

Cross-border Transfers and their Role in Payment Systems

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Abstract. In 1995, the phrase "cross-border transfer" was used in the payment system for the first time. The payment service providers, later payment services, have got used to it quite quickly. The payment system started to be divided into domestic, foreign and then cross-border payments as the above concept was introduced. But over time the "cross-border transfer" has somehow disappeared from the "dictionary", in particular, of the banking service providers. The client, in terms of banks or other providers of payments and payment services will learn that there are domestic (internal) payments, and then foreign (international) payments, in which exists the so-called SEPA (Single Euro Payment Area) transfers or payments. This paper seeks, following a search of expert resources on this subject, to use comparison method of source of law to reflect on whether the concept of "cross-border transfer" is already surviving and is legitimately neglected by banks or other providers of payment services or still has meaning for its clients.

Keywords: Cross-border Payment, SEPA, Directive, Regulation.

1 Introduction

In the area of international payments currently we meet various concepts, which are based on international trade practice or regulation in particular by European law. Banks as basic payment service providers within the implementation of funds from the payer located in one country to a recipient who is resident in another country then used for these transfers concepts as foreign payments or SEPA transfers, while increasingly moving away from the concept of cross-border transfers. The present state is trying to find the answer to whether it is justified real phenomenon consisting in the fact that the bank and, if necessary other payment service providers, cease to use this category.

2 Bibliographic Sources and Methodology

The authors in their research activities involved in the payment system, payment services and their application in practice for a long time. They devote significant attention on standing published in scientific journals or professional journals, at least. They found that directly in the area of cross-border payments with EU-related links,

resp. EEA, the authors do not address too much. Several studies have been directed to this concept, but these studies have dealt, for example, with cross-border transactions carried out by mobile applications outside the EU [15] or retail payments, again outside the EU [20].

Other scientific papers deal in particular with so-called SEPA payments, which may be considered a subset of the term "cross-border transfer", but the basic parameter is their currency, which can only be EUR. For example, the authors Shiva et al. [19], Huch [11], Jančková [12], Jilek [13], Mankainen [14] and others. Cross-border transfers as well as SEPA transactions were dealt with by Schlossberger [16, 17] or Schlossberger, Budík [18]. However, it should be noted that SEPA transfers can also be applied within the national payment system of Eurozone countries.

The following text is therefore taken into account not only the knowledge of the above authors, but the authors of this paper considered them only as a source of opinions on such matter.

During the preparation of this paper the authors took advantage of the method of comparison, when the examination of phenomena and processes that are linked to the category of "cross-border transfer" came out of the official definitions laid down in generally binding EU legislation with links to national legislation in the Czech Republic with a view to examine whether the concept of "cross-border transfer" is already obsolete and has nothing to do with the professional terminology of payment and payment services.

3 Cross-border Transfer and its Delimitation

The concept of "cross-border credit transfer" (or "cross-border payment") appeared within the framework of the European Parliament (hereinafter referred to as "EP") and Council Directive 97/5/EC (hereinafter as "Directive 5") on cross-border transfers has been explained as: "Cross-border transfer means operations carried out at the initiative of the payer through an institution or its branch situated in the same Member State, which is intended to transfer the amount of money to the beneficiary to an institution or its branch located in another Member State; the payer and the payee may be the same person" [1]. Article 1 of Directive 5 then modified its application to the client transfers in the currencies of Member States to the equivalent of 50 thousand ECU.

Subsequently, Regulation (EC) No. 2560/2001 of the European Parliament and the Council on cross-border payments in Euro (hereinafter referred to as "Regulation 2560") was adopted within the EU and the term "cross-border transfer" also appeared there. It was listed as: "Operations carried out at the initiative of the payer through an institution or its branch located in one Member State for the purpose of money transfer to the payee into an institution or its branch in another Member State; both the payer and the payee may be the same person" [2]. When comparing both definitions, there is almost no content difference in them. Also Regulation 2560, Article 1 set the regulation limit of 50 thousand, but already EUR. Regulation 2560 included a "cross-border transfer" under the "cross-border payments" category, which included "cross-border electronic transactions" and "cross-border checks", in addition to cross-border transfers.

