



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 November 2006**

**14765/06**

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**Interinstitutional File:  
2005/0245 (COD)**

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**LIMITE**

**EF 49  
ECOFIN 373  
CONSOM 104  
CRIMORG 162  
CODEC 1223**

**NOTE**

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from:	Presidency
to:	Working Party on Financial Services (attachés - 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

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Please find attached the Presidency compromise text for the entire text.

Changes compared to the previous texts are underlined.

- (1) It is essential for the establishment of the internal market that all internal frontiers in the Community be dismantled so as to enable the free movement of goods, persons, services and capital. The proper operation of the single market in payment services is therefore vital. At present, however, the lack of harmonisation in this area hinders the operation of that market.
- (2) Currently, the payment services markets of the Member States are organised separately, along national lines and the legal framework for payment services is fragmented into 25 national legal systems.
- (3) Several Community acts have already been adopted in this area, namely, Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers and Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro, have not sufficiently remedied this situation, any more than have Commission Recommendation 87/598/EEC of 8 December 1987 on a European Code of Conduct relating to electronic payment (relations between financial institutions, traders and service establishments, and consumers), Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems, and in particular the relationship between cardholder and card issuer, or Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder. Nonetheless, these measures continue to be insufficient. The co existence of national provisions and an incomplete Community framework gives rise to confusion and a lack of legal certainty.<sup>1</sup>
- (4) It is vital, therefore, to establish at Community level a modern and coherent legal framework for payment services, whether or not the services are compatible with the system resulting from the financial sector initiative for a Single Euro Payments Area (SEPA), that is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer costs, safety and efficiency, as compared with the present national systems.<sup>2</sup>

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<sup>1</sup> As in ECON 1.

<sup>2</sup> As in ECON 2.

- (5) That framework should ensure the coordination of national provisions on prudential requirements, the access of new payment service providers to the market, information requirements, and the respective rights and obligations of payment services users. Within that framework, the provisions of Regulation (EC) No 2560/2001, which created a single market for euro payments as far as prices are concerned, should be maintained. Those of Directive 97/5/EC and the recommendations made in Recommendations 87/598/EEC, 88/590/EEC and 97/489/EC should be integrated in a single act with binding force.
- (6) However, it is not appropriate for that legal framework to be fully comprehensive. Its application should be confined to providers whose main activity consists in the provision of payment services to payment service users. Nor is it appropriate for it to apply to services where the transfer of funds from the payer to the payee or its transport is executed solely in bank notes and coins or where the transfer is based on a cheque, bill, promissory note or other instruments, vouchers or cards drawn upon a payment service provider or other party with a view to placing funds at the disposal of the payee. Although the legal framework should apply to payment service users and their relationship with payment service providers whenever they use payment services, some provisions should not apply to transactions carried out by enterprises since the user is likely to be in a position to negotiate more specific and more appropriate terms and conditions with the payment service provider.
- (6a) Money remittance is a simple payment service usually based on cash provided by a payer to a payment service provider, which remits the corresponding amount, for example via communication network, to a payee or to another payment service provider acting on behalf of the payee. In some Member States supermarkets, merchants and other retailers provide to the public a corresponding service enabling paying utility and other regular household bills. This service falls under money remittance as defined in this Directive.<sup>3</sup>

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<sup>3</sup> A new recital to address the issue of bill paying services.

- (7) It is necessary to specify the categories of payment service provider which may legitimately provide those services throughout the Community, namely, credit institutions which take deposits from users to fund payment transactions and which should continue to be subject to the prudential requirements under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, electronic money institutions which issue electronic money to fund payment transactions and which should continue to be subject to the prudential requirements under Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, and post office giro institutions which are so entitled under national (...) law.
- (7a) This Directive lays down rules on the execution of payment transactions where the funds are electronic money as defined in Article 1 (3)(b) of Directive 2000/46/EC. This Directive does not, however, regulate issuance of electronic money or amend prudential regulation of electronic money institutions as provided for in Directive 2000/46/EC. Therefore, payment institutions are not allowed to issue electronic money.<sup>4</sup>
- (8) However, in order to remove legal barriers to market entry, it is necessary to establish a single licence for all providers of payment services which are not connected to taking deposits or issuing e-money. It is appropriate, therefore, to introduce a new category of service provider, hereinafter “payment institutions”, by providing for the authorisation, subject to a set of strict and comprehensive conditions, of natural or legal persons outside the existing categories to provide payment services throughout the Community. Thus, the same conditions would apply Community-wide to such services.<sup>5</sup>

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<sup>4</sup> A new recital to clarify that this Directive does not regulated issuance of e-money and thus payment institutions are not allowed to issue e-money.

<sup>5</sup> As in ECON 4.

- (9) The conditions for the granting and maintenance of authorisation as payment institutions should include prudential requirements proportionate to the operational and financial risks faced by such bodies in the course of their business. The requirements for the payment institutions should reflect the fact that payment institutions engage in more specialised and restricted activities, thus generating risks that are narrower and easier to monitor and control than those that arise across the broader spectrum of activities of credit institutions. In particular, payment institutions should be prohibited from accepting deposits from users and permitted to use only funds accepted from users for rendering payment services. Provision should be made for client funds to be kept separate from the payment institution's funds for other business activities. Payment institutions should also be made subject to effective anti-money laundering and anti terrorist financing requirements.<sup>6</sup>

[(9a) Whereas it is important to guarantee the financial stability of payment institutions. It is not appropriate for payments institutions to make long term loans, such as mortgage credits. However, where credit is granted in order to facilitate payments services, e.g. when issuing credit cards, or is otherwise closely linked to the businesses of the payment institution, it is appropriate to permit it where it is refinanced using the payment institution's own funds, including funds acquired from the capital markets, and not the funds held on behalf of clients for payment services.<sup>7</sup>]

- (10) It is necessary for the Member States to designate the authorities responsible for granting authorisation to payment institutions, for carrying out on-going controls and for deciding whether to withdraw authorisation. In order to ensure equality of treatment, Member States should not apply any requirements to payment institutions other than those provided for in this Directive. However, all decisions made by the competent authorities should be contestable before the courts. In addition, the tasks of the competent authorities should be without prejudice to the oversight of payment systems, which, according to the fourth indent of Article 105(2) of the Treaty, is a task to be carried out by the European System of Central Banks.

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<sup>6</sup> Partly as in ECON 5.

<sup>7</sup> ECON 6 amended. In square brackets as linked to the issue of capital, etc.

(11) Given the desirability of registering the identity and whereabouts of all persons providing payment services and of according them all a measure of acceptance, irrespective of whether they are able to meet the full range of conditions for authorisation as payment institutions, so that none are forced into the black economy, it is appropriate to provide a mechanism whereby payment providers unable to meet all those conditions may nevertheless be treated as payment institutions. For those purposes, it is appropriate to allow the Member States to enter such persons in the register of payment institutions while not applying all of the conditions for authorisation. However, it is essential to make the possibility of derogation subject to strict requirements relating to volume of transactions. It is also important to provide that, in cases where the derogation has been applied, payment services provided within the Community may be provided only in the Member State of registration.

(12) deleted.<sup>8</sup>

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<sup>8</sup> Recital 12 to be deleted as recital 12a covers more or less the same issue. Another solution could be to renumber recital 12a to recital 12 and consequential recital 12b to recital 12a.

- (12a) It is essential for any payment service provider to be able to access the services of technical infrastructures of payment systems. These payment systems typically include e.g. the four party card schemes as well as major systems processing credit transfers and direct debits. In order to ensure equality of treatment throughout the Community as between the different categories of authorised payment service providers, according to the terms of their prudential licence, it is necessary to clarify the rules concerning access to the provision of payment services and access to payment systems. Provision should be made for the non-discriminatory treatment of authorised payment institutions and credit institutions so that any payment service provider competing in the internal market is able to use the services of the technical infrastructures of these (...) payment systems under the same conditions. This should be without prejudice to Member States' rights to limit access to systemically important systems in accordance with Directive 98/26/EC as well as 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. Furthermore, a different treatment between authorised payment service providers and those benefiting from the derogation under the Article 21 of this Directive as well as from the waiver under the Article 8 of the Directive 2000/46/EC can be justified due to the differences in their prudential framework compared to the authorised payment service providers.
- (12b) The provisions of the access to payment systems would not apply to closed or proprietary systems which are generally set up and operated by a single payment service provider. These closed systems can operate either in direct competition to payment systems or more typically operate in a market niche not adequately covered by payment systems. Closed payment systems cover three party card schemes, internal systems of banking groups, payment services offered by telecommunication providers or money remittance services where the closed scheme operator is usually the payment service provider (either directly or through a licensed agent) to both the payer and payee. It would not be appropriate to grant third parties access to these closed proprietary payment schemes.
- (13) A set of rules should be established in order to ensure transparency of conditions for payment services.

(14) This Directive should not apply to payment transactions made in cash since a Single Payments Market for cash already exists. This Directive should also not apply to those payment transactions based on paper cheques since, by their nature, they cannot be processed as efficiently as other means of payment. Good practice in this area should, however, be based on the principles set out in this Directive.<sup>9</sup>

(15) deleted.<sup>10</sup>

(15a) As (...) consumers and enterprises<sup>11</sup> are not in the similar position, they do not need similar level of protection. While it is important to guarantee consumers' rights by provisions which cannot be derogated from by contract, it is reasonable to let enterprises and organisations agree otherwise. However, some core provisions of this Directive should always be applicable irrespective of the status of the user. (...).

(16) This Directive should specify the obligations which the payment service providers should have in informing the payment service users who should receive the same high level of clear information about payment services in order to make well-informed choices and be able to shop around within the EU. In the interest of transparency this Directive lays down harmonised requirements needed to ensure that necessary and sufficient information is given to the payment service users with regard to the payment service contract and the payment transactions. In order to (...) promote smooth functioning of internal market<sup>12</sup> of payment services, Member States should not be able to adopt information provisions other than those laid down in this Directive.

