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NOTE

from : Presidency
to : Working Party on Financial Services (payment services)
No. Cion prop. : 15625/05 EF 62 ECOFIN 407 CONSOM 54 CRIMORG 155 CODEC 1165
Subject : Proposal for a Directive of the European Parliament and of the Council on
payment services in the internal market and amending Directives 97/7/EC,
2000/12/EC and 2002/65/EC

Please find attached the Presidency compromise text.

Changes compared to the previous text, document 8623/06 + ADD 1 + ADD 2 REV 1, are underlined.

PRESIDENCY COMPROMISE PROPOSAL

TITLE I

Subject-matter, scope and definitions

Article 1

Subject matter¹

(...)

3. This Directive (...) lays down rules concerning the taking up, pursuit of and prudential supervision of the business of payment institution, access to open payment systems, transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.²

(...)

Article 2

Scope

- 1. This Directive shall apply to the following categories of payment service providers:

- (a) authorised credit institutions within the meaning of Article 4(1)(a) of Directive 2006/48/EC;

¹ The suggested restructuring Articles 1 and 2 would considerably clarify the text, without altering its intended substance.

² The suggested wording would better reflect the content of the Directive.

- (b) authorised electronic money institutions within the meaning of Article 1(3)(a) of Directive 2000/46/EC;
- (c) post office giro institutions, as referred to in the second indent of Article 2 of Directive 2006/48/EC, which are entitled under national or Community law to provide payment services;
- (d) payment institutions within the meaning of this Directive;
- (e) Member States and their regional and local authorities when they do not act in their capacity as public authorities;¹
- (f) European Central Bank and national central banks when they do not act in their capacity as monetary authorities.²

1. Titles III and IV of this Directive shall apply to payment services, where (...) both payment service providers are (...) located in the Community.³
2. ⁴(...) Titles III and IV of this Directive shall apply to payment services made in euro or any other national currency of a Member State.⁵

¹ The amendment seeks to reflect the views expressed by the majority of the delegations that public authorities should be subject to the Directive to the extent they provide payment services comparable to those provided by commercial enterprises, with a view of ensuring a level playing field. On the other hand public tasks like collection of taxes and transmission of social benefits should be excluded.

² See the previous footnote.

³ See the general justification of the Presidency compromise proposal.

⁴ See the general justification of the Presidency compromise proposal.

⁵ See the general justification of the Presidency compromise proposal.

Article 2a (new)

Prohibition to provide payment services without authorisation

1. Member States shall prohibit natural and legal persons other than those referred to in Article 2(-1)(a) to (d) from providing payment services.¹
2. ²This article shall not apply to:
 - a) the European Central Bank and national central banks of Member States,
 - b) Member States and their regional and local authorities;
 - c) credit institutions referred to in Article 2 of Directive 2006/48/EC except the first and second indent;³
 - d) undertakings benefiting from the derogation in Article 21 of this Directive; or
 - e) undertakings benefiting from the derogation in Article 8 of the Directive 2000/46/EC.

¹ Former Art. 1(4) redrafted.

² It is proposed that public authorities are excluded from the prohibition to provide payment services without authorisation. They would, however remain subject to other requirements of this Directive to the extent laid down in the proposed Art. 2(-1)(e). As a number of national special purpose credit institutions are allowed to operate without a banking licence, it would be appropriate to allow them to continue their activities also without having to apply for a payment institution authorisation. It is also necessary to refer to undertakings which benefit from the waiver in Art. 21 or the waiver in E-money Directive in order to avoid contradiction with those Articles. It should be noted that the proposed paragraph exempts the undertakings referred to in this paragraph only from the authorisation requirements but they would still remain subject to Title III and Title IV of this Directive.

³ The central banks of Member States and post office giro institutions as referred to in first and second indent of Article 2 of Directive 2006/48/EC have to be excluded as they are already covered in paragraphs 1 and 2(a) of this Article.

Article 3

(...) Exemptions from the scope

This Directive shall not apply to the following:

- (a) payment transactions (...) exclusively made in cash directly from the payer to the payee, without any intermediary intervention (...);¹
- (aa) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;²
- (b) professional collection, physical transport and delivery of banknotes and coins (...);³
- (c) payment transactions consisting in the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
- (d) cash provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of a payment transaction through a payment for the purchase of goods or services;
- (e) money exchange business consisting solely of (...) cash to cash operations, where the funds are not held on a payment account;

¹ In order to streamline and clarify the text; the meaning of the text is not intended to be changed.

² In order to avoid situations where the mere use of a commercial agent by a merchant would constitute a payment service. “Commercial agent”, see Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents.

³ In order to streamline and clarify the text; the meaning of the text is not intended to be changed.

- (f) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
- (i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing for a Uniform Law for Cheques;
 - (ii) paper cheques similar to those referred to in point (i) and governed by the law of Member States which are not party to the 1931 Geneva Convention;
 - (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing for a uniform law on bills of exchange and promissory notes;
 - (iv) paper-based vouchers;
 - (v) paper-based traveller's cheques;
 - (vi) paper-based promissory notes;
 - (vii) paper-based postal money orders as defined by the Universal Postal Union.¹
- (g) payment transactions carried out within a payment or securities (...) settlement system or between (...) settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system,² and payment service providers, as well as their (...) agents or branches thereof, without prejudice to Article 23;

¹ The indent would be added to reflect the fact that the documents referred to in this indent are comparable to other paper-based instruments.

² Suggested wording is in line with Directive 98/26/EC on settlement finality in payment and securities settlement systems. A reference cannot be made because the scope of this directive is wider.

- (ga) payment transactions related to securities asset servicing¹, including dividends, income or other distributions, or redemption or sale², carried out by persons referred to in subparagraph (g) or by investment firms, credit institutions or collective investment undertakings providing investment services;
- (h) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, IT and communication network provision, provision and maintenance of terminals and devices used for payment services;
- (i) services based on (...) instruments (...) that can be used to acquire goods or services only in the premises of the issuer or within a limited network of service providers or for a limited range of goods or services under a commercial agreement with the issuer;³
- (...)
- (j) payment transactions executed by means of a mobile telephone or any other digital or IT device, where the digital goods or electronic communication services are provided to the device itself and payment is made directly to the service provider operating the telecommunication or IT system or network and not to a third party;

¹ Asset servicing as defined in Cesame-project.

² Suggested wording is based on Article 2(1)(g) in Hague Convention 2002 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

³ Indents (i) and (ia) would be combined to streamline the text.

An alternative proposal could be to maintain the wording of the current E-money Directive (to be revised in the context of the forthcoming revision of the E-money Directive):

“services based on instruments that are accepted as a payment for goods and services only by a limited number of undertakings, which can be clearly distinguished by:

- (i) their location in the same premises or other limited local area;
- (ii) their close financial or business relationship with the payment service provider, such as a common marketing or distribution scheme;”

- (k) payment transactions carried out between payment service providers for their own account as well as between (...) agents or branches for their own account;
- (l) payment transactions between undertakings belonging to a group of undertaking, which consist of a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.¹

Article 4 *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) “*home Member State*” means (...):
- (i) deleted.
 - (ii) the Member State in which the registered office of the payment institution is situated; or
 - (iii) if the payment institution has, under its national law, no registered office, the Member State in which its head office is situated;
- (2) “*host Member State*” means the Member State other than the home Member State in which a payment institution has a branch or an (...) agent or provides payment services;
- (2a) “*payment service*” means the business activities as listed in the Annex (...) ²;

¹ It seems appropriate to exclude intra-group transactions from the scope of the Directive when there is no external payment service provider involved.

² The deleted words appear to be somewhat confusing compared to the actual wording of the Annex.

- (2b) “*payment institution*” means an undertaking¹ (...) which has been granted authorisation in accordance with Article 4a of this Directive to provide (...) payment services (...);²
- (2c) “*payment transaction*” means the act, initiated by the payer or by or through³ the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
- (3) “*payment system*” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;
- (3a) “*open payment system*” means a general purpose payment system where the payer and the payee generally have different payment service providers, both operating within the same payment, or for [debit and credit] card-transactions and similar transactions a payment system where the payer and payee generally have different payment service providers operating within the payment system which are directly contractually linked with other providers in the system [and not just with a central licensing party] and which may in turn be linked to other providers under the payment system’s rules through an agreement with a provider operating in the payment system;⁴

¹ The requirement for an authorised payment institution to be a legal person would be best taken into account in the context of authorisation requirements, see the proposed Art. 4a.

² In order to streamline the text, without changing its meaning.

³ Change in line with Art. 60(1)(a)

⁴ Recital to be added: For reasons of competition Payment Institutions should be allowed to participate to open, “main stream”, payment systems under the same conditions as the traditional payment service providers, such as credit institutions. Access is to be granted to payment systems, which, in principle, are meant for general usage and open to a wide range of participants, not necessarily having ownership or contractual linkages between them. For example, systems solely dedicated for processing [national] payments of a certain banking group or, in the area of card payments, where the issuer and the acquirer are the same entity (sc. three-party system) are not to be considered open payment systems.

- (4) “*payer*” means a natural or legal person who is the holder of a payment account or who has the right of disposal of funds and who allows or gives the order for a payment transaction from the account, or where there is no payment account, a natural or legal person who places the order for a payment transaction;
- (5) “*payee*” means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (6) “*payment service user*” means a natural or legal person who makes use of a payment service in the capacity of either payer or payee, or both;
- (6a) “*framework contract*” means a payment service contract (...) which governs future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account (...)¹;
- (6b) “*money remittance*” means a payment service where funds are received from a payer, without any payment accounts being created, for the sole purpose of transferring a corresponding amount to a payee or to an other payment services provider acting on behalf of the payee, and/or where such funds are received on behalf of and delivered to the payee;²
- (7) “*payment account*” means an account held in the name of one or more payment service users which is used for payment transactions;
- (8) “*funds*” means banknotes and coins³, scriptural money and electronic money as referred to in Directive 2000/46/EC;

¹ The definition proposed by the AT Presidency to be added is slightly redrafted in order to streamline the text.

² The amendment is in line with the wording of the FATF Interpretative note of SR VI and consequential to the overall compromise solution where simple money remittance is proposed to remain subject to a more appropriate prudential framework. A recital could be considered to clarify.

³ The presidency believes that this amendment by the ECON rapporteur should be accepted.

- (9) deleted.¹
- (10) “*payment order*” means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;
- (11) “*value date*” means a reference time used by a payment service provider for the calculation of interest on the funds transferred from or into a payment account and for allowing the funds to be available for the payment service user;²
- (12) “*reference exchange rate*” means the exchange rate which is used as the basis to calculate any currency exchange and which comes from an independent source which can be verified by both parties of a payment service contract (...);³
- (13) “*authentication*” means a procedure which allows the payment service provider to verify that the payment service user initiating the payment order is authorised to do so;⁴
- (14) “*reference interest rate*” means the interest rate which is used as the basis to calculate any interest to be applied and which comes from an independent source which can be verified by both parties to a payment service contract (...);⁵

¹ Not used in the current text. Deletion proposed already by the Austrian Presidency.

² The definition is amended in order to clarify the link between the value date and the availability of funds.

³ To ensure coherent terminology.