So far for the time being the European legislation of the concept of "cross-border transfer".

In 2002, the first comprehensive legal regulation of the provision of payment services and services related to the territory of the Czech Republic (hereinafter "CR") was published, which was reflected in the adoption of Act No. 124/2002 Coll., On Transfers of Funds, Electronic payment systems and payment systems (the Payment System Act), (hereinafter referred to as "ZPS 124"). Its effectiveness was set for January 1, 2003, with the effect that some of the provisions of this Act were expelled, at the time of the Czech Republic's accession to the European Union ("EU") or for January 1, 2004. Until then, some aspects have been modified, for example, in the then applicable Commercial Code (Act No. 513/1991 Coll., Commercial Code, abolished as of December 31, 2014); the Act on Banks (Act No. 21/1992 Coll., on Banks) or selected implementing decrees.

ZPS 124 in its § 1 defined what areas and activities it regulates. With regard to the focus of this contribution, we are particularly interested in the letter a) of this paragraph, which states that the law "... regulates the execution of transfers of funds in the Czech Republic in the Czech currency and the execution of cross-border transfers ..." [7] to the other provisions of § 2, para 2, which describes the term "cross-border transfer". The term was defined as: "... a transfer of funds from one EU Member State or State forming the European Economic Area ("EEA", Ed. Author) to another EU member state or a state that is part of the EEA in the domestic currency of any EU Member State or State EEA forming up to the equivalent of 50 thousand euros. The counter-value shall be converted at the exchange rate announced by the European Central Bank on the effective date of the transfer order" [7]. This characteristic of the "cross-border transfer" in the Czech legislation directly included the threshold of 50 thousand EUR as one of the conditions, which did not apply in the context of European legislation. The European regulation was enough with a simpler concept that did not bind to any limiting boundary. However, the threshold of 50 thousand EUR was specified for the regulation of the services (transfers), but as a separate condition outside the definition of "cross-border transfer".

Therefore, the Czech cross-border transfer could be characterized by three basic conditions:

- transfer between EU entities, resp. EEA,
- in the currencies of EEA countries (eg EUR, CZK, GBP, and CHF thanks to Liechtenstein), and
- up to 50 thousand EUR, respectively the equivalent of the currency of the EEA countries to this level expressed in EUR.

With this definition, we basically stayed until 2009, when he appeared directly effective EU law under the name EP and Council Regulation (EC) no. 924/2009 on cross-border payments in the Community and repealing Regulation (EC) no. 2560/2001 (hereinafter referred to as "Regulation 924"). Before the effective date of this regulation, EP and Council directive 2007/64 / EC on payment services in the internal market amending Directives 97/7 / EC, 2002/65 / EC, 2005/60 / EC and 2006/48 / EC and repeals Directive 97/5 / EC (hereinafter referred to as "PSD1"), was published in

2007. PSD1 did not directly define the concept of "cross-border transfer", as it primarily codified the newly-established "payment service" concept, including the transfer of funds. Article 2 then defined the scope of the Directive, which was aimed at regulating of payment services within the Community, with the few exceptions contained therein [5]. It also stipulated that some assignments of the PSD1 concerned payment services provided only in EUR and the currencies of Member States outside the euro area. These included, for example, rights and obligations in providing of payment services. However, from the context of PSD1 came out that this regulation, which had to be transposed by all EU countries, EEA by November 1st 2009 at the latest, also concerned cross-border transfers. In Czech conditions, this was reflected in the adoption of Act No. 284/2009 Coll., On Payment System (hereinafter referred to as "ZPS 284") [8].

However, this was otherwise in Regulation 924. In its Article 2, it defined the notion of "cross-border transfer" but rather used the term "cross-border payment". It is considered: "... an electronically processed payment transaction initiated by the payer or the payee or via the payee where the payment service provider of the payer and the payee's payment service provider are located in different Member States" [3]. This definition in itself again contains no boundary that would say what can be considered a cross-border payment and what can not. From the context of Regulation 924, it can be stated that cross-border transfers may be in EUR but also in other currencies of the Member States of the Community. This conclusion can be drawn from Article 1, which states that Regulation 924 applies to cross-border transfers in the currency of EUR or in the national currencies of the Member States which have notified their decision pursuant to Article 14 of this Regulation to extend the application of this Regulation to their national currency. The Czech Republic did not use this option. Only Sweden and Romania [10] decided to apply Regulation 924 to the national currency.