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<sup>9</sup> As in ECON 8.

<sup>10</sup> To be deleted as proposed by ECON 9.

<sup>11</sup> EP: treat microenterprises as consumers.

<sup>12</sup> EP: drafting needs to be clarified. New draft aims to that.



- (17) Consumers should be protected against unfair and misleading practices in line with Directive 2005/29/EC of the European Parliament and the Council concerning unfair business-to-consumer commercial practices in the internal market as well as Directive 2000/31/EC of the European Parliament and the Council (Electronic Commerce Directive) and Directive 2002/65/EC of the European Parliament and the Council concerning the distance marketing of consumer financial services. The additional provisions in these existing legal acts continue to be applicable (...). However, the relationship between this Directive and Directive 2002/65/EC needs to be clarified especially.
- (18) The information required should be proportionate to the needs of users and communicated in a standard manner. However, the information requirements for a single payment transaction should be different from those of a framework contract which provides for the series of payment transactions.<sup>13</sup>
- (18a) In practice framework contracts and transactions covered by them are by far more common and economically important than single payment transactions. If there is a payment account or a specific payment instrument, a framework contract is required. Therefore, the requirements for prior information on framework contracts should be quite comprehensive and information should always be provided either on paper or on another durable medium, including in particular printouts by account printers, floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail can be stored, but excludes Internet sites, unless such sites are accessible for future reference for a period of time adequate to the purposes of information and which allows the unchanged reproduction of the information stored.<sup>14</sup> However, the manner in which subsequent information on executed transactions is given can be agreed in the framework contract between the payment service provider and the payment service user. For instance, it may be agreed that in internet-banking all information on payment account is made available on-line.

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<sup>13</sup> As in ECON 10.

<sup>14</sup> As agreed during AT Presidency, text from original definition of “durable medium” under Article 4(19) to be moved to the recital.

- (18b) In single payment transactions only the essential information should always be given on the payment service provider's own initiative. As the payer is usually present when he gives the payment order, it is not necessary to require that information should in every case be provided on paper or on another durable medium. The payment service provider may give information orally over the counter or make it otherwise easily accessible, for example by keeping the conditions on a notice board on the premises. Information should also be given on where other more detailed information is available (e.g. the address of the website). However, if the consumer so requests, the essential information should be given on paper or on another durable medium.
- (18c) The Directive confirms the consumer's right to receive relevant information free of charge before he is bound by any payment service contract. Similarly, the consumer could request for prior information as well as the framework contract on paper for free of charge at any time during the contractual relationship. Thus, the consumer can compare payment service providers' services and their conditions and in case of any dispute verify his contractual rights and obligations. These provisions comply with the rules laid down in above mentioned Directive 2002/65/EC. The explicit provisions on free information in this Directive shall not have the effect that charges could be imposed for the provision of information to consumers (...) under other applicable Directives.
- (18d) In addition, the consumer should receive basic information on executed transactions without additional charges. In case of a single payment transaction the payment service provider should not charge separately for this information. While internet-banking and electronic transmission have become more common, it is still necessary to ensure that all consumers are equally able to receive relevant information. If agreed in the framework contract that information should be provided to the consumer on paper, the statement of a payment account should be given monthly free of charge. However, taking into account the importance of transparency in pricing and differing customer needs, the parties could agree on charges for more frequent or additional information.

(19) In order to facilitate customer mobility, it should be possible for consumers to terminate a framework contract after the expiry of a year without incurring charges. For consumers the period of notice could not be agreed for a longer period than a month and for payment service providers not for a shorter period than two months. (...)

(20)<sup>15</sup>

(21) In order to provide an incentive for the payment service user to notify his provider of any theft or loss of a payment instrument without undue delay and thus to reduce the risk of unauthorised transactions, the user should be liable only for a limited amount (...), unless the payment service user has acted fraudulently or with gross negligence. Moreover, once a user has notified a payment service provider that his payment instrument may have been compromised, the user should not be required to cover any further losses stemming from unauthorised use of that instrument. Payment service providers are responsible for technical security of their own products.<sup>16</sup>

(21a) In order to assess possible negligence by the payment service user, account should be taken of all the circumstances. (...) The evidence and degree of alleged negligence should be evaluated by courts according to national law. Contractual terms and conditions relating to the provision and use of electronic funds transfer instrument, the effect of which would be to increase the burden of proof on the consumer or to reduce the burden of proof on the issuer should be considered null and void.<sup>17</sup>

(21b) (...) Member States may set less stringent rules for consumers in order to maintain existing levels of consumer protection and promote trust in the safe usage of electronic payment instruments. The fact that different instruments involve different risks should be taken into account accordingly which should promote the issuance of safer instruments. (...)

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<sup>15</sup> This recital in the Commission proposal deals with micro payments. The discussion on the issue of micro/mass payments waits the results to the Commission questionnaire to the industry.

<sup>16</sup> As in ECON 11.

<sup>17</sup> ECON 12.

- (22) Provisions should be made for the allocation of losses in the case of unauthorised payment transactions. Different provisions may apply to payment service users who are not consumers, since such users are normally in a better position to assess the risk of fraud and take countervailing measures.<sup>18</sup>
- (23) In cases where the user makes a claim for refund of a payment transaction where the amount was not specified, refund rights should not affect the liability of the payer vis-à-vis the payee for goods or services ordered, consumed or legitimately charged or the users rights with regard to revocation of a payment order.
- (23a) For financial planning and the fulfilment of payment obligations in due time, consumers and enterprises need to have certainty on the length of time that the execution of a payment order takes. Therefore, this Directive introduces an unambiguous point in time at which rights and obligations start to take effect. The relevant point in time is when the payment service provider actually receives the payment order or should have received it under normal circumstances. Users should be able to rely on the proper execution of a payment order if the payment service provider has no contractual or statutory ground for refusal. Should the payment service provider refuse a payment order, the refusal and the reason why should be communicated to the payment service user at the earliest opportunity subject to the requirements of national and Community law.
- (24) In view of the speed with which modern fully automated payment systems process payment transactions, which means that after a certain point of time payment orders cannot be revoked without high manual intervention costs, it is necessary to specify a clear deadline for payment revocation. However, depending on the type of the payment service and the payment order the point of time may be varied by agreement between the parties. The revocation in this context is applicable only to the relationship between a payment service user and payment service provider, thus being without prejudice to the irrevocability and finality of payment transactions in payment systems.

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<sup>18</sup> Compatible with ECON 13.

- (25) It is essential, for the fully integrated straight-through processing of payments and for legal certainty with respect to the fulfilment of any underlying obligation between payment service users, that the full amount transferred by the payer should be credited to the account of the payee. Accordingly, it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred. However, it should be possible for the payee to enter into an agreement with his payment service provider under which the latter may deduct his own fees. Nevertheless, in order to enable the payee to verify that the due amount is correctly paid, subsequent information provided on the payment transaction should indicate not only the full amount of funds transferred but also the amount of any charges.
- (26) With regards to charges, experience has shown that the sharing of charges between a payer and a payee is the most efficient system since it facilitates the straight-through processing of payments. Provision should, in normal course, therefore be made for charges to be levied directly on the payer and the payee by their respective payment service providers. However, that should apply only where the transaction does not require currency exchange.<sup>19</sup> The amount of any charges levied may also be zero as the provisions of this Directive do not affect practice whereby the payment service provider does not charge consumers for crediting their accounts. Similarly, depending on the contract terms, a payment service provider (...) may charge only the payee (merchant) for the use of the payment service, which has the effect that no charges are imposed on the payer. The charging of the payment systems may be in the form of a subscription fee. The provisions on the amount transferred or any charges levied have no direct impact on pricing between payment service providers or any intermediaries.
- (26a) In order to promote transparency and competition, the payment service provider should not prevent the payee from requesting a charge from the payer for using a specific payment instrument. However, where a debit card scheme is an essential part of the (...) payment infrastructure, Member States may (...) forbid payees from charging payments made by (...) debit cards.

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<sup>19</sup> As in ECON 15.

- (27) In order to improve the efficiency of the payments throughout the Community, all payments initiated by the payer and denominated in euro or another national EU currency, including credit transfers and money remittances, should be subject to (...) a maximum one day execution time. For all other payments, such as payments initiated by or through a payee, including direct debits and card payments, in the absence of an explicit agreement between the payment service provider and the payment service user setting a longer execution time, the same one day execution time should apply. However, the possibility for the payee (merchant) and payment service provider agree otherwise should be limited to three business days when a direct debit scheme is used. The periods above could be extended by an additional business day, if a payment order is given on paper. This allows the continued provision of payment services for those consumers who are used to paper documents only. In view of the fact that national payment infrastructures are often highly efficient and in order to prevent any deterioration in current service levels, Member States should be allowed to maintain or set rules specifying an execution time shorter than one business day, where appropriate.<sup>20</sup>
- (28) The provision on execution for the full amount and execution time should constitute good practice where one of the service providers is not located in the Community.<sup>21</sup>
- (29) It is essential for payment service users to know the real costs and charges of the payment services in order to make their choice. Accordingly, the use of non-transparent pricing methods should not be allowed, since it is commonly accepted that those methods make it extremely difficult for users to establish the real price of the payment service. Specifically, the use of value dating to the disadvantage of the user should not be permitted.<sup>22</sup>

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<sup>20</sup> See ECON 16.

<sup>21</sup> ECON 19.

<sup>22</sup> ECON 20.