⁴ To ensure coherent terminology.

⁵ To ensure coherent terminology.

- (15) “*unique identifier*” means the combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously the other payment service user involved in a payment transaction;¹
- (16) “(*...*)² *agent*” means a natural or legal person which acts on behalf of a payment institution in carrying out payment services;
- (17) “*payment (...* *instrument*” means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to enable the payment service provider to authenticate a payment order. (*...*);³
- (17a) “*modern mass payment instrument*” means any payment instrument providing an alternative to traditional payment services, utilising advanced technologies and combined with rapid authorisation, to be used particularly for frequent purchase of low-priced goods and services.⁴
- (18) “*means of distance communication*” refers to any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;

¹ AT Presidency: For recital: "...such as IBAN (International Bank Account Number), the BIC (Bank Identifier Code), a payment account number, a card number, a name or any other combination."

² The notion of “*tied agent*” appears to be too restrictive as it could be understood to refer only to agents having a right to represent a single payment institution. There appears to be little justification for such a restriction.

³ In order to streamline the text, without changing its meaning.

⁴ A new definition for “*modern mass payment instrument*”. The definition would apply only for option 1 in Title IV new Chapter 2a. The definition could be clarified in a recital.

(19) “*durable medium*” means any instrument which enables the payment service user to store information addressed personally to the payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;¹

²[(19a)“*micro-enterprise*” means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined in Articles 1 and 2(1) and (3) of Title I of the Annex to Recommendation 2003/361/EC in the version of 6 May 2003;]

³(19b)“*consumer*” means a natural person who, in payment service contracts covered by this Directive, is acting for purposes outside his trade, business or profession;

⁴(20) “(...) *business day*” (...) means a day on which (...) the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

⁵(21) “*direct debit*” means a payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s mandate to the payee, or payee’s payment service provider or to the payer’s own payment service provider;

¹ AT Presidency: For recital: “..... in particular, durable medium covers printouts by account printers, (...) CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored (...).”

² Consequential to the proposed changes in Art. 23b and 40b.

³ New definition. Wording in line with Directive 2002/65/EC concerning the distance marketing of consumer financial services.

⁴ In order to streamline the definition already proposed by the Austrian Presidency.

⁵ A new definition in order to clarify Art. 60(1a).

¹(22) “branch” means a place of business which forms a legally dependent part of a payment institution and which carries out directly some or all of the transactions inherent in the business of a payment institution; any number of places of business set up in the same Member State by a payment institution with a registered office or head office in another Member State shall be regarded as a single branch”.

¹ The Presidency finds it helpful to add a definition of a branch along the lines of Articles 4(3) and 27 in Directive 2006/48/EC .

TITLE II

Taking up, pursuit of and the prudential supervision of the business of payment institutions (...) and access to open payment systems¹

Chapter 1

Payment institutions

SECTION 1

GENERAL RULES

Article 4a

(...) Authorisation requirements²

- 2. Member States shall require undertakings as referred to in Article 2(-1)(d), who intend to provide payment services, to obtain authorisation as a payment institution before commencing provision of payment services.³ Authorisation shall only be granted to a legal person registered in the Member State.⁴

¹ Change made to be in line with the wording of Article 1(3).

² Former Art. 6 and 4a combined for the sake of clarity.

³ The Presidency believes that this provision is an essential element of the legal framework and therefore, for the sake of clarity, it should be explicitly expressed in the Directive. It is not intended to change the meaning of the text.

⁴ See the footnote under Article 4(2b).

- 1. Authorisation shall be granted if the competent authorities are satisfied, on the basis of all the information required under Article 5, as to the sound and prudent management of the payment institution and if the payment institutions meets the requirements laid down in paragraphs 1 to 5 of this Article and Articles 10 and 10a of this Directive. Before authorisation, competent authorities may consult the national central bank or other relevant public authorities.¹
1. A payment institutions shall have an initial capital, that comprises of the items as defined in points (a) and (b) of Article 57 of Directive 2006/48/EC (...) of not less than [125 000 EUR]². (...) Its own funds, as defined in Articles 57 to 61 and 63 to 66³ of Directive 2006/48/EC (...), shall not fall below that amount. This paragraph and Article 5(1)(ba) shall not apply to payment institutions exclusively engaged in money remittance.⁴
2. A payment institution which, under the national law of its home Member State, has a registered office shall have its head office in the same Member State as its registered office.⁵

¹ The paragraph would replace former Art. 6(1). In order to improve the clarity of authorisation requirements the structure of this section is suggested to be clarified by making all authorisation requirements explicit and indicating them in one Article. The amendment is not intended to change the meaning of the text.

² See the general justification of the Presidency compromise proposal. A new recital to be added: “9a) It is appropriate, in particular, to require payment institutions, which provide more sophisticated payment services, to hold a minimum amount of capital in order to cover the operational and financial risks involved in such business and in order to maintain confidence in the payment system.”

³ In order to clarify that the same definition of own funds shall be applied as for credit institutions.

⁴ Consequential to the proposed addition of the definition of money remittance; see footnote under Article 4(6b).

⁵ Former first paragraph of Art. 14.

3. The competent authorities shall grant authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, they are satisfied as to the suitability of the shareholders or members that have qualifying holdings in the payment institution or in the agents to be used by the payment institution.¹
4. The competent authorities shall grant authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, they are satisfied that the directors and persons responsible for the management of the payment institution and its branches as well as the agents to be used by the payment institution are fit and proper persons and possess appropriate knowledge and ability to perform payment services.²
5. Where close links as defined in Article 4(46) of Directive 2006/48/EC exist between the payment institution and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.³
6. The authorisation shall be valid in all Member States and shall allow the payment institution concerned to provide payment services throughout the Community, either under the freedom to provide services or the freedom of establishment.⁴

Article 5

Applications for authorisation

1. For authorisation as a payment institution, an application shall be submitted to the competent authorities of the home Member State, together with the following:

¹ Corresponding to former Art 6 paragraph 2. The wording would be made more consistent with the rest of the Article.

² Corresponding the former point (i) of Article 5.

³ Former Art 6 paragraph 3. The reference would be clarified.

⁴ Former Art. 6 paragraph 4.

- (a) a programme of operations, setting out in particular the types of payment services¹ envisaged;
- (b) a business plan including a forecast budget calculation for the first three financial years which would allow the presumption that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- (ba) evidence that the payment institution has the amount of initial capital mentioned in Article 4a(1) (...);²
- (bb) a description of the procedure for the legal separation of funds in accordance with Article 10a;
- (c) a description of the applicant's administrative and accounting procedures (...);³
- (d) a description of the internal control mechanisms which the applicant, its branches, and the agents to be used by the applicant in the provision of payment services⁴ have established in order to comply with obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC (...);
- (e) a description of the applicant's risk management procedures;

¹ The text would be clarified to the effect that a payment institution can provide several types of payment services as set out in Article 10.

² The deleted words are superfluous as the principle is inherent in the definition of own funds, particularly with regard to the fact that authorisation could be granted only to legal persons.

³ The deletion is consequential to the restructuring of Articles 4a to 6.

⁴ The new wording is included as agents and branches involved in the actual client contact and responsible for accepting the money do not have to comply with any integrity requirements and therefore should be subject to certain integrity requirements, such as a fit and proper test and the obligation to have an internal control system in place in order to be able to comply with Directive 2005/60/EC. The same reasoning applies to (g) with the exception of branches as there are no separate qualified holdings in branches.

- (f) a description of the applicant's structural organisation, including a description of the use of agents and a description of outsourcing arrangements (...); ¹
- (fa) where applicable, a description of the applicant's participation to or involvement with a national or international payment system; ²
- (g) the identity of persons holding in the applicant and in agents to be used by the applicant in the provision of payment services, directly or indirectly, qualifying holdings within the meaning of Article 4(11) (...) of Directive 2006/48/EC (...), and the size of their effective holding and evidence of their suitability taking account the need to ensure the sound and prudent management of a payment institution; ³
- (ga) the identity of persons to which the applicant has close links as defined in Article 4(46) of Directive 2006/48/EC and a description of their links with the applicant; ⁴
- (h) deleted
- (i) the identity of directors and persons responsible for the management of the payment institution and its branches as well as of the agents to be used by the applicant in the provision of payment services ⁵ and evidence that they are fit and proper persons (...) and possess appropriate knowledge and ability to perform payment services, as determined by the home Member State of the payment institution;
- (j) the applicant's legal status and the articles of association;

¹ The Presidency believes that the concerns of some Member States related to the supervision of agents is best taken into account by adding the relevant information in the list of information on which the authorisation is based, as the information could be monitored on an on-going basis directly on the basis of the proposed Art. 10b.

² Latter part of former point (f) made, slightly redrafted, a new paragraph (1)(fa).

³ The text is made consistent with the proposed Article 4(3).

⁴ To reflect the proposed Art. 4(5).

⁵ To reflect the proposed Art. 4(4).

(k) the address of the head office (...) ¹

2. For the purposes of paragraph 1)(bb), (c) and (f) ², the applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services.
3. For the purposes of paragraph 1(d), (g) and (i), the competent authorities of the home Member State shall consult the competent authorities of the host Member State. ³
4. Member States may not impose any prior conditions in respect of granting authorisation apart from those laid down in paragraph 1 of this Article. ⁴

Article 5a

Exceptions for money remitters

Deleted. ⁵

Article 6

Granting

Deleted. ⁶

¹ Consequential to the restructuring of the provisions in Art. 14.

² Consequential to other amendments made to this Article.

³ The Presidency believes that an explicit requirement for consultation would be appropriate.

⁴ In order to clarify the fact that the list in paragraph 1 is intended to be exhaustive.

⁵ This provision is included in the proposed Art. 4a(1).

⁶ Proposed to be replaced by Art. 4a in order to clarify the authorisation requirements.

Article 7
Communication of decision

1. Within three months of receiving the application or, should the application be incomplete, within three months of receiving the complete information required for the decision under Article 5 of this Directive, the competent authority shall inform the applicant whether its application has been granted or refused.
2. Reasons shall be given whenever an authorisation is refused.

Article 8
Registration

1. Member States shall establish a public register of all authorised payment institutions and their branches and agents, as well as of all natural and legal persons, and their branches and agents, for which a derogation has been granted in accordance with Article 21. They shall be registered in the register of the Member State where they are established.¹
2. This register shall identify the services and/or activities laid down in Article 10 for which the payment institution is authorised or for which the natural or legal person has been registered. It shall be publicly available for consultation, accessible online, and be updated on a regular basis.

Article 9
Maintenance of authorisation

Deleted.²

¹ The same wording is used Article 23(3) of Directive 2004/39/EC (MiFID) and to point out that the register should be placed in the Member State where the payment institution is established.

² To be included in the proposed Art. 10b in order to clarify the structure of the text.

