

NEW E-COMMERCE RULES (NO. VII)

Records obligation of payment service providers (CESOP)

In order to prevent businesses involved in "cross-border e-commerce" from abusing opportunities to gain unfair market advantages by evading VAT obligations, a completely new obligation for payment service providers to keep for each calendar quarter sufficiently detailed records of the payees and of the payments in the case of cross-border payments which they arrange will be introduced from 1 January 2024.

A payment shall be considered a cross-border payment when the payer (a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order) is located in a Member State and the payee (a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction) is located in another Member State, in a third territory or in a third country.

On the basis of the information they already hold, the payment service providers are able to identify the location of the payee and the payer in relation to the payment services they provide, using an identifier IBAN of the payer's or the payee's payment account or any other identifier which unambiguously identifies, and gives the location, of the payer or the payee.

When such identifiers are not available, the location of the payer or the payee should be determined by means of a business identification code BIC of the payment service provider acting on behalf of the payer or the payee, in cases where the funds are transferred to a payee without any payment account being created in the name of a payer, where the funds are not credited to any payment account of the payee or where there is no other identifier of the payer or the payee.

The payment service providers will be required to keep records only on those cross-border payments which are likely to indicate economic activities. Therefore, the ceiling based on the number of payments received by a payee over the course of a calendar quarter which would give an indication whether those payments were received as part of an economic activity, and thereby excluding payments for non-commercial reasons, will be introduced.

The requirement to keep records shall apply where, in the course of a calendar quarter, a payment service provider provides payment services corresponding to more than 25 cross-border payments to the same payee. The number of cross-border payments shall be calculated by reference to the payment services provided by the payment service provider per Member State and per identifier (the IBAN of the payee's payment account or any other identifier which unambiguously identifies, and gives the location of, the payee, or in the absence of such identifiers, the BIC or any other business identifier code that unambiguously identifies, and gives the location of, the payment service provider acting on behalf of the payee). Where the payment service provider has information that the payee has several identifiers, the calculation shall be made per payee.

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The records obligations should not apply to the payment service providers of the payee that are not located in a Member State. In this case the payment service providers of the payer should be subject to the record keeping and reporting obligations of the cross-border payment.

Conversely, where the payment service providers of both the payee and the payer are located in a Member State, only the payment service providers of the payee should keep records. For the purposes of the record keeping and reporting obligations, a payment service provider should be considered as located in a Member State when its business identifier code (BIC) or unique business identifier refers to that Member State.

The payment service providers of the payer shall nevertheless include those payment services in the calculation of the above quarter ceiling.

The records of cross-border payments shall be kept by the payment service provider in electronic format for a period of three calendar years from the end of the calendar year of the date of the payment.

The records shall contain, inter alia, the following information:

- the name or business name of the payee, as it appears in the records of the payment services provider
- if available, any VAT identification number or other national tax number of the payee
- the IBAN or, if the IBAN is not available, any other identifier which unambiguously identifies, and gives the location of, the payee
- the BIC or any other business identifier code that unambiguously identifies, and gives the location of, the payment service provider acting on behalf of the payee where the payee receives funds without having any payment account
- if available, the address of the payee as it appears in the records of the payment services provider; the details of any cross-border payment and payment refunds identified (the date and time of the payment or of the payment refund; the amount and the currency of the payment or of the payment refund; the Member State of origin of the payment received by or on behalf of the payee, the Member State of destination of the refund, as appropriate, and the information used to determine the origin or the destination of the payment or of the payment refund; any reference which unambiguously identifies the payment; where applicable, information that the payment is initiated at the physical premises of the merchant)

Each Member State shall collect the information from payment service providers by means of an electronic form no later than by the end of the month following the calendar quarter to which the information relates.

The payment service provider means for these purposes credit institutions, electronic money institutions, post office giro institutions or payment institutions.

*Next time we will focus on **administrative obligations of individual suppliers / deemed suppliers of goods and service providers**. If you have any questions, please contact us at tomicek@stanek-tomicek.com*

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Staněk, Tomíček & Partners, s.r.o., zapsaná v obchodním rejstříku vedeném Městským soudem v Praze v části C, vložka č. 104681, IČ: 27210081, DIČ: CZ 27210081, se sídlem U Prašné brány 1078/1, 110 00 Praha 1