- (30) The smooth and efficient functioning of the payment system depends on the user being able to rely on the payment service provider executing the payment transaction correctly and within the agreed time. Usually, the provider is in the position to assess the risks involved in the payment transaction. It is the provider which provides the payments system, makes arrangements to recall misplaced or wrongly allocated funds and decides in most cases on the intermediaries involved in the execution of a transaction. In view of all those considerations, it is entirely appropriate, except where there is *force majeure*, to impose liability on the payment service provider in respect of execution of a payment transaction accepted from the user.<sup>23</sup>
- (30a) (...)The payment service provider should assume liability for correct payment execution including (...) full responsibility for any failure 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 should, 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. Possible compensation and the right of refund between the payment services providers and any intermediary, such as processors, should be subject to contractual arrangements.
- (31) It should be possible for the payment service provider to specify unambiguously the information required to correctly execute a payment order. On the other hand, however, in order to avoid fragmentation and jeopardising the setting-up of integrated payment systems in the Community, Member States should not be allowed to require a particular identifier to be used for payment transactions. The liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user. If the payment service provider also requests other information such as the BIC (Bank Identifier Code) or the name of the other user, it should, where possible, arrange adequate means to verify the consistency of information. However, this provision does not require manual checking and (...) should, therefore, not hinder straight-through processing.

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<sup>23</sup> ECON 21.

- (32) In order to facilitate effective fraud prevention and combat payment fraud across the Community, provision should be made for the efficient exchange of data between payment service providers who should be allowed to collect, process and exchange personal data relating to persons involved in payment fraud. All those activities should be conducted in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- (33) It is necessary to ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive. Appropriate procedures should therefore be established by means of which it will be possible to pursue complaints against payment service providers which do not comply with those provisions and to ensure that, where appropriate, proportionate and dissuasive penalties are imposed.
- (34) Without prejudice to the right of customers to bring their action before the courts, Member States should ensure an accessible and cost sensitive resolution of conflicts between payment service providers and consumers stemming from rights and obligations set out in this Directive. The Rome Convention ensures that the protection provided by the mandatory rules of the country of a consumer's habitual residence may not be deprived by any contractual terms on law applicable.<sup>24</sup>
- (34a) Member States should determine whether the competent authorities designated for granting authorisation to payment institutions might also be the competent authorities with regard to complaint and out-of-court redress procedure.
- (35) This Directive should be without prejudice to provisions of national law relating to the consequences as regards liability of inaccuracy in the expression or transmission of a statement.

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<sup>24</sup> In order



- (36) Since it is necessary to review the efficient functioning of this Directive and to monitor progress on the establishment of a Single Payment Market, the Commission should be required to produce a report three years after the end of the transposition period of this Directive.
- (37) Since the provisions of Directive 97/5/EC have been completely changed, that Directive should be repealed.
- (38) It is necessary to lay down more detailed rules concerning the fraudulent use of payment cards, an area currently covered by Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. Those Directives should therefore be amended accordingly.
- (39) Since, pursuant to Directive 2006/48/EC, financial institutions are not subject to the rules applicable to credit institutions, they should be made subject to the same requirements as payment institutions so that they are able to provide payment services throughout the Community. Directive 2006/48/EC should therefore be amended accordingly.
- (39a) Since money remittance is defined in this Directive as a payment service which requires an authorisation for a payment institutions or a registration for some natural or legal persons benefiting from a waiver clause under certain circumstances specified in the provisions of this Directive, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing should therefore be amended accordingly.
- (40) In the interests of legal certainty, it is appropriate to make transitional arrangements in accordance with which persons who have commenced the activities of payment institutions in accordance with the national law in force before the entry into force of this Directive to continue those activities within the Member State concerned for a specified period.

- (41) Since the objectives of the proposed action, that is to say, the establishment of a single market in payment services, cannot be sufficiently achieved by the Member States because it requires the harmonisation of a multitude of different rules currently existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (42) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999, as amended by Council Decision 2006/512/EC of 17 July 2006, laying down the procedures for the exercise of implementing powers conferred on the Commission,

# TITLE I

## Subject-matter, scope and definitions

### *Article 1*

#### *Subject matter*

1. This Directive lays down the rules in accordance with which Member States shall distinguish the following six categories of payment service provider:
  - (a) credit institutions within the meaning of Article 4(1)(a) of Directive 2006/48/EC;<sup>25</sup>
  - (b) electronic money institutions within the meaning of Article 1(3)(a) of Directive 2000/46/EC;<sup>26</sup>
  - (c) post office giro institutions which are entitled under national law to provide payment services;<sup>27</sup>
  - (d) payment institutions within the meaning of this Directive;<sup>28</sup>
  - (da) the European Central Bank and national central banks when they do not act in their capacity as monetary or other public authorities;<sup>29</sup>
  - (db) Member States or their regional or local authorities when they do not act in their capacity as public authorities.<sup>30</sup>

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<sup>25</sup> ECON 26, reference to the new CRD of 2006 in stead of Directive of 2000.

<sup>26</sup> ECON 27. According to Article 8 of Directive 2000/46/EC also waived undertakings are e-money institutions.

<sup>27</sup> Reference to Directive 2006/48/EC deleted as Article 2 of that Directive refers only to post office giro institutions without any further clarification. In addition, there is no Community legislation on post office giro.

<sup>28</sup> ECON 28.

<sup>29</sup> Partly as in ECON 29.

<sup>30</sup> Partly as in ECON 30.

2. This Directive also lays down rules concerning 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 in relation to the provision of payment services as a regular occupation or business activity.<sup>31</sup>
3. deleted.<sup>32</sup>
- 3a. Deleted.<sup>33</sup>

## *Article 2*

### *Scope*

1. This Directive shall apply to payment services within the Community. However, Titles III and IV of this Directive shall only apply, where both the payer's payment service (...) provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in the Community.<sup>34</sup>  
  
(...)  
(...)
2. Titles III and IV of this Directive shall apply to payment services made in euro or any other official currency of one of the Member States.<sup>35</sup>
3. Member States may waive the application of all or part of the provisions of this Directive to credit institutions referred to in Article 2, except the first and second indent, of Directive 2006/48/EC.<sup>36</sup>

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<sup>31</sup> Former Article 1(3). Reference to taking up, pursuit of and prudential supervision and access to payment systems deleted. Compatible with ECON 31.

<sup>32</sup> As in ECON 32. Central banks are dealt with in point (da) of paragraph 1.

<sup>33</sup> Removed to Article 2(3).

<sup>34</sup> To clarify the text, compatible with ECON 34 first part.

<sup>35</sup> As in ECON 34, last part.

<sup>36</sup> Former Article 1(3a), unchanged.

*Article 3*  
*Negative 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;
- (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;
- (b) professional physical transport of banknotes and coins, including their collection, processing and delivery;
- (c) payment transactions consisting in the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
- (d) service where cash is 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;<sup>37</sup>
- (e) money exchange business, that is to say, cash to cash operations, where the funds are not held on a payment account;<sup>38</sup>
- <sup>39</sup> (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:

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<sup>37</sup> As in ECON 36 slightly amended.

<sup>38</sup> As in ECON 37.

<sup>39</sup> There appears to be a clear majority in favour of excluding paper-based instruments as proposed. It should be noted that since such instruments fall outside the harmonisation requirements laid down by this Directive, Member States remain free to apply any national rules to such instruments as they consider appropriate.

- (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;<sup>40</sup>
- (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;
- (g) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 23;<sup>41</sup>
- (ga) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (g) or by investment firms, credit institutions, (...) collective investment undertakings or management companies providing investment services and any other entities allowed to have the custody of financial instruments;

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<sup>40</sup> As in ECON 38.

<sup>41</sup> ECON 42, slightly amended.

- (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 used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
- (j) payment transactions executed by means of any telecommunication, digital or IT device, where the payment transaction relates to a purchase of goods or service that are distributed to the device itself or to another such device by the service provider operating the telecommunication or IT system or network by which the payment is made and payment is made directly to the service provider for its own account and not as an intermediary to a third party which originally provided the goods or service;<sup>42</sup>
- (k) payment transactions carried out between payment service providers for their own account as well as between agents or branches for their own account;<sup>43</sup>
- (l) payment transactions between 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.

#### *Article 4*

#### *Definitions*

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

- (1) “*home Member State*” means any of the following:

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<sup>42</sup> ECON 44 amended.

<sup>43</sup> ECON 45, refers to agents in stead of tied agents.

- (i) deleted.<sup>44</sup>
  - (ii) the Member State in which the registered office of the payment service provider is situated; or
  - (iii) if the payment service provider 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 service provider has a branch or an agent or provides payment services;
- (2a) “*payment service*” means business activities as listed in the Annex (...);<sup>45</sup>
- (2b) “*payment institutions*” means legal persons who have been granted authorisation in accordance with Article 6 of this Directive to provide and execute payment services throughout the Community;<sup>46</sup>
- (2c) “*payment transaction*” means the act, initiated by the payer or by the payee, of placing transferring or withdrawing funds, irrespective of any underlying obligations between the payer or the payee;<sup>47</sup>
- (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) “*closed payment system*” means a proprietary payment system where a single payment service provider is the predominant payment service provider for both the payer and the payee, and where the scheme owner typically is the proprietor of the technical network which is used for routing, switching, clearing and processing the payment transactions;

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<sup>44</sup> As first part of ECON 46.

<sup>45</sup> ECON 48 amended.

<sup>46</sup> As in ECON 49.

<sup>47</sup> As in ECON 50.



- (4) “*payer*” means either a natural or legal person who (...) holds a payment account (...) and (...) allows (...) a payment order (...) from (...) that payment account, or, where there is no payment account, a natural or legal person who places (...) an order for a payment transaction;<sup>48</sup>
- (5) “*payee*” means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;<sup>49</sup>
- (5a) “*payment service provider*” means undertakings referred to in Article 1(1) of this Directive and legal and natural persons benefiting from the waiver in accordance with Article 21 of this Directive.<sup>50</sup>
- (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) “*consumer*” means a natural person who, in payment service contracts covered by this Directive, is acting for purposes outside his trade, business or profession;<sup>51</sup>
- (6b) “*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;<sup>52</sup>
- (6c) “*money remittance*” means a payment service (...) <sup>53</sup> 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 another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

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<sup>48</sup> As in “SRVII Regulation”, Article 2(3), document PE-CONS 3630/06. Compatible with ECON 53.