Article 10

Activities

1. Payment institutions shall be entitled to engage in the following activities:
 - (a) the provision of payment services (...)¹;
 - (b) the provision of operational and closely related ancillary services such as (...) guaranteeing execution of payment transactions, foreign exchange services, safekeeping activities, and storage and processing of data;
 - (c) the accessing and operation of payment systems for the purposes of transferring, clearing and settling funds, including any instruments and procedures relating to the systems, without prejudice to Article 23;
 - (d) business activities other than provision of payment services, having regard to applicable Community and national law.²
2. (...) Payment institutions (...) ³ may (...) hold payment service user's money on payment accounts only if they are⁴ exclusively used for payment transactions; any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of Article 5 (...) of Directive 2006/48/EC (...), or electronic money within the meaning of Article 1(3) of Directive 2000/46/EC.

¹ In order to maintain the consistency of the text.

² It is proposed to replace the former paragraph 3 by this indent in order to enhance the consistency and clarity of the text. The amendment is not intended to change the meaning of the text.

³ The deleted text appears to be superfluous.

⁴ In order to remove the ambiguity of the sentence.

¹2b) Payment institutions may grant credit only from the funds other than those received from payment service users in connection with providing payment services.

(...)²

³*Article 10a*

(...) Separation of assets

1. (...) Member States shall ensure that there is a legal separation between (...) funds (...) received by a payment institution from a payment service user on a payment account or other funds received for the purpose of carrying out future payment transactions and other funds of the payment institution so that the received funds are safeguarded in the interest of those payment service users against the claims of other creditors of the payment institution, in particular in the event of bankruptcy or other insolvency procedure.⁴

¹ See the general justification of the Presidency compromise proposal.

² See footnote under paragraph 1(d).

³ New recital to be added: Adequate arrangements for a legal separation of funds received by a payment institution from a payment service user on a payment account are necessary in order to ensure safeguarding of the payment service user's money, especially in the event of the payment institution's insolvency or bankruptcy. The most efficient way to protect payment service users in such cases is to have national bankruptcy provisions in place. However, given the differences of bankruptcy law in Member States the implementation of such safeguards measures should be at the discretion of the Member States.

⁴ See the general justification of the Presidency compromise proposal.

1a. Where a portion of the amount of funds referred to in paragraph 1 is used for future payment transactions with the balance being used for non-payment services, that portion of the funds received for future payment transactions shall also be subject to paragraph 1. Where this portion is variable or unknown in advance, Member States may apply this paragraph on the basis of a representative portion assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the competent authorities.¹

²1b. This Article shall not apply to payment institutions exclusively engaged in money remittance.

1c. The funds referred to in this Article may only be invested in secure, liquid, low risk assets as defined by Member States. These assets shall be subject to the requirements laid down in paragraph 1.³

(...)⁴

Article 10b

On-going verification of authorisation (...)

⁵1. Where any change affects the accuracy of information and evidence provided under Article 5, the payment institution shall without undue delay inform the competent authority of its home Member State accordingly.

¹ The Presidency believes that the suggested principle is necessary for the issuers of hybrid payment instruments..

² See the general justification of the Presidency compromise proposal.

³ In order to improve the legal clarity of the text.

⁴ This paragraph appears to be over-restrictive in the light of the proposed amendments as it could be interpreted as to require the assets to be separated (and invested) individually for each customer.

⁵ See footnote under Art.9.

As far as Article 5(1)(d), (g) and (i) are concerned, the competent authorities of the home Member State shall inform the competent authorities of the host Member State in the case a new agent or branch is established.¹

2. The competent authorities shall ensure that the calculations justifying compliance with Article 4a(1) are made not less than twice each year (...) ² either by payment institutions themselves, which shall communicate them, and any component data required, to the competent authorities, or by competent authorities, using data supplied by the payment institutions.

SECTION 2

OTHER REQUIREMENTS

Article 11

Use of branches, (...) agents and outsourcing

1. In cases where a payment institution intends to provide payment services through an (...) agent or a branch, it shall communicate the name and address of the (...) agent or branch to be used to the competent authorities in its home Member State.

¹ See the footnote under Art. 5(3).

² The deleted text is not relevant taking into account the proposed Art. 10a.

2. Where a payment institution intends to outsource payment services¹ (...) operations, it shall inform the competent authorities of its home Member State accordingly.

Outsourcing of important operational functions may not be undertaken in such way as to impair materially the quality of its internal control and the ability of the competent authority to monitor the payment institution's compliance with all obligations laid down by this Directive.²

3. Payment institutions shall ensure that (...) agents or branches acting on their behalf inform payment service users accordingly.

Article 12

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 avoid undue operational risk.
2. Member States shall require that payment institutions remain fully liable for any acts of their managers, employees, or any (...) agent, branch or outsourced activity, pursuant to this Directive.

Article 13

Record-keeping

Member States shall require payment institutions to keep all appropriate records for the purpose of this Title for at least five years, without prejudice to Directive 2005/60/EC or other relevant Community or national legislation.

¹ The scope of this paragraph, like paragraph 1, should be limited to payment services.

² The wording is used in Article 13(5) of Directive 2004/39/EC.

Deleted.

SECTION 3

COMPETENT AUTHORITIES AND SUPERVISION

Article 15

Designation of competent authorities

1. Member States shall designate as the competent authorities responsible for the authorisation and prudential supervision of payment institutions² under this Title either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law.

The competent authorities shall be such as to guarantee independence from economic actors and to avoid conflicts of interest. With the exception of central banks,³ they shall not be payment institutions, credit institutions, electronic money institutions, or post office giro institutions.

The Member States shall inform the Commission accordingly.

2. Member States shall ensure that the competent authorities designated under paragraph 1 possess all the powers necessary for the performance of their duties.

¹ The Presidency believes that it is appropriate to express this provision as an authorisation requirements and, to the extent it concerns institutions waived under Art. 21, include it in that Article.

² Consequential to the suggested new Art. 15a.

³ It would be appropriate to exclude central banks as they may fall under the definition of a credit institution.

3. Where there is more than one competent authority for matters covered by this Title on its territory, Member States shall ensure that those authorities cooperate closely so that they can discharge their respective duties effectively.

¹Article 15a (new)

Responsibility for supervision

The tasks of the competent authorities, as laid down in Article 15(1), shall be the responsibility of the competent authorities of the home Member State.

Article 16

Ongoing supervision

1. Member States shall ensure that the controls exercised by the competent authorities for checking continued compliance with this Title are proportionate, adequate and responsive to the risks to which payment institutions are or might be exposed.²
2. In order to check compliance with this Title, the competent authorities (...) shall be entitled to take the following steps (...)³:
- (a) to require the payment institution to provide any information needed to monitor compliance;

¹ In order to clarify home/host responsibilities.

² The same wording is used in Article 124(1) of Directive 2006/48/EC.

³ As agreed in the Council WG on July 13th.

- (b) to carry out on-site inspections with the payment institution, (...) any entity to whom payment services operations are outsourced, any (...) agent and any (...) branch providing payment services under the responsibility of the payment institution;¹
- (c) to issue recommendations and guidelines and, if applicable, (...) ² binding administrative actions;
- (d) to issue warnings and impose proportionate penalties in cases of non-compliance;
- (e) to suspend or withdraw authorisation in cases, where the conditions for authorisation in accordance with Article 4a (...) ³ are not or no longer fulfilled.

Article 17

Professional secrecy

1. Member States shall ensure that all persons working or who have worked for the competent authorities, as well as experts acting on behalf of the competent authorities, are bound by the obligation of professional secrecy, without prejudice to cases covered by criminal law.
2. In the exchange of information in accordance with Article 19, professional secrecy shall be strictly applied to ensure the protection of individual and business rights.
3. Member States may apply this Article taking into account, mutatis mutandis, the provisions laid down in Articles 44 to 52 of the Directive 2006/48/EC.⁴

¹ To clarify the text.

² In order to take into account the fact that recommendations and guidelines are not binding.

³ Consequential to the amendments suggested above.

⁴ The Presidency believes that it is appropriate, taking into account the widely differing markets and supervisory arrangements in Member States, that application of more detailed secrecy rules could be left to national discretion.

Article 18

Right to apply to the courts

1. Member States shall ensure that decisions taken and penalties imposed¹ by the competent authorities in respect of a payment institutions and applicants for authorisation as a payment institution² in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be contested before the courts in the Member State of the authorities which adopted them.
2. The first paragraph shall apply also in respect of failure by the competent authorities to act.

Article 19

Exchange of information

1. The competent authorities of the different Member States shall cooperate with each other and, where appropriate, with the European Central bank and the national central banks of the Member States³ and other relevant competent authorities designated under Community legislation applicable to payment service providers (...).
2. Member States shall, in addition, allow exchanges of information between their competent authorities and the following:
 - (a) the competent authorities of (...) other⁴ Member States responsible for the authorisation and supervision of payment institutions;

¹ The competent authorities are allowed to impose proportional penalties according to Article 16.

² In order to clarify that the Article shall be applied also when authorisation is refused.

³ It seems appropriate to include a co-operation requirement also between supervisors and central banks, taken into account the role of central banks in the oversight of payment systems.

⁴ The text would be clarified to ensure that the obligation to allow exchange of information applies both to the home and the host authority.

- (b) (...) ¹ the European Central Bank and the national central banks of Member States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- (c) other relevant authorities designated under this Directive and other Community legislation applicable to payment service providers, such as legislation applicable to money laundering and terrorist financing. ²

Article 20

Exercise of the right of establishment and freedom to provide services

1. Any authorised payment institution wishing to carry on its activities for the first time in a Member State other than its home Member State, in exercise of the right of establishment or the freedom to provide services, shall so inform the competent authorities in its home Member State.

Within one month of receiving that information, the competent authorities in the home Member State shall inform the competent authorities in the host Member State of the name and address of the payment institution and of the kind of payment services it intends to provide on the territory of the host Member State.

2. In order to carry out the controls and take the necessary steps provided for in Article 16 in respect of a branch or an (...) agent of a payment institution located in the territory of another Member State, the competent authority of the home Member State shall cooperate with the competent authorities in the host Member State.
3. By way of cooperation in accordance with paragraphs 1 and 2, the competent authority of the home Member State shall notify the competent authority of the host Member State whenever it wishes to carry out an on-site inspection within the territory of the latter.

¹ In order to make the text more consistent as the ESCB is not a separate legal entity.

² In order to clarify the text.

However, if both authorities so wish, the competent authority of the home Member State may delegate to the competent authorities of the host Member State the task of carrying out on-site inspections with the institution concerned.

4. Competent authorities shall provide each other with all essential and/or relevant information, in particular in the case of infringements or suspected infringements by a branch or an (...) agent. In this regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.¹

SECTION 4

DEROGATION

Article 21

Conditions for derogation

1. By way of derogation from Article 2(-1)(d) (...), Member States may waive or allow their competent authorities to waive the application of all or part of the procedure and conditions set out in Sections 1 and 2 and allow (...) natural or legal persons to be entered in the register established under Article 8, (...) where ² (...)

¹ In Article 132 of Directive 2006/48/EC the term "essential information" is broader than "relevant" as there is an obligation of both competent authorities to communicate on their own initiative all essential information and not only on request of one of them.

² In the light of discussion with the Member States there appears to be wide support for deleting the qualitative criteria. The Presidency believes also that in the light of the comments made by some Member States, where the amount of payment institutions likely to benefit from the derogation is particularly high, it would be advisable to introduce the possibility of applying this Article also directly by virtue of national law instead of a case-by-case discretion, in order to avoid unreasonable administrative burden for the authorities and the undertakings. Introducing this option can be further justified if the qualitative criteria are removed as suggested.

