

Please be reminded that if any questions arise regarding the activities being carried out or to be carried out you can approach the Supervision Service concerning the compliance of activities with applicable legal acts.

⁵ Answer to Question 155 (http://ec.europa.eu/internal_market/payments/docs/framework/transposition/faq_en.pdf)