<sup>49</sup> As in ECON 54.

<sup>50</sup> A new definition.

<sup>51</sup> EP: treat microenterprises as consumers; want to use the definition of professional user (ECON 55)

<sup>52</sup> Compatible with ECON 56 and 160, though merged together in definition.

<sup>53</sup> Reference to bill paying services deleted. See new recital 6a.

- (7) “*payment account*” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;<sup>54</sup>
- (8) “*funds*” means banknotes and coins, scriptural money and electronic money as referred to in Directive 2000/46/EC;<sup>55</sup>
- (9) deleted.
- (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 debited from or credited to a payment account;
- (12) “*reference exchange rate*” means the exchange rate which is used as the basis to calculate any currency exchange and which (...) is made available by the payment service provider or comes from a publicly available source;<sup>56</sup>
- (13) “*authentication*” means a procedure which allows the payment service provider to verify that (...) the payment order is authorised by the payer (...);<sup>57</sup>
- (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 (...) publicly available source which can be verified by both parties to a payment service contract;<sup>58</sup>

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<sup>54</sup> Compatible with ECON 57.

<sup>55</sup> As in ECON 59.

<sup>56</sup> Compatible with ECON 60.

<sup>57</sup> Compatible with ECON 61.

<sup>58</sup> As in ECON 62.

- (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 and/or his payment account involved in a payment transaction;<sup>59</sup>
- (16) “*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 initiate (...) a payment order;
- (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;
- (19) “*durable medium*” means any instrument which enables the payment service user to store information addressed personally to him 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;<sup>60</sup>
- (19b) deleted.<sup>61</sup>
- (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;<sup>62</sup>

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<sup>59</sup> As in ECON 63. Reference to payment account is added just for clarification as it is usually the payment account which is specified, not the payment service user.

<sup>60</sup> Identical with ECON 65. See also recital 18a.

<sup>61</sup> The definition of consumer moved to Article 4(6a).

<sup>62</sup> Compatible with ECON 66, slightly differently drafted.

- (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;
- (22) “*branch*” means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all the places of business set up in the same Member State by a payment institutions with head office in another Member State shall be regarded as a single branch;
- (23) “*group*” means a group of undertakings, which (...) consists of a parent undertaking, (...) its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.<sup>63</sup>

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<sup>63</sup> Definition of group as in point 12 of Article 2 of Directive.

## **TITLE II**

### **Payment service providers**

#### **Chapter 1**

#### **Payment institutions**

##### **SECTION 1**

##### **GENERAL RULES**

###### *Article 5*

###### *Applications for authorisation*

For authorisation as a payment institution, an application shall be submitted to the competent authorities of the home Member State, together with the following:<sup>64</sup>

- (a) a programme of operations, setting out in particular the type of payment services envisaged;
- (b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;<sup>65</sup>

<sup>66</sup>[(ba) evidence that the payment institution has the amount of initial capital mentioned in Article 5a;<sup>67</sup>

(bb) a description of the procedure for the legal separation of funds in accordance with Article 5a;<sup>68</sup>]

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<sup>64</sup> As in ECON 73.

<sup>65</sup> As in ECON 74.

<sup>66</sup> In square brackets as issues related to capital and ring fencing remain open.

<sup>67</sup> As in ECON 75.

<sup>68</sup> Corresponds with ECON 76.

- (c) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these (...) control mechanisms and procedures are proportionate, appropriate, sound and adequate;<sup>69</sup>
- (d) a description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC;<sup>70</sup>
- (e) deleted.<sup>71</sup>
- (f) a description of the applicant's structural organisation and, including, where applicable, a description of the intended use of branches and agents and a description of outsourcing arrangements, and of its (...) participation in a national or international payment system;
- (fa) deleted.
- (g) the identity of persons holding in the applicant, 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;
- (h) deleted
- (i) the identity of directors and persons responsible for the management of the payment institution and evidence that they are fit and proper and possess appropriate knowledge and ability to perform payment services, as determined by the home Member State of the payment institution;<sup>72</sup>

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<sup>69</sup> Compatible with ECON 77.

<sup>70</sup> Compatible with ECON 78.

<sup>71</sup> As in ECON 79.

<sup>72</sup> Compatible with ECON 81.

(j) the applicant's legal status and the articles of association;<sup>73</sup>

(k) the address of the head office (...).<sup>74</sup>

For the purposes of point (...) [(bb),] (c) and (f), 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.<sup>75</sup>

<sup>76</sup>[Article 5a (new)]

*Solvency requirements and other measures to ensure the protection of client funds in the course of transmission*<sup>77</sup>

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] . Its own funds, as defined in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC, shall not fall below that amount.
2. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the payment institution belongs to a same group as another payment institution, a credit institution, investment firm, asset management company or insurance undertaking.

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<sup>73</sup> As in ECON 82, “good reputation” replaced with “fit and proper”.

<sup>74</sup> Compatible with ECON 83.

<sup>75</sup> Corresponds former Article 5(2). Reference to point (bb) in square brackets as the issue of ring fencing remains open.

<sup>76</sup> The whole Article in square brackets as issues related to capital and ring fencing remain open. Only purely technical changes made. Not to be discussed at the meeting on 8 November.

<sup>77</sup> As in ECON 86.

3. Member States shall ensure that 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. Where a portion of the amount of funds referred to in paragraph (...) 3 is used for future payment transactions with the remaining amount being used for non-payment services, that portion of the funds received for future payment transactions shall also be subject to paragraph (...) 3. 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.
5. This Article shall not apply to payment institutions exclusively engaged in money remittance.
6. The funds referred to in (...) paragraph 3 and 4 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 (...) 3.]

#### *Article 6*

#### *Granting*

- 1. Member States shall require undertakings other than those referred to in Article 1(1)(a) to (c) and (da) to (db) and legal and natural persons benefiting from the derogation in Article 21, who intend to provide payment services, to obtain authorisation as a payment institution before commencing provision of payment services. Authorisation shall only be granted to a legal person established in the Member State.<sup>78</sup>

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<sup>78</sup> Former Article 4a(-2).



1. An authorisation shall be granted if the information and evidence accompanying the application complies with all the requirements laid down in Article 5 and if the competent authorities, having scrutinised the application, reach a favourable overall assessment. Before an authorisation is granted, the competent authorities may consult, where relevant, the national central bank or other relevant public authorities.<sup>79</sup>
- 1a. 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.<sup>80</sup>
2. The competent authorities shall grant authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, the payment institution has robust governance arrangements for its payment services business, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures; these arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.<sup>81</sup>
- 2a. The competent authorities shall refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of a payment institution, they are not satisfied as to the suitability of the shareholders or members that have qualifying holdings.<sup>82</sup>
- 2b. 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.<sup>83</sup>

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<sup>79</sup> As in ECON 89.

<sup>80</sup> Former first paragraph of Article 14. Compatible with ECON 113.

<sup>81</sup> Former Article 4a(3)(c).

<sup>82</sup> Compatible with ECON 91.

<sup>83</sup> Compatible with ECON 92, reference to new Directive of 2006 and the specific provision in it. Former Article 4(3)(e).

- 2c. The competent authorities shall grant authorisation only if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of their supervisory functions.
3. 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, provided that such services are covered by the authorisation.<sup>84</sup>

### *Article 7*

#### *Communication of decision*

Within three months of receiving the application or, should the application be incomplete, within three months of receiving all the information required for the decision, the competent authority shall inform the applicant whether its application has been granted or refused.<sup>85</sup>

Reasons shall be given whenever an authorisation is refused.

### *Article 7a*

#### *Withdrawal of authorisation*

1. The competent authorities may withdraw the authorisation issued to a payment institution only where such an institution:
- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorisation to lapse in such cases; or

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<sup>84</sup> The text recognises that payment institutions may be authorised to provide only part of the payment services mentioned in the Annex.

<sup>85</sup> As in ECON 93.

- (b) has obtained the authorisation through false statements or any other irregular means;  
or
- (c) no longer fulfils the conditions (...) for granting authorisation (...); or
- (d) would constitute a threat to the stability of the payment system by continuing its payment services business; or
- (e) falls within one of the other cases where national law provides for withdrawal of authorisation.

2. Reasons must be given for any withdrawal of authorisation and those concerned informed thereof.

### *Article 8* *Registration*

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, and the institutions mentioned in Article (...) 2(3)<sup>86</sup> which are entitled under national law to provide payment services. They shall be registered in the register of the Member State where they are established.

This register shall identify the payment services<sup>87</sup> 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.

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<sup>86</sup> It should be noted that most of the institutions referred to here do not provide payment services.

<sup>87</sup> The authorisation for a payment institution covers payment services listed in the Annex, not the other activities laid down in Article 10.

*Article 9*  
*Maintenance of authorisation*

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.

*Article 10*  
*Activities*

1. Payment institutions shall be entitled to engage in the following activities:
  - (a) the provision of payment services, set out in the Annex;<sup>88</sup>
  - (b) the provision of operational and closely related ancillary services such as ensuring execution of payment transactions, foreign exchange services, safekeeping activities, and storage and processing of data;<sup>89</sup>
  - (c) the operation of payment systems (...)<sup>90</sup>, without prejudice to Article 23;<sup>91</sup>
  - (d) business activities other than provision of payment services, having regard to applicable Community and national law.
2. Payment institutions may hold payment service user's money on payment accounts only if they are 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.<sup>92</sup>

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<sup>88</sup> As in ECON 97.

<sup>89</sup> As in ECON 98.