(...) the total business activities of the person concerned, including any (...) agent or branch for which it assumes full responsibility, generates a total amount of funds outstanding which were accepted for the provision of payment services and which does not exceed EUR 5 million on average over a month and EUR 6 million at any given point in time

(...)

¹ 1a. Member States may also waive the application of all or part of the provisions of this Directive to credit unions referred to in Article 2 of Directive 2006/48/EC established under their national law.

² 1b. Any natural or legal person registered in accordance with this Article shall be required to have its head office in the Member State in which it actually carries on its business.³

2. The persons referred to in paragraph 1 and 1a shall be treated as payment institutions. However, they shall be allowed to provide payment services within the Community only within the Member State of registration.

Member States may also provide that they may engage only in certain of the activities listed in Article 10.

3. The persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the condition specified in (...) paragraph 1.

¹ A new paragraph is proposed to allow the exclusion of credit unions, which in some Member States are established under national law and which operate only locally. It would be required, however, that there should be some minimum national requirements to protect payment service users. The same derogation could be considered, if needed, for other undertakings mentioned in Article 2 of Directive 2006/48/EC.

² Consequential to the amendments made above (former second paragraph of Art. 14), see the footnote under Art. 14.

³ Former second paragraph of Art. 14.

Article 22
Notification and information

1. If a Member State avails itself of the derogation provided for in Article 21, it shall notify the Commission accordingly by the date specified in the first paragraph of Article 85(1) at the latest and shall notify it forthwith of any subsequent change.
2. In addition, it shall inform the Commission, on an annual basis,¹ of the number of natural and legal persons concerned and (...) of the total amount of funds outstanding, as referred to in (...) Article 21(1).

Chapter 2
Common provisions

Article 23
*Access to open payment systems*²

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

In any event, open payment systems may not impose on payment service providers, on payment service users or on other payment systems any of the following requirements:

- (a) restrictive rules on effective participation in other payment systems;

¹ In order to clarify the frequency of the obligation laid down in this paragraph.

² AT Presidency: Recital to be added: "Article 23 should (...) be without prejudice to the competences of the ECB and the ESCB as laid down in Article 105(2) of Treaty and Article 3.1 and Article 22 of the Statute of the ESCB, concerning access to payment systems."

(b) a rule which discriminates between authorised payment service providers, (...) between registered payment service providers or between authorised and registered payment service providers in relation to the rights, obligations and entitlements of participants;

(c) any restriction on the basis of institutional status.

2. Paragraph 1 shall not apply where payment systems are exclusively composed of payment service providers belonging to the same group [composed of entities having links of capital conferring to one of the linked entities an effective control over the others] nor to systems designated under Directive 98/26/EC.

TITLE III

Transparency of conditions and information requirements for payment services

Chapter -1¹

General rules

Article 23b

(...) Scope

Title III applies to (...) single payment transactions, framework contracts and payment transactions covered by them. The parties may agree that it does not apply in whole or in part when the payment service user is not a consumer [or a micro-enterprise] (...).²

*Article 23 c (new)*³

Other provisions in Community legislation

This Directive is without prejudice to any Community legislation containing additional requirements on prior information.

¹ Title III is structured in the same way as Title IV, i.e. general rules are in the beginning.

² The same wording is used in Article 40b concerning the scope of application of Title IV. The wording “upon their request”, does not work in practice, in particular, when standard contracts are used. Moreover, traditionally it is not relevant which of the parties takes the initiative to agree otherwise. The wording ”not a consumer or a micro-enterprise” covers other enterprises than micro-enterprises, as well as national authorities and other entities, such as international organisations.

³ Clarifies the relationship with other Community rules. A recital also possible but not as clear.

Article 23 d (new)¹
Charges for information

1. The payment service provider may not charge the payment service user for information under this Title, unless otherwise specified² in this Title.
2. The payment service provider and the payment service user may agree on charges on additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request. Such charges shall be appropriate and in line with the payment service provider's actual costs.

Chapter 1
Single payment transactions

Article 24
Scope

1. This Chapter applies to single payment transactions not covered [directly or indirectly] by a framework contract.

¹ New Article, follows the rules in Article 40c.

² See new paragraph 2 in Articles 36 and 37 and Article 32.

- [2. When a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider is not obliged to provide or make available information which is already given to the payment service user on the basis of the framework contract or which will be given to him according to that framework contract.]¹

Article 25

Prior general information

1. Member States shall require that before the payment service user is bound by any offer covering a single payment transaction the payment service provider is to (...) make available to the payment service user in an easily accessible manner² (...) the information and conditions in accordance with Article 26. At the payment service user's request, the information and conditions shall be provided on paper or on another durable medium.³ They shall be given in easily understandable words and in a clear and comprehensible form, in an official language of the Member State where the payment service is offered or in any other language agreed by the parties.

(...)

¹ The purpose of this provision is to take into account certain situations, e.g. when ATM is used. It is usual that the payment service user has a paying card covered by a framework contract with another payment service provider and, therefore, most of the relevant information is or will be given by that other payment service provider.

Alternatively a withdrawal of cash could be regarded as a transaction *sui generis* and so it would not be under provisions on single transactions or individual transactions covered by a framework contract. In that case, charges levied on a withdrawal should be informed to the client according to Article 40(2). If this interpretation is possible, it should be explained in recitals.

² Single payment transactions are rather rare in practice. They would mainly relate to payment transactions made over the counter where there is no reason as a main rule to require provision of information on paper. For this reason, neither does it seem necessary to introduce the standardised format suggested in the draft ECON report taking also into account that such a format may not be feasible in all situations.

2. If the payment transaction has been executed at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph 1, the payment service provider shall fulfil its (...) obligations under (...) paragraph 1 immediately¹ (...) after the execution of the transaction.

Article 26

Information and conditions

1. Member States shall ensure that the following information and conditions are provided or made available to the payment service user:

(a) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;

(b) the maximum execution time for the payment service to be provided;

(...)²

(c) all charges payable by the payment service user to his payment service provider;

(ca) where applicable, the actual or reference exchange rate to be applied to the payment transaction;

(...)³

¹ It is appropriate to use identical wording already used in other directives applicable to payment services, such as Directive 2002/65/EC concerning distance marketing of consumer financial services.

² Consequential to the proposed deletion of the definition of availability of funds in Article 4(9).

³ Some of the former deleted requirements are hardly relevant in single payment transactions. The relevant information would be covered by new paragraph 3.

3. Any other information specified in Article 31 is to be made available to the payment service user in an easily accessible manner.¹

Article 27

Information (...) to the payer after the receipt of the payment order (...)

Immediately after the receipt of the payment order² (...), the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in Article 25(1) (...) the following information:

- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, the information relating to the payee;
- (b) the amount of the payment transaction;
- (ba) the amount of any charges for the payment transaction payable by the payer;
- (c) where applicable, the exchange rate used in the payment transaction (...) by the payer's payment service provider or a reference hereto, when different from the rate provided in accordance with Article 26(1)(ca).

¹ Most of the information requirements in Article 31 apply to single payment transactions. However, it seems apparent from the context that some requirements are not relevant in practise (e.g. (2)(f), (4)(4), (5)(a-c) and (6)). It is not the amount of information that is crucial in single payment transactions but the way such information is to be given to the payment service user. This issue is proposed to be dealt with in a separate paragraph in order to make it clear that the payment service provider does not have to provide such other information on paper.

² The wording “execution” is changed to “receipt of the payment order” to make it possible for the payment service provider to fulfil the information requirements immediately over the counter. Fulfilling the information requirements after the execution is not even feasible in practise because the payer’s payment service provider is not usually informed by the payee’s payment service provider that the payment transaction has been executed.

Article 28

Information (...) to the payee after execution

Immediately after the execution of the payment transaction, the payee's payment service provider shall provide or make available to the payee, in the same way as provided for in Article 25(1) (...) the following information:

- (a) the reference enabling the payee to identify the payment transaction and, where appropriate, (...)the payer, and any information transferred with the payment transaction;¹
- (b) the amount of the payment transaction transferred from the payer;
- (c) the amount of any charges for the payment transaction payable by the payee;
- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider;²
- (e) the value date.³

Chapter 2

Framework contracts

Article 29

Scope

This Chapter applies to payment transactions covered by a framework contract (...).

¹ This is aligned with Article 27(a) since differences seem not necessary.

² The payee's payment service provider does not necessarily know if the payer's service provider has made a currency conversion and, if so, which exchange rate is used.

³ The payee should be informed about the point of time at which the funds are available.

Article 30

Prior general information

1. Member States shall require that before the payment service user is bound by any framework contract or (...) offer, the payment service provider is to provide to the payment service user on paper or on another durable medium (...) the information and conditions in accordance with Article 31. They shall be given in easily understandable words and in a clear and comprehensible form, in an official language of the Member State where the payment service is offered or in any other language agreed by the parties.
2. If the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph 1, the payment service provider shall fulfil its (...) obligations under that paragraph immediately (...) after the conclusion of the framework contract.

Article 31

Information and conditions

Member States shall ensure that the following information and conditions are provided to the payment service user:¹

(1) payment service provider

¹ Information requirements are proposed to be structured in a clearer and more comprehensible way. The same kind of structure is used in other directives applicable to payment services, especially in Directive 2002/65/EC concerning the distance marketing of consumer financial services. Some textual modifications are made in order to use as similar wording as possible as in other directives. There are also some changes in substance, such as subparagraph 4 c.

- (a) the name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its branch or agent established in the Member State where the payment service is offered, and any other address, including electronic mail address, relevant for the communication with the payment service provider;¹
- (b) the trade or similar public register in which the service provider is entered and the registration number, or equivalent means of identification in that register;²
- (c) the particulars of the relevant supervisory authority;

(2) use of payment service

- (a) a description of the main characteristics of the payment service to be provided;³
- (b) specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;⁴
- (c) the form of and procedure for transmitting consent to execute a payment transaction and withdrawal of such a consent in accordance with Articles 41 and 56;⁵
- (d) a reference to the point in time of receipt of a payment order as defined in Article 54(1) and cut-off time established by the payment service provider;⁶

¹ Part of former point (id) redrafted in order to streamline the text with Directive 2002/65/EC.

² Part of former point (id) redrafted in order to streamline the text with Directive 2002/65/EC.

³ The original point (b). Information on the main characteristics of the product is regarded as material and required to be given in Directive 2005/65/EC.

⁴ Former point (ba).

⁵ Former point (ia).

⁶ Former point (d). Added reference to the cut-off time.

(e) the maximum execution time for the payment services to be provided;¹

(f) spending ceilings for the use of the payment instrument in accordance with Article 43(1);²

(3) charges, interest and exchange rates

(a) all charges payable by the payment service user to the payment service provider;³

(b) where applicable, the interest and exchange rates applied to payment transactions, including as well as the method of calculation, the relevant date and index or base for determining the reference interest or exchange rate;⁴

(c) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with Article 33(2);⁵

(4) communication

(a) where applicable, the technical requirements with respect to the payment service user's authorised equipment for communication, including the way in which it can be used and means of communication agreed by parties for transmission of information or notifications under this Directive;⁶

¹ Former point (bb).