With effect from Regulation 924, which was set for November 1st, 2009, the ZPS 284, which was the PSD1 transposition, became effective as well. As regards the definition of the term "cross-border transfer or payment", reference can be made to what was mentioned above about PSD1. ZPS 284 replaced the ZPS 124, but it was also canceled and replaced in January 2018 by another law (see below).

In 2012, another EU regulation was adopted, this time Regulation (EU) 260/2012 of the European Parliament and of the Council laying down technical and business requirements for euro payments and collection and amending Regulation (EC) No. 924/2009 (hereinafter referred to as "Regulation 260"). Again, this regulation includes the "Definitions" section, in which this term refers to "cross-border payment transactions". Those are determined as: "... payment transactions initiated by the payer or the payee where the payment service provider of the payer and the payee's payment service provider are in different Member States" [1]. Again, if we compare with the definition in Regulation 924, we will find that Regulation 260 has a content link to the concept of "cross-border payment", but instead used the more general meaning of "cross-border payment transactions". However, this Regulation 260 only regulates transactions executed in the euro currency, i.e. it regulates a certain "subset" of transactions carried out in the framework of cross-border transfers, due to the strong support of so-called SEPA payments, which can only be realized in the euro currency.

However, for all the above definitions of "transfers, payments or transactions" there is one thing in common - and that is the word "cross-border". Consequently, this concept still expresses a situation where entities - whether legal or individual persons - are transferring cashless or electronic money, if they have their seat in different EU countries, resp. EEA. However, it does not follow from the above definitions that cross-border operations should be only in EUR, or on the contrary. It is assumed that these payments in different currencies of EU member states, resp. EEA, and the selected European legislation aimed its control harder to operations in EUR.

The last important legal regulation that significantly regulates providing of cross-border payment transactions is also Directive 2015/2366 of the European Parliament and of the Council (EU) 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 repeals Directive 2007/64 / EC (hereinafter "PSD2"). Even this directive does not directly describe the "cross-border transfer, payment or transaction" but regulates providing of payment services which it has extended [6]. The directive had to be transposed by January 13, 2018 at the latest. In the Czech Republic, the new Payment System Act was published under No. 370/2017 Coll. (i.e. Act No. 370/2017 Coll., on Payment System, effective from January 13, 2018, hereinafter referred to as "ZPS 370").

Even in this Act, we can not find a direct definition of "cross-border transfer, payment or transaction" similar to ZPS 284. Law 370 primarily deals with regulation in providing of payment services and regulation of the providers themselves. One of the major payment services, however, is, inter alia, the transfer of funds from the payment account to which the payer, payee or payer orders via the payee issue a payment order (§3 (1) (c) and (d) ZPS 370) which can be considered as a transfer, payment or transaction. From the assignments of § 128 of the ZPS 370, it can be clearly deduced from these exceptions that this law regulates (if we use the terminology of Regulation 924, resp. Regulation 260), cross-border payments (transfers or transactions) that are payment services, both domestic and cross-border in all currencies of the Member States. Payment service providers may then use the assignment of this paragraph to declare that transfers of funds in currencies other than the currencies of Member States are not covered by the ZPS 370. ZPS 370 in Section 128 para 1 provides for a negative definition: "The Provider and the User can not, by agreement, deviate from the assignments ... " [9] and further specifies the specific references to the relevant paragraphs of the ZPS 370. In the following paragraphs ZPS 370 then states that the selected provisions either do not apply or are not using their provider agrees with the user. Most payment service providers in the Czech Republic have used this option and put it into their terms. In particular, the deadlines for debiting the payment, the payment deadline and the non-application of the clause prohibiting the deduction of the payment transaction amount are respected.

4 Discussion

Therefore, it can be concluded from the presented comparison that the concept of "cross-border transfer, payment or transaction" still has a significant place, as the EU is interested in aligning as much as possible the conditions for providing of payment services in which transfers of funds are an integral part. The fact that the SEPA project has emerged since the beginning of the 21st century, has only highlighted the importance of approximating national and cross-border transfers denominated in this single or common currency. The word "cross-border" thus translates into a transitional situation until such transfers become essentially "national" or, more precisely, "intra-EU transfers, payments or transactions".