<sup>90</sup> Deleted part unnecessary as covered already by the definition in Article 4(3).

<sup>91</sup> Close to ECON 99.

<sup>92</sup> Largely compatible with ECON 101.

[2a. Payment institutions shall not be entitled to grant credit, unless

<sup>93</sup>

- (a) the credit is closely linked to the activities of the payment institution and
- (b) the credit is made from the payment institution's funds other than payment service users' funds held for payment services.]

3. Deleted.

## SECTION 2

### OTHER REQUIREMENTS

#### *Article 11*

*Use of branches, agents, or entities to whom activities are outsource<sup>94</sup>*

1. When a payment institution intends to provide payment services through an agent or a branch, it shall communicate the following information to the competent authorities in its home Member State:
  - a) the name and address of the agent or branch;
  - b) a description of the internal control mechanisms that will be used by agents or branches in order to comply with the obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC;
  - c) deleted

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<sup>93</sup> In square brackets as linked to the issue of capital, etc. Not to be discussed at the meeting of 8 November.

<sup>94</sup> Compatible with ECON 105.

d) the identity of directors and persons responsible for the management of the agent or branch to be used in the provision of payment services and evidence that they are fit and proper persons.

1a. (...) When the competent authorities (...) receive the information listed in paragraph (1)(a) to (d) then it may list the agent or branch in the register established under Article 8 (...).

1aa. deleted.

1b. (...) Before listing the agent or branch in the register, the competent authorities may if it considers that the information provided to it may not be correct take further action to verify the information.

1c. If, following that action, the competent authorities is not satisfied that the information provided to it pursuant to paragraph (1)(a) to (d) is correct, the competent authorities will refuse to list the agents or branches in the register established under Article 8.

<sup>95</sup>1d. (...) If the payment institution wishes to carry on activities in another Member State by engaging an agent or establishing a branch it must follow the procedures set out in Article 20. Before the agent or branch may be registered under this Article, the competent authorities of the home Member State (...) must inform the competent authorities of the host Member State of its intention to register the agent or branch and (...) take its opinion into account. (...) If the competent authorities (...) of the proposed host Member State have reasonable grounds to suspect that, in connection with the (...) intended engagement of the agent or establishment of the branch, money laundering or terrorist financing within the meaning of Directive 2005/60/EC is being or has been committed or attempted, or that the (...) engagement of such agent or establishment of such branch could increase the risk of (...) money laundering or terrorist financing, they shall inform the competent authorities of the home Member State, who may (...) refuse (...) to register the agent or branch (...), or may withdraw the registration, if already made, of the agent or branch.

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<sup>95</sup> Former paragraph 1b.

2. Where a payment institution intends to outsource payment services 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 authorities to monitor the payment institution's compliance with all obligations laid down by this Directive.<sup>96</sup>

For the purposes of the second subparagraph, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation requested under (...) this Title or its other obligations under this Directive, or its financial performance, or the soundness or the continuity of its payment services.<sup>97</sup>

<sup>98</sup>Member States shall ensure that, when payment institutions outsource important operational functions, the payment institutions comply with the following conditions:

- (a) the outsourcing must not result in the delegation by senior management of its responsibility;
- (b) the relationship and obligations of the payment institution towards its payment service users under this Directive must not be altered;
- (c) the conditions with which the payment institution must comply in order to be authorised in accordance with (...) this Title, and to remain so, must not be undermined;
- (d) none of the other conditions subject to which the payment institution's authorisation was granted must be removed or modified.

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<sup>96</sup> As in the first subparagraph of Article 13(5) of Directive 2004/39/EC (MiFID).

<sup>97</sup> As Article 13(1) of Commission Directive 2006/73/EC.

<sup>98</sup> As Article 14(1) of Commission Directive 2006/73/EC.

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 (...) employees, or any agent, branch or entity to which activities are outsourced.<sup>99</sup>

## *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.<sup>100</sup>

## *Article 14*

### *Place of the head office*

Deleted.<sup>101</sup>

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<sup>99</sup> Largely compatible with ECON 111, with the exception of the deletion of the word "tied".

<sup>100</sup> As in ECON 112.

<sup>101</sup> First paragraph moved to Article 6(2) and second paragraph to Article 21(1b). Deletion paragraph 2 as in ECON 114, even though different justification.



### 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 institutions 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. 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.
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. The same applies in cases where competent authorities for matters covered by this Title are not the competent authorities responsible for supervision of credit institutions.<sup>102</sup>
4. The tasks of the competent authorities designated under paragraph 1 shall be the responsibility of the competent authorities of the home Member State.<sup>103</sup>

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<sup>102</sup> To ensure cooperation between national competent authorities supervising payment institutions and competent authorities supervising credit institutions in cases where these authorities are not the same.

<sup>103</sup> Former Article 15a.

*Article 16*  
*Ongoing supervision*<sup>104</sup>

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 exposed.

In order to check compliance with this Title, the competent authorities are entitled to take the following steps, in particular:<sup>105</sup>

- (a) to require the payment institution to provide any information needed to monitor compliance;
- (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;<sup>106</sup>
- (c) to issue recommendations and guidelines and, if applicable, (...) binding administrative provisions;<sup>107</sup>
- (d) deleted<sup>108</sup>
- (e) to suspend or withdraw authorisation in cases referred to in Article 7a.<sup>109</sup>

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<sup>104</sup> As in ECON 118.

<sup>105</sup> As in ECON 119.

<sup>106</sup> Compatible with ECON 120.

<sup>107</sup> Compatible with ECON 121.

<sup>108</sup> As the former point (d) is likely to cause significant difficulties to some Member States because of their way their national administration is structured it is proposed that this point is replaced by a new paragraph (3) which would be similar to Article 54 of Directive 2006/48/EC and therefore more likely to be acceptable to all Member States.

<sup>109</sup> Compatible with ECON 122.

Without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, the Member States shall provide that their respective competent authorities, may, as against payment institutions or those who effectively control the business of payment institutions which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their payment service business, adopt or impose in respect of them penalties or measures aimed specifically at ending observed breaches or the causes of such breaches.<sup>110</sup>

### *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.

### *Article 18*

#### *Right to apply to the courts*

Member States shall ensure that decisions taken by the competent authorities in respect of a payment institution in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be contested before the courts.

The first paragraph shall apply also in respect of failure to act.

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<sup>110</sup> As Article 54 of Directive 2006/48/EC.

*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 States and other relevant competent authorities designated under Community or national 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 other Member States responsible for the authorisation and supervision of payment institutions;
  - (b) 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;<sup>111</sup>
  - (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.

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<sup>111</sup> Compatible with ECON 125.

## Article 20

### *Exercise of the right of establishment and freedom to provide services*

1. Any authorised payment institution wishing to (...) provide payment services<sup>112</sup> 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.

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.

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<sup>112</sup> To clarify that the Article regulates on the right to provide payment services, not other activities of payment institutions.

- 4a. Without prejudice to the foregoing, the competent authorities of the host Member State shall be responsible for the supervision of compliance with obligations in relation to money laundering under Directive 2005/60/EC and regulations regarding counter terrorism.<sup>113</sup>

## SECTION 4

### DEROGATION

#### <sup>114</sup>[Article 21 Conditions

1. By way of derogation from Article 1(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
  - (a) the total business activities of the person concerned, including any agent or branch for which it assumes full responsibility, generates a turnover deriving from payment services with a total amount not exceeding EUR 5 million on average over a month and EUR 6 million at any given point in time;and
  - (b) none of the natural persons involved with the control or operation of the business have been convicted of offences relating to money laundering or terrorist financing.<sup>115</sup>
- 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.<sup>116</sup>

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<sup>113</sup> As in ECON 128.

<sup>114</sup> In square brackets as linked to the issue of capital, etc. Not to be discussed at the meeting of 8 November. Purely technical changes made to clarify the text.

<sup>115</sup> As in point c) in ECON 129.

<sup>116</sup> The former second paragraph of Article 14.

2. The persons referred to in paragraph 1 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. Member States shall ensure that where the condition of this Article are no longer fulfilled, the person shall seek authorisation within 30 calendar days according to the procedure in Article 6.<sup>117]</sup>

## *Article 22*

### *Notification and information*

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. In addition, it shall inform the Commission of the number of natural and legal persons concerned and shall, on an annual basis, inform the Commission of the (...) turnover<sup>118</sup> as at the 31<sup>st</sup> December of each calendar year, as referred to in point (a) of Article 21(1).<sup>119</sup>

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<sup>117</sup> Compatible with the last part of ECON 129.

<sup>118</sup> To clarify the text and consequential to the technical change made in point (a) of Article 21(1).

<sup>119</sup> Compatible with ECON 130.

## **Chapter 2**

### **Common provisions**

#### *Article 23*

#### *Access to payment systems*

1. Member States shall ensure that the rules on access of authorised or registered payment service providers that are legal persons to payment systems 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.

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;
  - (b) a rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants;
  - (c) any restriction on the basis of institutional status.
2. Paragraph 1 shall not apply to:
  - (a) payment systems designated under Directive 98/26/EC, and
  - (b) payment systems exclusively composed of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities, and
  - (c) closed payment systems.



*Article 23a*

*Prohibition of other than payment service providers to undertake payment services*

Member States shall prohibit natural or legal persons that are neither payment service providers (...) nor explicitly excluded from the scope of this Directive (...) from providing payment services as listed in the Annex.<sup>120</sup>

## **TITLE III**

### **Transparency of conditions and information requirements for payment services**

#### **Chapter -1**

#### **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.<sup>121</sup>

(...)<sup>122</sup>

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<sup>120</sup> As a new definition of payment service provider is proposed it is not necessary to refer to Article 1(1). Neither is it necessary to refer to Article 8 of Directive 2000/46/EC, see footnote under Article 1(1)(b). Compatible with ECON 133.