² Former point (c).

³ Former point (e). The partly previously in square brackets deleted.

⁴ Former point (f).

⁵ New provision, consequential to the proposed changes in Article 33(2).

⁶ Former point (a).

- (b) the manner and frequency in which information under this Directive is to be provided or made available;¹
- (c) the language or languages in which the framework contract shall be concluded and communication during this contractual relationship undertaken;²
- (d) the payment service user's right to receive contractual terms of the framework contract and information and conditions according to Article 32;³

(5) safeguards and corrective measures

- (a) where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument, and an indication of risks involved if the steps are not taken and how to notify the payment service provider for the purposes of Article 46(b);⁴
- (b) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 43;⁵
- (c) the liability of the payer in accordance with Article 50, including information on the relevant amount;⁶

¹ Former point (ie) redrafted in order to streamline the text; see in particular Articles 36(2) and 37(2).

² New provision. The language or languages to be used, especially in cross-boarder situations, is essential information for the payment service user. Also in Directive 2002/65/EC.

³ Former point (i) redrafted in order to streamline the text; the meaning of the text is not intended to be changed.

⁴ Former point (bd).

⁵ Former point (be); the latter part deleted as information on the person whom, if not the payer, the payment service provider should contact cannot be known at this stage.

⁶ Former point (bg).

- (d) how and in which time the payment service user is to notify the payment service provider of any unauthorised or incorrect transaction in accordance with Article 47a as well as the payment service provider's liability for unauthorised payment transactions in accordance with Article 49;¹
- (e) the liability of the payment service provider for the execution of payment transactions in accordance with Article 67;²
- (f) the conditions for refund in accordance with Articles 52 and 53;³

(6) changes and termination of framework contract

- (a) if agreed, information that the payment service user is to be deemed to have accepted changes in the conditions unless he notifies the payment service provider of not accepting them by the date of their proposed date of entry into force;⁴
- (b) duration of the contract;⁵
- (c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Article 33(1) and 34;⁶

¹ Former point (ic) redrafted in order to clarify the text.

² Former point (bf) redrafted in order to streamline the text; the meaning of the text is not intended to be changed.

³ Former point (da).

⁴ Former point (ib).

⁵ New provision. Noted that information on duration of the contract is regarded as material and required to be given in Directive 2005/29/EC.

⁶ Former point (bc) redrafted in order to streamline the text; the meaning of the text is not intended to be changed.

(7) redress

- (a) any contractual clause on law applicable to the framework contract and/or the competent court;¹
- (b) the complaints and out-of-court redress procedures available to the payment service user in accordance with Chapter 4 of Title IV;²

(...)

Article 32

Accessibility of information and contractual conditions (...) of the framework contract

(...) At any time during the contractual relationship the payment service user has a right, at his request, to receive the contractual terms of the framework contract as well as information and conditions specified in Article 31 on paper or on another durable medium.³ [The framework contract may include a condition that the payment service provider may charge for this information if it is to be provided on paper.]

¹ Former point (g).

² Former point (h).

³ In order to streamline the text with Article 5(3) of Directive 2002/65/EC.

Article 33
Changes in contractual conditions

1. Any changes in the framework contract (...) as well as information and conditions specified in (...) Article 31, shall be proposed by the payment service provider in the same way as provided for in Article 30(1) and not later (...) than one month before their (...) proposed date of application.¹

Where applicable in accordance with Article 31(1)(6)(a), the payment service provider has to inform the payment service user that he is to be deemed to have accepted these changes if he does not notify the payment service provider that he does not accept them by the date of their entry into force and that he may by the said date [/at any time thereafter] terminate the framework contract immediately without charge.²

¹ AT Presidency: Possible recital to be added: "Payment service users must be able to have full information about any changes to contractual conditions relating to the provision of payment services by payment services providers. However, for some new forms of payment instruments such as pre-paid telephone cards, it may not be technically feasible for the payment service provider to directly provide full information about proposed changes in contractual conditions to payment service users. Nevertheless, in such cases the payment service provider will be deemed to have provided the payment service user with full information, if a direct and individual message is sent (i.e. provided) to the payment service user that the payment service provider intends to change contractual conditions and this message indicates a suitable source, such as an internet website satisfying the requirements of a "durable medium" or a local distribution point, where full information on the change to contractual conditions is made available to the payment service user. All other requirements relating to changes in contractual conditions shall apply mutatis mutandis."

² See Annex to Directive on unfair terms in consumer contracts 93/13/EEC, Article 2(b).

2. (...) Changes in the interest or exchange rates may be applied immediately without notice, provided that such a right is agreed upon in the framework contract and that the changes are based on the reference interest or exchange rates agreed on (...) in accordance with in Article 31(1)(3)(b) and (c) (...). The payment service user shall be informed of the change in the interest rate at the earliest opportunity in the same way as provided for in Article 30(1) unless the parties have agreed on a specific frequency or a manner in which the information is to be provided or made available.¹

(...)

3. Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

¹ In order to streamline the text. It is not necessary to require that changes based on the reference interest or exchange rates have to be informed since such changes happen frequently. It is more practicable to make such information available in the manner agreed (e.g. on the internet).

Article 34¹
Termination

1. The payment service user may terminate the framework contract at any time unless the parties have agreed on a period of notice. Such a period may not exceed one month.

[The payment service user which no longer exceeds the size of a micro-enterprise may terminate the framework contract with one month's notice regardless the terms of the contract.]²

- 1a. Termination of a framework contract concluded for a period of 12 months or more or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months. In all other cases charges for the termination shall be reasonable and in line with costs.

[Option 2)]³

The termination of a framework contract shall be free of charge for the payment service user where the contract has been concluded for an indefinite period and, in case of a fixed period exceeding 12 months, after the initial 12 months period. In all other cases charges for termination shall be reasonable and in line with the payment service provider's actual costs.]

¹ Former Article 42a (new) moved back from Title IV, consequential to the amendment in the definition of micro-enterprise a new subparagraph added in paragraph 1. Option 2 of paragraph 1a would allow the termination of framework contracts concluded for an indefinite period free of charge at any time, even within the first 12 months.

² It seems natural to regulate the situation where an enterprise falls in size to a micro-enterprise so that such an enterprise has a right to get rid of a framework contract that may not be suitable any longer. In this way, the enterprise can benefit from the protection of mandatory rules in the directive. The relevant point of time for determining whether an enterprise is a micro-enterprise should be the point of time of the conclusion of the contract. This is taken into account in the definition of micro-enterprise. See footnote 3.

³ This option is necessary, at least, if paragraph 3 is not accepted.

2. Charges for payment services levied on a regular basis shall be payable only proportionally up to the termination of the contract. Where charges are paid in advance, they shall be reimbursed proportionally.
3. Member States may provide more favourable provisions for payment service users.

Article 35

Information before execution of an individual payment transaction

In the case of an individual payment transaction under a framework contract, a payment service provider shall, at the request of the payment service user for this specific transaction, provide explicit information on the maximum execution time, and the charges payable by the payment service user to the payment service provider.

Article 36

Information (...) to the payer (...) on individual payment transactions

1. After the receipt of the payment order¹ (...) of an individual payment transaction or after the amount of the an individual payment transaction is debited from the payer's account, the payer's payment service provider shall provide the payer (...) in the same way as provided for in Article 30(1) with the following information:
 - (a) a reference enabling the payer to identify each payment transaction and, where appropriate, the information relating to the payee;
 - (b) the amount of the payment transaction (...);
 - (c) the amount of any charges for the payment transaction payable by the payer;

¹ The same wording as in Article 27. However, in cases where the payer has a payment account, the information shall be provided after the account is debited.

- (d) where applicable, the exchange rate used in the payment transaction (...) by the payer's payment service provider.

2. A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically on a regular basis and in the agreed manner which allows the payer to store and reproduce information unchanged.¹ The parties may agree in the framework contract charges if such information is to be provided on paper.²(...)

Article 37

Information (...) to the payee (...) on individual payment transactions

1. After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee (...) in the same way as provided for in Article 30(1) with the following information:
 - (a) the reference enabling the payee to identify the payment transaction and, where appropriate, (...) the payer, and any information transferred with the payment transaction;³
 - (b) deleted
 - (c) the amount of the payment transaction transferred from the payer;
 - (d) the amount of any charges for the payment transaction payable by the payee;

¹ The original proposal by the Commission slightly redrafted. In addition, the provision makes it possible to agree on the manner in which information is made available or provided. This is important, especially, for internet banking services. The same change in Article 37.

² Writing and sending documents cause expenses, which should be possible to take into account in service prices. The same amendment is proposed to be made in Article 37(2).

³ See footnote under Article 28(a).

(e) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider;

(f) the value date.¹

2. A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically on a regular basis and in the agreed manner which allows the payer to store and reproduce information unchanged. The parties may agree in the framework contract charges if such information is to be provided on paper.²

Article 38

Micro payments

Deleted.³

Chapter 3

Common provisions

Article 39

Transaction currency and currency conversion

1. Payments shall be made in the currency agreed by the parties.

¹ See footnote under Article 28(e).

³ Replaced by the new Article 70a.

2. Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the reference exchange rate to be used for converting the transaction.

The payer shall (...) agree to the currency conversion service on that basis.

Article 40

Information on additional charges or reductions

1. Where, for the use of a given payment instrument, the payee requests a surcharge or offers a reduction, the payer shall be informed of those matters prior to the initiation of the payment transaction. The payment service provider shall not prevent the payee from requesting such a surcharge or offering such a reduction.
2. Where, for the use of a given payment instrument, a payment service provider or a third party requests a surcharge, the payment service user shall be informed of those matters prior to the initiation of the payment transaction.

TITLE IV
Rights and obligations
in relation to the provision and use of payment services

Chapter –1
Common provisions

Article 40b

(...) Scope

1. Where the payment service user is not a consumer [or a micro-enterprise], the parties may agree that Articles 40c(1), 41(3), [48,] (...) 50, 52, 53, and 56 (...) do not apply (...) in whole or in part. The parties may also agree on a different time period than provided for in Article 47a.¹
- 1a. Member States may provide that Chapter 4 of Title IV does not apply where the payment service user is not a consumer [or (...) a micro-enterprise].²

(...)³

¹ Paragraphs 1 and 2 combined together. The solution is similar to Title III, i.e. parties other than consumers [and micro-enterprises] are not out of the scope of the directive but certain provisions are not mandatory. Additional provisions are taken into account: Art. 40c(1) charges applicable (as in Title III); 41(3) only reference to a paragraph is changed (earlier 41(4)); 42a is deleted because the provision is removed to 34; 47a notification of unauthorised or incorrect transactions; 52 refund conditions; 53 time-limits for refund; 56 longer period for irrevocability (needed for mass transactions like pensions, tax refunds etc.)

² Chapter 4 of Title IV concerns issues that cannot be agreed on by the parties. Yet, parties other than consumers and micro enterprises may be excluded from the scope of application.

³ See Art. 34(1).