Table 1. Transfer of payment at the initiative of the payer from a payment service provider based in the Czech Republic.

Transfer type	Currency	Regulated by ZPS 370	Regulated by Regulation 924, resp. Regulation 260	
			Yes	No
Domestic	CZK	Yes	Yes	No
	EU currency, EEA without EUR	Yes	No	No
	EUR	Yes	Yes, if payer and payee provider is SEPA compliance.	No
Cross-border	Other currency than mentioned above	No	No	No
	EU currency, EEA without EUR	Yes	No	No
	EUR (other than SEPA payments)	Yes (also if it is not a SEPA member project)	Yes, if the recipient is in the country of the euro zone or the beneficiary's bank is SEPA compliance. If it is not SEPA compliance, then only partly.	Yes
Foreign	EUR - SEPA	Yes	Yes	Yes
	EU currency, EEA without EUR	No	No	No
	EUR	No	No	No

Notes to Table 1: The table does not take into account the decisions of Sweden and Romania under Article 14 of Regulation 924 [3].

The Czech Republic has not yet accepted EUR for its domestic currency. From this perspective, we have the situation of customers of banks and other payment service providers at the territory of the Czech Republic rather complicated, administratively at

least. That is a fact that the clients in the role of payer must, within their payment orders (demonstrated in the type of payments initiated by the payer) distinguish the following options - see Table 1.

At this point it is necessary to realize what the foreign payment is from the point of view of the above table - payment from a Community country (i.e. the Czech Republic) to a non-Community country in any currency, i.e. in EUR, other currencies of EU countries, resp. EEA and in other currencies.

So far, one country outside the EEA and whose banks as payment service providers are applying for SEPA is Switzerland. Even client payments from a payment service provider based in the Czech Republic to SEPA compliance providers are to be considered as SEPA payments (i.e. cross-border payments in EUR even though Switzerland is not an EEA country).

From the overview in Table 1, which is just a general example, it is important for payment service providers to distinguish and correctly state in their terms, tariffs, etc. whether they are cross-border or foreign transfers. In the context of the cross-border transfer, it is appropriate for providers, especially banks, to indicate whether they are providing SEPA transfers because that it is not the responsibility of non-euro area providers. This division is required because the ZPS 370 regulates only domestic transfers and cross-border transfers as regards the processing time for both so-called the "outgoing" payments and the "occurred" payments, as well as the prohibition of changing the transaction fee from the transfer amount. Deadlines and prohibitions are clearly set out in Law 370 [9]. Furthermore, cross-border payments are regulated by the Regulation, in particular those in EUR. It will mostly be SEPA payments, but it may not always be. Certainly, we can imagine a bank from the Czech Republic that is not a member of the SEPA project and who, for its client, makes a payment in EUR for example to a euro-zone country or another EEA country in EUR and therefore must comply not only with the rules of ZPS 370 but also with Regulation 924, resp. Regulation 260.

5 Conclusion

The fact that the term "cross-border payments; transfer or transaction" is deleted from the bank's dictionary in the Czech Republic can be considered as erroneous and minimally misleading towards the client. For example, if a client of a major payment service provider learns that a transfer, for example, in a GBP to a UK-based bank is a foreign payment, it does not seem to him that the payee should, for example, receive the payment the next day benefit of his account, and that no fees can be deducted from this payment. The fact that banks in the Czech Republic (i.e. in a country outside the EMU) are burdening cross-border payment charges as foreign payments can be considered as legitimate including payments in EUR. The regulation of the amount of the payment charge in EUR is not applicable to them. Why, however, the EUR fee payment for many banks as payment service providers remains divided by the threshold of 50 thousand EUR, so there is no regulatory justification. It is only the business decision of such provider to burden the transfer over 50 thousand EUR by higher fee.

Within Eurozone countries, payments must not be distributed as such. In this area, the cross-border transfers in EUR, which are automatically all SEPAs, apply uniform charges in terms of the amount of national charges for payment in EUR.

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