<sup>121</sup> All enterprises would have the possibility to agree otherwise on the provisions of Title III. This proposal corresponds to ECON 34 although the wording is different. A distinction between consumers and others is often made in Community legislation.

EP: treat microenterprises as consumers, wants still to use the definition of professional user.

<sup>122</sup> Moved to Article 23c.

*Article 23 c*

*Other provisions in Community legislation*

The provisions of this Title are without prejudice to any Community legislation containing additional requirements on prior information.

[However, where also Directive 2002/65/EC concerning the distance marketing of consumer financial services is applicable, the information provisions under Article 3 of said Directive, with the exception of subparagraph (2)(c)-(g), 3(a) and (e) and 4(b), shall be replaced with Articles 25, 26, 30 and 31 of this Directive.]<sup>123</sup>

*Article 23 d*

*Charges for information*

1. The payment service provider may not charge the payment service user for providing information under this Title, unless otherwise specified in Articles 36(2) and 37(2).<sup>124</sup>
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.<sup>125</sup>
3. Where the payment service provider may impose charges for information under paragraphs 1 and 2, they shall be appropriate and in line with the payment service provider's actual costs.

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<sup>123</sup> The parallel provision is to be added in Article 83.

<sup>124</sup> Corresponds to ECON 210, even though in a different article. See recitals 18(c) and (18d).

<sup>125</sup> Paragraphs 2 and 3 correspond to ECON 212, even though in a different article.

*Article 23 e*  
*Burden of proof on information*

Member States may stipulate that the burden of proof shall lie with the payment service provider to prove that it has complied with the information requirements set out in this Title.<sup>126</sup>

**Chapter 1**  
**Single payment transactions**

*Article 24*  
*Scope*

1. This Chapter applies to single payment transactions not covered (...) by a framework contract.
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<sup>127</sup> information which is already given to the payment service user on the basis of the framework contract with another payment service provider or which will be given to him according to that framework contract.

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<sup>126</sup> See ECON 177. EP: not an option. Direct interference in national procedural law should be avoided.

<sup>127</sup> EP: wants to make the distinction, through out the Title, that essential information is communicated (given), all other information communicated upon first request (obtained from the payment service provider only upon request).

*Article 25*  
*Prior general information*

1. Member States shall require that before the payment service user is bound by any single payment service contract or offer the payment service provider is to make available to the payment service user in an easily accessible manner<sup>128</sup> the information and conditions in accordance with Article 26. At the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium.<sup>129</sup> 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 single payment service 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 paragraph 1 immediately after the execution of the transaction.
3. The obligations under paragraph 1 may also be discharged by supplying a copy of the draft single payment contract or the draft payment order including the information in accordance with Article 26.

*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:

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<sup>128</sup> Corresponds to ECON 137, 139 and 150. Partly follows ECON 136 in that it requires that information is to be provided on paper at request.

<sup>129</sup> See recital 18(b).

- (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;
  - (...)
  - (c) where applicable, all charges payable by the payment service user to his payment service provider and, where aggregate fee is to be used, the prices of the different service elements of that fee;<sup>130</sup>
  - (ca) where applicable, the actual or reference exchange rate to be applied to the payment transaction;
  - (...)
3. Where applicable, any other relevant information specified in Article 31 is to be made available to the payment service user in an easily accessible manner.<sup>131</sup>

#### *Article 27*

##### *Information to the payer after the receipt of the payment order*

Immediately after the receipt of the payment order, 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:

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<sup>130</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

<sup>131</sup> Most of the information requirements in Article 31 apply to single payment transactions. However, it seems apparent that some requirements are not relevant in practice (e.g. (2)(f), (4)(4), (5)(a) to (c) and (6)).  
 ECON amendments 138 see Article 31(1)(d), 139 see Article 31(1)(c), 141 see Article 31(5)(1), which was not proposed to be changed, 142 and 146 see Article 31(2)(c), 144 see Article 31(5)(f), 148 see Article 31 (7)(-a) and (a), 149 see Article (2)(c).  
 ECON 143 completes a point, which has been deleted.

- (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 in the currency used in the payment order;<sup>132</sup>
- (ba) where applicable, the amount of any charges for the payment transaction payable by the payer and, where the aggregate fee is used, the prices of the different service elements of that fee;<sup>133</sup>
- (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), and the amount of the payment transaction after that currency conversion;<sup>134</sup>
- (d) date of the receipt of the payment order.<sup>135</sup>

#### *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;
- (b) the amount of the payment transaction transferred from the payer in the currency in which the funds are at the payee's disposal;<sup>136</sup>

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<sup>132</sup> See also an amendment in subparagraph (c). The clarification is in line with ECON 155. Corresponding amendments needed to Articles 27, 36 and 37 also.

<sup>133</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

<sup>134</sup> As in ECON 157.

<sup>135</sup> In line with ECON 154, but taking account of the fact that only the date of receipt of a payment order can be given at this stage.

<sup>136</sup> See footnote to Article 27.

- (c) where applicable, the amount of any charges for the payment transaction payable by the payee and, where the aggregate fee is used, the prices of the different service elements of that fee;<sup>137</sup>
- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;
- (e) the credit value date.

## **Chapter 2**

### **Framework contracts**

#### *Article 29*

#### *Scope*

This Chapter applies to payment transactions covered by a framework contract.<sup>138</sup>

#### *Article 30*

#### *Prior general information*

1. Member States shall require that in good time 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.<sup>139</sup>
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.

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<sup>137</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

<sup>138</sup> Corresponds to ECON 160.

<sup>139</sup> In line with ECON 161 and 173.

3. The obligations under paragraph 1 may also be discharged by supplying a copy of the draft framework contract including the information in accordance with Article 31.

### *Article 31*

#### *Information and conditions*

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

#### *(1) payment service provider*

- (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;
- (b) Deleted
- (c) the particulars of the relevant supervisory authority and of the register specified in Article 8 or of any other relevant public register of authorisation of the payment service provider and the registration number, or equivalent means of identification in that register;<sup>140</sup>
- (d) where applicable, a statement that funds received for a payment transaction by the payment service provider are not covered by deposit guarantee scheme.<sup>141</sup>

#### *(2) use of payment service*

- (a) a description of the main characteristics of the payment service to be provided;
- (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;

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<sup>140</sup> The provision corresponds to ECON 138. It applies to both single transactions and framework contracts.

<sup>141</sup> Compatible with ECON 139. The same statement will be included in information for single transactions by the reference in Article 25(3).



- (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;<sup>142</sup>
- (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;
- (e) the maximum execution time for the payment services to be provided;<sup>143</sup>
- (f) whether there is a possibility to agree on spending ceilings for the use of the payment instrument in accordance with Article 43(1);<sup>144</sup>

*(3) charges, interest and exchange rates*

- (a) all charges payable by the payment service user to the payment service provider and, where the aggregate fee is to be used, the prices of the different service elements of that fee;<sup>145</sup>
- (b) where applicable, the interest and exchange rates to be applied <sup>146</sup> or, if the reference interest and exchange rates are to be used, the method of calculation of the actual interest (...) and the relevant date and index or base for determining such reference interest or exchange rate;<sup>147</sup>
- (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);

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<sup>142</sup> In line with ECON 171, as well as ECON 142, 146 and 165, if withdrawal is understood to mean cancellation and to include revocation.

<sup>143</sup> As ECON 162, but without limitation to services provided by the payer's payment service provider only.

<sup>144</sup> Amendment as per ECON 166.

<sup>145</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

<sup>146</sup> Interest is not calculated on transactions, but on funds in an account.

<sup>147</sup> Compatible with ECON 168; extends the possibility to fixed rates.

*(4) communication*

- (a) where applicable, means of communication, including the technical requirements for the payment service user's equipment, agreed by parties for transmission of information or notifications under this Directive;
- (b) the manner and frequency in which information under this Directive is to be provided or made available;<sup>148</sup>
- (c) the language or languages in which the framework contract shall be concluded and communication during this contractual relationship undertaken;
- (d) the payment service user's right to receive contractual terms of the framework contract and information and conditions according to Article 32;<sup>149</sup>

*(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 how to notify the payment service provider for the purposes of Article 46(b);<sup>150</sup>
- (b) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 43;
- (c) the liability of the payer in accordance with Article 50, including information on the relevant amount;
- (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;

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<sup>148</sup> In line with ECON 172, the provision is applicable not only to Articles 36 and 37 but also to other information under this Directive.

<sup>149</sup> In line with ECON 170.

<sup>150</sup> As ECON 141 and 163.

- (e) the liability of the payment service provider for the execution of payment transactions in accordance with Article 67;
- (f) the conditions for refund in accordance with Articles 52 and 53;<sup>151</sup>

*(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 in accordance with Article 33 unless he notifies the payment service provider of not accepting them by the date of their proposed date of entry into force;
- (b) duration of the contract;
- (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;<sup>152</sup>

*(7) redress*

- (a) any contractual clause on law applicable to the framework contract and/or the competent court;<sup>153</sup>
- (b) the complaints and out-of-court redress procedures available to the payment service user in accordance with Chapter 4 of Title IV.

*Article 32*

*Accessibility of information and contractual conditions of the framework contract<sup>154</sup>*

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.<sup>155</sup>

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<sup>151</sup> As ECON 164.

<sup>152</sup> As in ECON 162.

<sup>153</sup> See amendment in recital 34.

<sup>154</sup> Heading in line with ECON 175.

<sup>155</sup> Compatible with ECON 176. See recital 18(c).

(...)<sup>156</sup>

### *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 two months before their proposed date of application.<sup>157</sup>

Where applicable in accordance with Article 31(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. In this case the payment service provider shall specify that the payment service user has the right to terminate the framework contract immediately and without charges by the date of (...) of the application of changes.<sup>158</sup>

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(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.<sup>159</sup> However, changes in the interest or exchange rates which are more favourable to the payment service users, may be applied without notice.
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.<sup>160</sup>

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<sup>156</sup> ECON 177, see Article 23e.