Article 40c
Charges applicable

1. (...) The payment service provider may not charge for fulfilment of its (...) obligations under this Title (...) on payment service user, unless otherwise specified in this Title.¹ Those charges shall be agreed by the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.
2. Where a payment transaction (...) does not involve any currency conversion (...)², Member States shall require that any charges be levied directly on the payer and the payee by their respective payment service providers[, and that the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider.]³

(...)

¹ The previous wording "exercise of rights and obligations" was not clear enough. See also Art. 55, 56 and 66. In recitals it should be explained that this provision does not have the effect that charges could be imposed for the provision of information in the field of other directives applicable to consumers.

² Amendment based on the restriction of the scope to only two-legs and EU-currencies.

³ The amount determined can also be zero. Recital 26 to be reviewed. It should be allowed that the consumer is not responsible for paying charges for e.g. crediting his account or using mobile telephones for payment transactions. The provision should not impact on pricing of services or charges between payment service providers.

Chapter 1

Authorisation of payment transactions

Article 41

Consent and withdrawal of consent

1. Member States shall ensure that a payment transaction is considered to be authorised only if the payer has consented to the payment order addressed to his payment service provider. A payment transaction may be authorised by the payer prior or, if agreed between the payer and his payment service provider (...), after the execution of the payment transaction.
2. Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed (...) between the payer and his payment service provider.

In the absence of such consent, a payment transaction shall be considered to be unauthorised.

3. Consent may be withdrawn by the payer at any time, but not later than the point in time of irrevocability under Article 56. The same applies to a consent (...) given for a series of payment transactions which may be withdrawn with the effect that any future payment transaction shall be considered as unauthorised (...).
4. The procedure for transmitting consent shall be (...) agreed between the payer and his payment service provider (...).

Article 42

Transmission of consent

Deleted.

Article 42a
Termination of framework contracts

Deleted.¹

Article 43
Limits of the use of the payment instrument

1. In cases where a specific payment instrument (...) is used for the purposes of transmitting consent, the payer and his payment service provider may agree on spending ceilings for payment services.
2. If agreed in the framework contract, the payment service provider may reserve the right to block the use of a payment instrument for objectively justified security reasons or where there are reasonable grounds (...) to suspect an unauthorised or fraudulent use of the payment instrument or, in case of payment instrument with a credit line, where the risk that the payer is unable to fulfil his liability to pay is significantly increased.²
3. In such cases the payment service provider should, where possible, inform the payer before the payment instrument is blocked and at the latest immediately after of the blocking in the manner agreed in the framework contract, unless giving such information would compromise objectively justified security reasons or would be prohibited by other relevant Community or national legislation.

¹ Removed back to Title III, Art. 34.

² “Unauthorised use” is added, since “fraudulent” seemed too restrictive. Additionally, it has been taken into account that where there is a risk for insolvency of the payer and the claims of the payment service provider are not sufficiently secured, the payment service provider has to have a right to immediately block payer’s account with overdraft facility. Under Art. 12(2) of the proposal for a Directive on credit agreements for consumers the creditor has a right to terminate open-end credit agreement without prior notice. This issue could be noted in recitals, too. See also Art. 34.

4. The payment service provider shall unblock the use of the payment instrument once the necessary security checks have been completed or when there is no longer a risk of the payer's inability to pay.

Article 45

Unauthorised transactions and withdrawal of consent

Deleted.

Article 46

Obligations on the payment service user in relation to payment instruments

1. The payment service user entitled to use the payment instrument shall meet the following obligations:
 - (a) to use a payment instrument in accordance with the terms governing the issuing and use of the payment instrument;
 - (b) to notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.
2. For the purposes of point (a), the payment service user shall, in particular, as soon as the payment service user receives a payment instrument, take all reasonable steps to keep its personalised security features safe.

Article 47

Obligations on the payment service provider in relation to payment instruments

The payment service provider issuing the payment instrument shall meet the following obligations:

- (a) to make sure that the personalised security features of a payment instrument are not accessible to parties other than the payment service user entitled to use (...) the payment instrument, without prejudice to the obligations on the payment service user in accordance with Article 46;
- (b) to refrain from sending an unsolicited payment instrument, except where a payment instrument already (...) given to the payment service user is to be replaced;
- (c) to ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Article 46(b); upon request the payment service provider shall provide the payment service user with the means to prove, for [18 months]¹ after the notification, that he has made such a notification;
- (ca) to prevent all use of the payment instrument once the notification pursuant to Article 46(b) has been made (...).

¹ Period in line with Article 47a.

Article 47a

Correction with respect to unauthorised or incorrect transactions (...)

Option 1:

On becoming aware of any unauthorised or incorrect¹ (...) transactions the payment service user shall notify his payment service provider thereof without undue delay. The payment service user shall obtain rectification, provided notification takes place within 18 months after the debit date, unless, where applicable, the information was not provided by the payment service provider or has not been made available in accordance with Title III.

Option 2:

On becoming aware of any unauthorised or incorrect (...) transactions the payment service user shall notify his payment service provider thereof without undue delay at the risk of forfeiting his rights against the payment service provider. In any case the notification shall be given within [1 or 2 years]² after the date on which information of that payment transaction has been provided or made available in accordance with Title III.

¹ The notification and time limits should concern all erroneous situations, Art. 67 too.

² Two years is used as a time limit in Article 5 in Directive on certain aspects of the sale of consumer goods and associated guarantees (1999/44/EC) and in Article 39 of the United Nations Convention on Contracts for International sale of Goods (1980).

Article 48

(...) Evidence on authentication and execution of payment transactions¹

1. Member States shall require that, where a payment service user denies having authorised (...) an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his (...) payment service provider to prove (...) that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

(...)

3. The use of a payment instrument recorded by the payment service provider shall not (...) necessarily be sufficient to establish (...) that the payment transaction was authorised by the payer (...) or that the payer (...) acted fraudulently or failed with intent or gross negligence to fulfil (...) one or more of his obligations under Article 46.

Article 49

Payment service provider's liability for (...) unauthorised payment transactions

1. Member States shall ensure that, (...) without prejudice to Article 47a, in the case of an unauthorised payment transaction, the payer's payment service provider refunds to the payer immediately the amount of the unauthorised payment transaction [and, where applicable, restores the payment account that had been debited with that amount to the situation that would have existed if the unauthorised payment transaction had not taken place].²
2. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his (...) payment service provider (...).

¹ Art. 67(2) could be integrated in this provision if Art. 49 covers also non-execution or defective execution.

² Unnecessary, the different manners of rectifications are not mentioned in other provisions, such as Art. 53 and 67.

Article 50

(...) Payer's liability for (...) unauthorised use of payment instrument (...)

1. By derogation from Article 49 the payer shall bear the loss relating to payment transactions, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from misappropriation of a payment instrument¹ [occurring before he has fulfilled his obligation to notify his payment service provider under Article 46(b)].

Member States may reduce that maximum amount further.

2. The payer shall bear all the losses on unauthorised transactions if he incurred them by acting fraudulently or by failing to fulfil (...) one or more of his obligations under Article 46 with intent or gross negligence. In such cases, the maximum amount referred to in paragraph 1 shall not apply.
3. The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after (...) the notification in accordance with (...) Article 46(b), except where he has acted fraudulently.
4. If the payment service provider does not provide adequate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under Article 47(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where the payer has acted fraudulently.

¹ The suggestion takes into account modern instruments where there is no physical card but only a pin-code or electronic signature. Such a piece of knowledge cannot be lost or stolen in a traditional sense, but a comparable situation occurs if the payer fails to keep the personalised security features safe and thus enables misappropriation.

Article 51
Electronic money

Deleted.¹

Article 52
Refunds for payment transactions initiated by or through a payee

1. Member States shall ensure that a payer [acting in good faith] is entitled to a refund from his payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, if the following conditions are met:

(a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and

(b) the amount of the payment transaction executed is not an (...) amount that (...) the payer reasonably would expect (...).

[OR

(b) the amount of the payment transaction (...) exceeds an (...) amount (...) the payer could reasonably expect taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case.]²

2. However, for the purposes of point (b), the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with Articles 26(1)(ca) and 31(1)(3)(b) (...) was applied.

¹ Replaced by the new Article 70a on “modern mass payment instruments”.

² The suggestion tries to improve the wording that has been criticized in the Working Party.

Article 53

Requests for refunds for payment transactions initiated by or through a payee

Option 1:

1. Member States shall ensure that the payer can request the refund referred to in Article 52 of an authorised payment transaction initiated by or through a payee, at the latest within [eight] weeks from the date on which the funds are debited, unless, where applicable, the information on that payment transaction was not provided or made available in accordance with Article 36 for at least four weeks by the payment service provider. (...) At the request of the payment service provider the payer shall provide factual elements relating to the conditions laid down in Article 52 (...).

Option 2:

1. Member States shall ensure that the payer can request the refund referred to in Article 52 of an authorised payment transaction initiated by or through a payee, at the latest within [four/eight] weeks from the date on which (...) the information on that payment transaction was (...) provided or made available in accordance with Article 36¹ (...). (...) At the request of the payment service provider the payer shall provide factual elements relating to the conditions laid down in Article 52 (...).
2. Within ten business (...) days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the body to which the payer may refer the matter in accordance with Articles 72 to 75 if he does not accept the justification provided.

¹ The same starting point as in the notice of defect Art. 47a, option 2.

Chapter 2

Execution of a payment transaction

SECTION 1

PAYMENT ORDERS AND AMOUNTS TRANSFERRED

Article 54

*Receipt of payment orders*¹

1. Member States shall ensure that (...) the point in time of receipt is the time when the payment order initiated by the payer is received by his payment service provider or the payment order initiated by or through the payee is received by his payment service provider or when the payment service provider in question has had the opportunity to receive it (...).² The payment service provider may establish a cut-off time near the end of a business (...) day beyond which any payment order received will be deemed to have been received on the next business (...) day.

¹ Possible recital to be added: "For their financial planning, consumers and particularly corporate customers need to have certainty about when a payment transaction will be executed by a payment service provider, hence when the amount of the payment transaction is credited to the payee's account or when the order is refused by the payment service provider. Customers should not have to wait until a payment service provider formally accepts for execution a received payment order, because then the payment service provider would have the discretion to decide when time starts for the payment service user's rights to become effective. Therefore the point in time of receipt is introduced as the relevant point in time when rights and obligations start to take effect. This point in time of receipt should be when the payment service provider (...) have received the payment order or has had the opportunity to receive it (...). This is when the payment service provider becomes aware of receiving a payment order or – to not allow for subjective circumstances to influence the time of receipt – when under normal circumstances he would have had the possibility to do so."

² The suggestion aims at clarifying who is the relevant PSP in different situations. The wording "recognised" is legally unclear.

2. If the payment service user and his payment service provider agree that the payment order shall be executed on a specific day (...) or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal¹ the point in time of receipt for the purposes of Article 60 is deemed to be the agreed day (...).

Article 55

Refusal of payment orders

1. Where the payment service provider refuses to execute a payment order (...)², the reasons for the refusal and the procedure for correcting any factual mistakes that led to the refusal shall, if possible, be notified to the payment service user by his payment service provider in an agreed manner (...).

Notification shall be made without undue delay and, in any case, within the periods specified in accordance with Article 60, unless prohibited by other relevant Community or national legislation.

The framework contract may include a condition that the payment service provider may charge for such a notification if the refusal is objectively justified.

2. In cases where all the conditions set out in the payer's framework contract (...) are met, the payer's payment service provider shall not refuse to execute an authorised payment order (...).³

¹ The additional wording aims at taking account of execution of mass transactions such as pensions, tax refunds, etc. or bundling payment orders. The addition also clarifies the point in time of receipt in a case where a billing-method is used (i.e. a phone bill which contains payments for goods and services ordered). The point in time of receipt has to be agreed in the framework contract Art. 31(1)(2)(d).

² The payment service provider shall inform the payment service user of the refusal to execute a payment order irrespective who has initiated the payment order.

³ The payment service provider is required according to the framework contract to execute payment orders initiated by the payer as well as payment orders initiated by or through the payee.

3. A payment order, which has been refused to be executed, is not regarded to have been received for the purposes of Articles 60 and 67.

Article 56

Irrevocability of a payment order

1. Member States shall ensure that the payment service user may revoke a payment order until the point in time when the payer's payment service provider starts to execute payments initiated by the payer, or when the payee's payment service provider starts to execute payments initiated by or through the payee, and thereafter only if (...) agreed between the payment service user and his payment service provider (...).
2. In the case referred to in Article 54(2) (...) the payment service user may revoke a payment order at the latest by the end of the business (...) day preceding the agreed day (...), and thereafter only if (...) agreed between the payment service user and his payment service provider (...).
3. If agreed in the framework contract, the payment service provider may charge for revocation.

[Article 56a

Reimbursement by payment service providers in cases of third party dispute

Member States shall ensure that the irrevocability under Article 56 shall not affect a payment service provider's right or obligation, based on the payer's framework contract or national law, to reimburse the payer the amount of the executed payment transaction in a case of a dispute between the payer and the third party supplier for good and services. Such a reimbursement shall be considered a new payment transaction.]¹

¹ The wording amended slightly since rights and obligations can be based on legislation, too. The issue could be dealt with in recitals, too.

Article 57

Deleted.

Article 58

Amounts transferred and amounts received

1. (...) Member States shall require the payer's payment service provider to ensure that the full amount of the payment transaction is received by the payee. Intermediaries shall not deduct charges from the amount transferred.
- 1a. (...) However, the payee and his payment service provider may agree that (...) the payment service provider deducts its (...) charges from the amount transferred before crediting it to the payee.

SECTION 2

EXECUTION TIME [AND VALUE DATE]

Article 59

Scope

(...)¹

2. This Section shall apply to;
 - (a) euro currency payment transactions;
 - (b) national payment transactions in the currency of the Member State concerned;

¹ Consequential to the new “modern mass payment instrument”.

[(c) payment transactions under (a) or (b)¹ requiring currency conversion between the euro and the currency of a non-euro Member State, provided the currency conversion is carried out by a payment service provider located in that non-euro Member State.]

3. In (...) other cases it shall apply, unless otherwise (...) agreed between the payment service user and his (...) payment service provider.

Article 60

Payment transactions to a payment account

1. Member States shall require the payer's payment service provider to ensure for a payment transaction initiated by the payer that, after the point in time of receipt in accordance with Article 54, the amount of the payment transaction is credited to the payee's payment account at the latest by the end of the next business (...) day of the payee's payment service provider (...). Up to 1 January 2012, a payer and his payment service provider may agree on a period no longer than three days. [However, up to 1 January 2012] these periods may be extended by a further business (...) day for paper-initiated payment transactions.
- 1a. Member States shall require the payee's payment service provider to ensure for a payment transaction initiated by or through the payee, that after the point in time of receipt in accordance with Article 54 the amount of the payment transaction is credited to the payee's payment account at the latest by the end of the next business (...) day of both the payee's and the payer's payment service provider (...). The payee and his payment service provider may agree on a longer (...) period, which for direct debits² may not exceed three business days. [However, up to 1 January 2012] these periods may be extended by a further business (...) day for paper-initiated payment transactions.]

¹ New wording to clarify the relevant non-euro currency. Payments from a non-euro account in an euro Member State to an euro account in a non-euro Member State would not be covered.

² Definition of the "direct debit" to be included in Article 4.

Article 61

Deleted.

Article 62

Absence of payee payment account with the payment service provider

Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the period specified in Article 60.

Article 63

Cash placed on an own account

Where the payment service user places cash on his own account (...), the payment service provider shall ensure that the amount is credited and value dated at the latest on the next business day after receipt of the funds (...).

Article 64

National payment transactions

For purely national payment transactions, Member States may provide for shorter maximum execution times than those provided for in this Section.

*Article 64a*¹

Value date

1. Member States shall ensure that the credit value date for the payee's payment account shall be not later than the point in time at which the amount of the payment transaction is credited to the payee's payment service provider's account.
2. Member States shall ensure that the debit value date for the payer's payment account shall be not earlier than the point in time at which the amount of the payment transaction is debited to that account.

SECTION 3

(...) LIABILITY²

Article 65

Value date

Deleted.

Article 66

Incorrect unique identifiers

1. If a payment order is executed in accordance with the unique identifier determined by the payment service provider and provided by the payment service user, the payment order shall be deemed to have been (...) executed correctly with regard to the payee specified. (...) ³

¹ Former Art. 65 removed from Section 3.

² No need for "availability" in the heading since the provision in question has been repealed.

³ Only one unique identifier should be in use and it should be specified in prior information, (see Articles 26(1)(a) and 31(1)(2)(b)).

2. If the (...) unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable for the non-execution or defective execution of the transaction.

[However, the payment service provider shall make reasonable (...) efforts recover the funds involved in the payment transaction.]¹

If agreed within the framework contract between the payments service user and his payment service provider, the payment service provider may charge on payment service user for recovery.

3. If the payment service user provides information additional to that requested under (...) Article 26(1)(a) or (...) Article 31(1)(2)(b) (...), the payment service provider shall be liable only for the execution of payment transactions in accordance with the (...) unique identifier provided by the payment service user.²

¹ See new paragraph 4.

² AT Presidency: Recital to be added: "In order for customers to benefit from the advantages of rapid, efficient straight-through processing, payment service providers need a unique identifier that takes precedence over any other information provided by the payment service user. Payment service providers should therefore determine a (...) unique identifier, which may only vary by payment system. Such unique identifiers should incorporate internal data consistency checks, such as control digits, in order to verify the internal consistency of the (...) unique identifier provided by the user and thereby keep incorrect payment execution to an absolute minimum level."

4. The Member States shall require the payment service provider to arrange appropriate means to verify, where necessary, taking into account the characteristics of the provided payment service and the technical limitations, the correctness of the unique identifier and its consistency with other information specified by the payment service provider. If the unique identifier is found incorrect or inconsistent with other information, the payment service provider shall refuse the payment order or inform the payer directly or via his payment service provider thereof. Where the default is found only after the execution of the payment transaction, the payer's payment service provider shall take reasonable measures to correct the defective execution.¹

¹ In requiring the payment service provider to verify the correctness of the unique identifier, it is appropriate to take into account the nature of the payment service in question as well as whether the verification is technically possible in practice. Moreover, the payment service provider should only be obliged to check the consistency of the unique identifier with such other information it has itself specified to the payment service user (see Articles 26 and 31).

Article 67

*Non-execution or defective execution*¹

1. (...)

1a. Where a payment order is initiated by the payer (...), his payment service provider (...) shall, without prejudice to Articles 47a, 66(2) and (3) and 70, be liable for the correct execution of the payment transaction (...).²

1b. Where a payment order is initiated by or through the payee (...), his payment service provider (...) shall, without prejudice to Articles 47a, 66(2) and (3) and 70, be liable for the correct execution of the payment transaction (...).³

¹ AT Presidency: Amendment to recital 30: last two sentences to be replaced by: "Moreover, where a payment is not correctly executed, payment service users, and consumers in particular, are badly placed to identify where the problem has occurred and how to remedy the situation. In view of these considerations, the payment service provider who receives the payment order should be liable vis-à-vis its payment service user for the correct execution of a payment transaction, except where legitimately not executed or in case of force majeure. Such liability includes full responsibility for any failures by other parties in the payment chain up to and including payment to the payee. As a result of this liability the payment service provider of the payer shall, where the full amount is not credited to the payee, immediately refund to the payer the relevant amount of the transaction, without prejudice to any other claims which may be made. Any possible indemnification and the right of refund between the payment services providers and any intermediary, such as processors, should be subject to contractual arrangements. (...)"

² The references to some provisions are suggested to be repealed (e.g. overlap between different references, unnecessary references) and some provisions to be added.

³ See above.

1c. In addition, where a payment order is initiated by the payer, his payment service provider shall be liable for any charges, and for any interest to which the payer is subjected as a consequence of the non-execution or defective execution of the payment transaction. Where a payment transaction is initiated by or through the payee, his payment service provider shall be liable for any charges and for any interest to which the payee is subjected as a consequence of the non-execution or defective execution of the payment transaction.

(...)¹

Article 68

Transfers to third countries

Deleted.²

Article 69

Additional financial compensation

Any financial compensation additional to that provided for under this Section may (...) determined in accordance with the (...) law applicable to the contract concluded between the payment service user (...) and his payment service provider (...).³

¹ Former paragraph 2 is proposed to be integrated into Art. 48.

² Deleted since not anymore covered by the new two-leg scope.

³ As in Art. 49

Article 70

No liability

Liability under Chapter 1 and 2 (...) shall not apply in cases of *force majeure* or where a payment service provider is bound by other legal obligations (...) covered by national or Community legislation (...).¹

¹ Similar to Art. 45 and 55.

Chapter 2 a (new)

Modern mass payment instruments

¹Article 70 a

Derogation for modern mass payment instruments

Option 1:

1. For purely national payment transactions, Member States may waive or allow their competent authorities to waive the application of all or part of the provisions under Titles III and IV to modern mass payment instruments.
2. If a Member State avails itself of the derogation provided for in paragraph 1, it shall notify accordingly to the Commission by the date specified in the first paragraph of Article 85(1) at the latest and shall notify it forthwith of any subsequent change. The Member States shall indicate the grounds on which it granted the derogation.

¹ A recital to be added: “Certain payment instruments are dedicated to be an alternative for traditional payment instruments, such as credit transfers, direct debits and card payments, particularly for the frequent purchase of low-priced goods and services. Such instruments use new advanced technologies in order to provide cost-effective and easy-to-use payment services. In the interests of simplicity and convenience for the user, as well as taking into account the fact that these payment instruments and their underlying payment systems are basically designed for frequent, low-value payments, thereby representing low-risk means of payment for their providers and users, the use of these payment instruments should not be overburdened by excessive requirements. The relevant information requirements and the rules regarding the rights and obligations of payment service providers and users should therefore be simplified. However, clear rules should preferably be laid down as to the information to the payment service user about the charges levied, execution time, how the payment service user is to authorise transactions and how he can reverse it in case of non-authorisation and the liability of the payment service provider to correctly execute a payment transaction. That is important in order to guarantee user confidence and legal certainty for the parties involved in a payment transaction. The competent national authorities should determine what characteristics these alternative payment instruments should have in order to benefit from the application of these simplified requirements.”