<sup>157</sup> Compatible with ECON 178.

The question how information on changes could be arranged for pre-paid telephone cards etc. could be dealt with special Article on micro payments.

<sup>158</sup> Compatible with ECON 178 and 179.

<sup>159</sup> In substance in line with ECON 180 and 181.

<sup>160</sup> Identical to ECON 182.

*Article 34*  
*Termination*<sup>161</sup>

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.<sup>162</sup>

(...)

- 1a. Termination of a framework contract concluded for a period exceeding 12 months 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.<sup>163</sup>
- 1b. If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice in the same way as provided for in Article 30(1).
2. Charges for payment services levied on a regular basis shall be payable only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.
- 2a. The provisions of this Article are without prejudice to the Member States' laws and regulations governing the rights of the party to declare the framework contract avoided or null and void.
3. Member States may provide more favourable provisions for payment service users.

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<sup>161</sup> See recital 19.

<sup>162</sup> Corresponds in substance to ECON 183 and 187.

<sup>163</sup> Identical to ECON 184.

### Article 35

#### *Information before execution of an individual payment transaction*

In the case of an individual payment transaction under a framework contract initiated by the payer, a payment service provider shall, at the payer's request (...) for this specific payment transaction, provide explicit information on the maximum execution time, and the charges payable by the payer and, where the aggregate fee is used, the prices of the different service elements of that fee.<sup>164</sup>(...).

(...)<sup>165</sup>

### Article 36

#### *Information to the payer on individual payment transactions*

1. After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account after the receipt of the payment order, the payer's payment service provider shall provide the payer in the same way as laid down 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;<sup>166</sup>
  - (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;<sup>167</sup>
  - (c) where applicable, the amount of interest or any charges for the payment transaction (...) payable by the payer and, where the aggregate fee is used, the prices of the different service elements of that fee;<sup>168</sup>

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<sup>164</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

<sup>165</sup> Deleted, as proposed also by ECON 189.

<sup>166</sup> ECON 192, see footnote to Article 27.

<sup>167</sup> See footnote to Article 27.

<sup>168</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

(d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion;<sup>169</sup>

(e) the debit value date or the date of receipt of the payment order.<sup>170</sup>

2. A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically at least once a month and in the agreed manner which allows the payer to store and reproduce information unchanged. Where agreed in the framework contract that information shall be provided on paper, the parties may agree on charges if such information is to be provided more often than once a month.<sup>171</sup>

#### *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 laid down 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;<sup>172</sup>

(b) deleted

(c) the amount of the payment transaction transferred from the payer in the currency in which the payee's payment account is credited;<sup>173</sup>

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<sup>169</sup> ECON 194.

<sup>170</sup> See Article 27.

<sup>171</sup> See recital 18(d).

<sup>172</sup> Compatible with ECON 199.

<sup>173</sup> See footnote to Article 27.

(d) where applicable, the amount of interest or any charges for the payment transaction payable by the payee and, where the aggregate fee is used, the prices of the different service elements of that fee,<sup>174</sup>

(e) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction (...) before that currency conversion.;

(f) the credit value date.

2. A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically at least once a month and in the agreed manner which allows the (...) payee to store and reproduce information unchanged. Where agreed in the framework contract that information shall be provided on paper, the parties may agree on charges if such information is to be provided more often than once a month.<sup>175</sup>

#### *Article 38*

#### *Micro payments*

(to be replaced by a new provision on "micro payments/mass payment instruments")<sup>176</sup>

## **Chapter 3**

### **Common provisions**

#### *Article 39*

#### *Transaction currency and currency conversion*

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

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<sup>174</sup> Brake down of charges, concept agreed with EP, wording needs to be verified.

<sup>175</sup> See recital 18(d)

<sup>176</sup> This issue will be dealt with in a separate document.



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<sup>177</sup> exchange rate to be used for converting the transaction.<sup>178</sup>

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 (...) charge or offers a reduction, the payee shall inform the payer of those matters prior to the initiation of the payment transaction.<sup>179</sup>
2. Where, for the use of a given payment instrument, a payment service provider or a third party requesting a (...) charge shall inform the payment service user of those matters prior to the initiation of the payment transaction.

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<sup>177</sup> The payee should be given the actual exchange rate.

<sup>178</sup> As in ECON 207.

<sup>179</sup> The provision in the last sentence is moved to Article 40c(3).

**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, 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 time period different from that laid down for in Article 47a.
- 1a. Member States may provide that Article 75 does not apply where the payment service user is not a consumer.

*Article 40c*

*Charges applicable*

1. The payment service provider may not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Title (...), unless otherwise specified in Articles 55(1), 56(3) and 66(2). 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, Member States shall require that the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider.<sup>180</sup>

(...)

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<sup>180</sup> See recital 26.

- 3a. The payment service provider shall not prevent the payee from requesting from the payer a (...) charge or a reduction for the use of the given payment instrument. However, Member States may, for debit cards, forbid or limit requesting (...) such charging by the payee.<sup>181</sup>

## **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 (...) <sup>182</sup>. 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.<sup>183</sup>
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.<sup>184</sup>

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 is to be considered as unauthorised.
4. The procedure for transmitting consent shall be agreed between the payer and his payment service provider.

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<sup>181</sup> ECON 208.

<sup>182</sup> ECON 213.

<sup>183</sup> ECON 216.

<sup>184</sup> Corresponds to ECON 214.

*Article 42*  
*Transmission of consent*

Deleted.

*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 (...) reasons (...) related to the security of the payment instrument, the suspicion of an unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, the significantly increased risk that the payer is unable to fulfil his liability to pay (...).
3. In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless giving such information would compromise objectively justified security reasons or would be prohibited by other relevant Community or national legislation.<sup>185</sup>
4. The payment service provider shall unblock the use of the payment instrument or replace it with a new payment instrument once the reasons for blocking the use of the payment instrument no longer exist.

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<sup>185</sup> Paragraphs 2 and 3 are compatible with the idea of ECON 223. ECON 224; see Article 47 (ca) and re (non)charges Article 40c.

*Article 44*  
*Record keeping*

Deleted

*Article 45*  
*Unauthorised transactions and withdrawal of consent*

Deleted.<sup>186</sup>

*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:<sup>187</sup>
  - (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.<sup>188</sup>

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<sup>186</sup> See Article 47a and Article 41(3).

<sup>187</sup> Corresponds to ECON 228, slightly amended.

<sup>188</sup> Identical to ECON 231.

## *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:<sup>189</sup>

- (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;<sup>190</sup>
  - (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) or request unblocking pursuant to Article 43(4); upon request the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that he has made such notification;
  - (ca) to prevent all use of the payment instrument once notification pursuant to Article 46(b) has been made.<sup>191</sup>
- 2a. The payment service provider shall bear the risk of sending a payment instrument to the payer or of sending any personalised security features of it.<sup>192</sup>

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<sup>189</sup> As in ECON 232.

<sup>190</sup> In line with ECON 233.

<sup>191</sup> Corresponds with ECON 235, although in a different article.

<sup>192</sup> ECON 236.

## *Article 47a*

### *Notification of unauthorised or incorrect transactions*

The payment service user shall obtain rectification only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrect transactions and not later than 18 months after the debit date, unless, where applicable, the payment service provider has not provided or made available the information on that transaction in accordance with Title III.

## *Article 48*

### *Evidence on authentication and execution of payment transactions*<sup>193</sup>

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,<sup>194</sup> 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 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.

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<sup>193</sup> ECON 237; see a new provision in Article 40d.

<sup>194</sup> See amended definitions in Article 4(13) and (17).

## *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 debited payment account (...) to the state in which it (...) would have existed if the unauthorised payment transaction had not taken place.<sup>195</sup>
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.

## *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 any unauthorised 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 instrument.

(...)

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.
- 2a. In cases where the payer has not acted fraudulently or with intent, Member States may reduce the liability referred to in paragraphs 1 and 2, taking into account especially the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated.

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<sup>195</sup> Partly follows ECON 239; see general provision in Article 40c.



2. 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.
3. If the payment service provider does not provide appropriate 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.

(...)

*Article 51<sup>196</sup>*  
*Electronic money*

1. deleted<sup>197</sup>
2. Articles 48, 49 and 50(1) and (2) of this Directive shall not apply to electronic money within the meaning of Article 1(3)(b) of Directive 2000/46/EC.

Article 50(3) and (4) shall apply to electronic money insofar as the payment service provider is technically in a position to freeze or prevent further spending of the electronic money stored on an electronic device.

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

1. Member States shall ensure that a payer 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

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<sup>196</sup> This provision is related to Articles on micro/mass payments.

<sup>197</sup> Deleted as ECON 244.

- (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.

The refund consists of an amount by which the payment transaction exceeds the expected amount.<sup>198</sup>

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(3)(b) was applied.
3. The right to a refund shall not apply to payment transactions where the payer has transmitted his consent to the payment order directly to his own payment service provider and the information on future payment transaction is provided or made available to the payer in accordance with Article 36(2) for at least four weeks before the due date by the payment service provider or, if agreed in the framework contract, by the payee.

### *Article 53*

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

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, during the period of (...) 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.

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<sup>198</sup> Compatible with ECON 246.

2. Within ten business days of receiving a request for a refund, the payment service provider shall either refund the (...) 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.

## **Chapter 2**

### **Execution of a payment transaction**

#### **SECTION 1**

#### **PAYMENT ORDERS AND AMOUNTS TRANSFERRED**

##### *Article 54*

##### *Receipt of payment orders*<sup>199</sup>

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. 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.
2. If the payment service user initiating the payment order and his payment service provider agree that execution of the payment order shall start 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 disposal the point in time of receipt for the purposes of Article 60 is deemed to be the agreed day.