3. In addition, it shall inform, on an annual basis, the Commission of the value and number of payment transactions made with the payment instruments concerned. The Commission shall submit an annual report to the Payments Committee as referred to in Article 77 on the use of the derogation.

Option 2:

1. Member States may waive or allow their competent authorities to waive in whole or in part the application of Articles 30-31, 35-37, 46(1)(b), 47(c) and (ca), [47a-]50, 55-56, 60 and 62 to modern mass payment instruments which:¹
- 1) utilise advanced technologies and provide alternative means to traditional payment instruments;
 - 2) are designed particularly for the frequent purchase of low-priced goods and services;
 - 3) cannot be used for individual transactions exceeding the amount set by the Member State or which store funds not exceeding the amount set by the Member State; and
 - 4) can be used only for purely national transactions.

¹ It would be left to the Member States to set more detailed rules for derogations depending also on the characteristics of the instrument in question. The derogations could cover for example the following situations:

- a) Articles 30, 31 and 35: the payment service provider could be required to provide the payer only with information on the main characteristics of the payment service as well as an indication of where other information would be made available;
- b) Articles 36 and 37: in case of several payments of the same kind made to the same payee, the payment service provider would not be required to give information separately on each payment transaction or in case where the payment instrument is used anonymously, to give any information;
- c) Articles 46(1)(b), 47(c) and (ca) as well as 50(3) and (4) could be applicable only if the payment service provider is technically in a position to freeze or prevent further use of the payment instrument;
- d) Articles 47a and 49 could be inapplicable in cases where the payment instrument is used anonymously:

- ii) Articles 55(1) and 56: in some cases the payment service provider would not be required to notify the payment service user of the refusal of a payment order nor would the user have the right to revoke the payment order;
- iii) Articles 60 and 62: other execution periods could be applicable.

2. If a Member State avails itself of the derogation provided for in paragraph 1, it shall notify accordingly to the Commission by the date specified in the first paragraph of Article 85(1) at the latest and shall notify it forthwith of any subsequent change. In this notification a Member State shall indicate the grounds on which it granted the derogation and report on the thresholds in question and the types of payment services to which such thresholds apply. In addition, a Member State shall inform, on an annual basis, the Commission of the value and number of payment transactions made with the payment instruments concerned. The Commission shall submit an annual report to the Payments Committee as referred to in Article 77 on the use of the derogation.

Chapter 3

Data protection

Article 71

Data protection

Member States shall permit the processing of personal data by payment systems and payment service providers when this is necessary to safeguard the prevention, investigation and detection of payment fraud. The processing of such personal data shall be carried out in accordance with Directive 95/46/EC.

Chapter 4

Complaints and out-of-court redress procedures for the settlement of disputes

SECTION 1

COMPLAINTS PROCEDURES

Article 72

Complaints

1. Member States shall ensure that procedures are set up which allow payment service users and other interested parties, including consumer associations, to submit complaints to the competent authorities¹ (...) with regard to disputes between payment service users and payment service providers regarding alleged infringements of (...) the provisions of national law implementing the provisions of (...) this Directive.
2. Where appropriate and without prejudice to the right to bring a complaint before a court in accordance with national law on procedures, the reply from the competent authority shall inform (...) the complainant of the existence of (...) the out-of-court (...) procedures set up under Article 75.²

¹ A recital might be added stating that the competent authorities referred to in this Article do not necessarily have to be the same as the competent authorities for the supervision of payment institutions referred to in Title II.

² In order to clarify the text.

Article 73

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall notify the provisions referred to in Article 73(1) and the identity of the competent authorities in accordance with Article 74 to the Commission by the date specified in the first paragraph of Article 85(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 74

Competent authorities

1. Member States shall take all the measures necessary to ensure that the complaints procedures and penalties provided for in Article 72(1) and (...) 73(1) respectively are administered by the authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in this Section.
2. In case of infringement or suspected infringement of the provisions of national law adopted pursuant to Titles III and IV of this Directive, the competent authority of the Member State where the payment service user is habitually resident shall be responsible under paragraph 1.¹

¹ A new paragraph to be added in order to clarify which competent authority is responsible for the compliance of Titles III and IV.

SECTION 2

OUT-OF-COURT REDRESS PROCEDURES

Article 75

Out-of-court redress

1. Member States shall (...) promote the setting up and the use of appropriate and effective out-of-court complaints and redress procedures for the out-of-court settlement of disputes between payment service users and their payment service providers for (...) disputes concerning rights and obligations stemming from this Directive.¹
2. In the case of cross-border disputes, Member States shall make sure that these bodies cooperate actively in resolving them.

¹ In order to align the provision with other Community legislations, particularly with Directive 2002/65/EC.

TITLE V

Implementing measures and Payments Committee

Article 76

Implementing measures

1. In order to take account of technological and market developments in payment services and to ensure the uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 77(2), adopt the following implementing measures:
 - (a) adapt the list of activities in the Annex to this Directive, in accordance with Articles 2 to 4 and 10;
 - [(b) update the definition of a micro-enterprise within the meaning of Article 4(19a) in accordance with an amendment of Recommendation 2003/361/EC;]
 - (c) update the amounts specified in Articles 21(1) (...) and 50(1) in order to take account of inflation and significant market developments.
- [2. None of the implementing measures enacted may change the essential provisions of this Directive.]

Article 77

Committee

1. The Commission shall be assisted by a Payments Committee, hereinafter “the Committee”, composed of representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph in other articles, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

The period specified in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

TITLE VI

Final provisions

Article 78

Full harmonisation [and mutual recognition]

1. Without prejudice to Articles 34 (...), 50(1), 64 and 80 in so far as this Directive contains harmonised provisions, Member States may not maintain or introduce provisions other than those laid down in this Directive.
- [2. When exercising the options granted to them under the second subparagraph of Article 50(1) or Article 64 of this Directive, Member States may not restrict the activities of payment service providers authorised in another Member State and operating within their territory in accordance with the provisions of the present Directive either by way of freedom of establishment or by way of freedom to provide services.]¹
3. The Member States shall ensure that payment service providers do not derogate, to the detriment of payment service users, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.

However, payment service providers may decide to grant more favourable terms to payment service users.

¹ Deletion could be considered.

Article 79

(...) Review

No later than (...) three years after the date specified in the first paragraph of Article 85(1), the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee and the European Central Bank a report on the implementation and impact of this Directive, in particular on:

- the possible need to expand the scope of the Directive to payment transactions in all currencies and to payment transactions where only one of the payment service providers is located in the Community, and
- the application of Articles 70a of this Directive and the possible need to revise the scope of this Directive with respect to modern mass payment instruments, accompanied where appropriate by a proposal for its revision.¹

Article 80

Transitional provision

1. Without prejudice to Directive 2005/60/EC or other relevant Community legislation, Member States shall allow legal persons, including financial institutions within the meaning of Directive 2006/48/EC (...), who have commenced the activities of payment institutions, as provided for in this Directive, in accordance with the national law in force before [*date of entry into force of this Directive*] to continue those activities within the Member State concerned for not more than 18 months after the date set out in the first paragraph of Article 85(1), without being entered into the register under Article 8. Any such persons who are not registered within this period shall be prohibited in accordance with Article 2a(1) (...) from continuing to carry out payment services.

¹ Foresees a possibility to enlarge the scope of the Directive to “one-legged” transactions and all currencies and to revise the current regime for modern mass payment instruments.

2. Member States may provide that legal persons under paragraph 1 shall be automatically entered into the register in accordance with Article 8 if the competent authorities already have evidence that the requirements laid down in Articles 4a and 5 are complied with. The competent authorities shall inform the affected entities before being entered into the register.
3. Without prejudice to Directive 2005/60/EC or other relevant Community legislation, Member States may allow natural or legal persons who have commenced the activities of payment institutions, as provided for in this Directive, in accordance with the national law in force before *[the date of entry into force of this Directive]* and who are eligible for registration in accordance with Article 21 to continue those activities within the Member State concerned for a transitional period not longer than [3] years without being entered into the register under Article 8. Any such persons who are not registered within this period shall be prohibited in accordance with Article 2a(1) (...) from continuing to carry out payment services.

Article 81

Amendment of Directive 97/7/EC

Article 8 of Directive 97/7/EC is deleted.

Article 82

Amendment of Directive 2006/48/EC (...)

In Article 24(1) (...) of Directive 2006/48/EC (...), the following paragraph is added after subparagraph 1:

“Without prejudice to the point (e) (...) paragraph, in so far as financial institutions provide payment services within the meaning of Directive [...] of the European Parliament and of the Council on payment services in the internal market (*), they shall fulfil the requirements (...) laid down in Title II of that Directive.

(*) OJ L [...], ..., p. [...].”

Article 83
Amendment of Directive 2002/65/EC

Article 8 of Directive 2002/65/EC is deleted.

Article 83a
Amendment of Directive 2005/60/EC

Directive 2005/60/EC shall be amended as follows:

1. (...) Article 3(2) (...) is amended as follows (...):

(a) the text of paragraph (a) shall be replaced by the following text:

“(a) an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 3, 6 to 12 and 14 of Annex I to Directive 2006/48/EC including the activities of currency exchange offices (bureaux de change);¹

(b) the following paragraph shall be inserted:

“(ea) a "payment institution" within the meaning of Article 2(-1)(d) (...) of Directive [...] or natural or legal persons, which benefit from the derogation granted in accordance with Article 21 of Directive [...] when they provide payment services as defined in the said Directive.”²

¹ The last part of the provision should be deleted as money transmission or remittance offices are already covered by the definition of payment institution.

² In order to clarify that payment institutions are covered by the Third Money laundering Directive only when they provide payment services.

(c) the text of paragraph (f) shall be amended as follows (...):

“(f) branches, when located in the Community, of financial institutions as referred to in points (a) to (ea), whose head offices are inside or outside the Community;”

[2. In Article 36(1) second sentence is deleted.¹]

Article 84

Repeal

Directive 97/5/EC is repealed with effect from the date specified in the first paragraph of Article 85(1).

Article 85

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18] months after the date of adoption at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and the provisions of this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

¹ The second sentence of Article 36(1) could be deleted to avoid any conflict between these two Directives.

Article 86
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 87
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

“PAYMENT SERVICES” UNDER ARTICLE 4

- (1) Cash placed on a payment account as well as all the operations required for operating a payment account.
- (2) Cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- (3) Execution of payment transactions, including transfer of funds, on a payment account with the user's payment service provider or with another payment service provider:
- execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders.
- (4) Execution of payment transactions where the funds are covered by a credit line for a payment service user:
- execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders.
- (5) Issuing of payment cards which allow the payment service user to transfer funds.
- (6) Execution of payment transactions where the funds are electronic money within the meaning of Directive 2000/46/EC.
- (7) Money remittance (...).¹

¹ Consequential to the proposed new definition of money remittance in Art 3.

(8) Execution of payment transactions by any means of communication at a distance such as mobile telephones or other digital or IT devices where the service provider operating the telecommunication or IT system or network is either facilitating the payment of goods or services that are not digital goods or electronic communication services and so are not provided to the device itself, or simply arranging the transfer of funds to a third party for the payment of digital goods or electronic communication services provided to the device itself.

(9) deleted