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<sup>199</sup> See recital 23a.

*Article 55*  
*Refusal of payment orders*

1. Where the payment service provider refuses to execute a payment order, the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user, unless prohibited by other relevant Community or national legislation.

The payment service provider shall send or make available the notification in an agreed manner without undue delay and, in any case, within the periods specified in accordance with Article 60.

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 irrespective of whether the payment order is initiated by a payer or by or through a payee, unless prohibited by other relevant Community or national legislation.
3. A payment order, execution of which has been refused, shall be deemed not 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 not revoke a payment order after (...) the point in time of receipt, unless otherwise specified in this Article (...).
- 1a. Where the payment transaction is initiated by or through the payee, the payer may not revoke the payment order or withdraw his consent to an individual payment order after transmitting it to the payee. [In case of a consent given for a series of payment transactions, the payer may not revoke the payment order or withdraw his consent concerning an outstanding amount to the payee].

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.
3. After the time limits specified in above paragraphs, the payment order may be revoked only if agreed between the payment service user and his payment service provider. In the case referred to in paragraph 1a, also the payee's agreement is required. 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 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, regulations, administrative provisions or guidelines, to reimburse the payer the amount of the executed payment transaction in the event of a dispute between the payer and the third party supplier for good and services. Such reimbursement shall be considered a new payment transaction.

#### *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*

200 (....)

2. This Section shall apply to;
  - (a) euro currency payment transactions;
  - (b) national payment transactions in the currency of the Member State concerned;
  - (c) where currency conversion is required, only payment transactions (...) including conversion between the euro and the currency of (...) the Member State (...) where the payment service provider carrying out the conversion is located (...).
3. (...) This Section shall apply to other payment transactions, 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. Until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three days. These periods may be extended by a further business day for paper-initiated payment transactions.

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<sup>200</sup> ECON 209, deleted given the narrower scope.

- 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 debits may not exceed three business days after the day of receipt. These periods may be extended by a further business day for paper-initiated payment transactions.

#### *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 a payment account*

1. Where a consumer places cash on a payment account with that payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is credited and value dated immediately after the receipt of the funds. Where payment service user is not a consumer, the payee's payment account shall be credited and value dated at the latest on the next business day after the receipt of the funds.
2. The payment service provider shall ensure that the funds are at the payee's disposal when those funds are credited to his payment account.

*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*  
*Value date and availability of funds*

1. Member States shall ensure that the credit value date for the payee's payment account is the day when the amount of the payment transaction is credited to the payee's payment account.

The payment service provider of the payee shall ensure that the funds are at the payee's disposal when those funds are credited to his payment account.<sup>201</sup>

2. Member States shall ensure that the debit value date for the payer's payment account is not earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

**SECTION 3**  
**LIABILITY**

*Article 65*  
*Value date*

Deleted.

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<sup>201</sup> Partly in line with ECON 259. Aligned with Article 63.



*Article 66*  
*Incorrect unique identifiers*

1. If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified in the unique identifier.
2. If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 67 for non-execution or defective execution of the transaction.

However the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction.

If agreed in the framework contract, the payment service provider may charge the 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(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.
4. Member States shall require the payment service provider to arrange appropriate means to verify, where possible, taking into account the characteristics of the payment service and the technical limitations, the correctness of the unique identifier and/or its consistency with other information requested by the payment service provider under Article 26(1)(a) or Article 31(2)(b). If the unique identifier is found incorrect or inconsistent with the other requested information, the payment service provider shall refuse the payment order or inform the payer directly or via his payment service provider thereof.<sup>202</sup>

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<sup>202</sup> See recital 31.

## Article 67

### *Non-execution or defective execution*

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 correct execution of the payment transaction.<sup>203</sup> In case of non-execution or defective (...) payment transaction, the payment service provider shall (...) immediately refund to the payer the amount of non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have existed if the non-executive or defective payment transaction had not taken place.<sup>204</sup>
  - 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 correct execution of the payment transaction. In case of non-execution or defective (...) payment transaction, the payment service provider shall (...) immediately refund to the payee the amount of non-executed or defective payment transaction.
  - 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 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 non-execution or defective execution of the payment transaction.

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<sup>203</sup> Corresponds to ECON 262; “strict” is deleted and necessary references added.

<sup>204</sup> Redrafted by using the concept of rectification, in line with Article 49. This may also clarify the distinction to Article 69.

*Article 68*  
*Transfers to third countries*

Deleted.<sup>205</sup>

*Article 69*  
*Additional financial compensation*

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

*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.

**Chapter 2 a**  
**Mass payment instruments**

A separate document on this issue.

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<sup>205</sup> As in ECON 267.

## **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 authorities with regard to payment service providers' 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.

[2a. Member States shall ensure that complaints are appropriately answered within 30 days of receipt.]<sup>206</sup>

### *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.

### <sup>207</sup> *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 the event of infringement or suspected infringement of the provisions of national law adopted pursuant to Titles III and IV of this Directive, the competent authority referred to in paragraph 1 shall be the competent authorities of the home Member State of the payment service provider, except for branches and agents conducted under freedom of provision of services the competent authorities of the host Member State.

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<sup>206</sup> Presidency consults the Member States on a new paragraph (2a) (ECON 268).

<sup>207</sup> See recital 34a.

## SECTION 2

### OUT-OF-COURT REDRESS PROCEDURES

#### *Article 75*

#### *Out-of-court redress*

- [1. Member States shall ensure that adequate (...) 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 are put in place, using existing dispute settlement bodies where appropriate.]<sup>208</sup>
2. In the case of cross-border disputes, Member States shall make sure that these bodies cooperate actively in resolving them.

#### [Article 75a

#### Statistical information

1. Member States shall repeal, with effect from 1 January 2008 at the latest, any national reporting obligations for payments for balance-of-payment statistics.
2. Member States shall repeal, with effect from 1 January 2008 at the latest, any national obligations as to the minimum information to be provided concerning the payment service users which prevent the automation of payment execution.]<sup>209</sup>

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<sup>208</sup> Presidency consults Member States on paragraph (1) which EP wants to be as in Commission proposal or strengthened from former Council text.

<sup>209</sup> Presidency consults Member States on a new Article 75a (ECON 269) which EP wants to include into the Directive. EP has indicated that a revised drafting could be acceptable.

## 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) deleted<sup>210</sup>
  - (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.

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<sup>210</sup> Consequential upon deletion of the provisions on micro enterprises.

2. Where reference is made to this paragraph in other articles, Articles 5a 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*

1. Without prejudice to Articles 34(3), 40c(3a), (...) 50(2a), 64 and 80 insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce provisions other than those laid down in this Directive.
2. Deleted<sup>211</sup>
3. 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.

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<sup>211</sup> Opposed to deletion: UK, LUX and COM.



## *Article 79*

### *Review*

No later than three years after the date specified in the first subparagraph 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 Articles 70a/38 and 40e of this Directive and the possible need to revise the scope of this Directive with respect to mass payment instruments,

accompanied where appropriate by a proposal for its revision.

## *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 subparagraph of Article 85(1), without authorisation under Article 6. Any such persons who have not been granted authorisation within this period shall be prohibited in accordance with Article 23a to provide payment services.

2. Member States may provide that legal persons under paragraph 1 shall be automatically granted authorisation and entered into the register under Article 8 if the competent authorities already have evidence that the requirements laid down in Articles 5 and 6 are complied with. The competent authorities shall inform the affected entities before authorisation being granted.
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 waiver 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 waived in accordance with Article 21 and entered into the register under Article 8. Any such persons who are not waived within this period shall be prohibited in accordance with Article 23a to provide 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*

Directive 2002/65/EC shall be amended as follows:

1. Article 8 (...) shall be deleted.
2. In Article 4 the following paragraph shall be added:
  - (5) Where also Directive [...] of the European Parliament and the Council (\*) is applicable, the information provisions under Article 3 of this Directive, with the exception of subparagraph (2)(c)-(g), 3(a) and (e) and 4(b), shall be replaced with Articles 25, 26, 30 and 31 of the former Directive.<sup>212</sup>

(\*) OJ L[...], ...,p. [...]

*Article 83a*  
*Amendment of Directive 2005/60/EC*

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

1. Point (a) of Article 3(2) 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 12 and 14 of Annex I to Directive 2006/48/EC, including the activities of currency exchange offices (bureaux de change) and the provision of payment services as defined in Article 4(2a) of Directive [...]”.

<sup>213</sup>[1a. Article 15(1) and (2) shall be replaced by the following text:

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<sup>212</sup> Consequential to Article 23c(2).

<sup>213</sup> Consequential to amendment of Article 3(2)(a) in paragraph 1. References in Article 15(1) and (2) to money remittance to be deleted.

- “1. Where a Member State permits credit and financial institutions referred to in Article 2(1)(1) or (2) situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit institutions and persons referred to in Article 2(1) situated in its territory to recognise and accept, in accordance with the provisions laid down in Article 14, the outcome of the customer due diligence requirements laid down in Article 8(1)(a) to (c), carried out in accordance with this Directive by an institution referred to in Article 2(1)(1) or (2) in another Member State, with the exception of currency exchange offices, and meeting the requirements laid down in Articles 16 and 18, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.
2. Where a Member State permits currency exchange offices referred to in Article 3(2)(a) situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit them to recognise and accept, in accordance with Article 14, the outcome of the customer due diligence requirements laid down in Article 8(1)(a) to (c), carried out in accordance with this Directive by the same category of institution in another Member State and meeting the requirements laid down in Articles 16 and 18, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.”]
2. In Article 36(1), second sentence is deleted as from the date set out in first paragraph of Article 85(1) of the present Directive.

#### *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.

*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) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.

(2) Services enabling 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 credited funds (debit cards) or funds covered by credit lines (credit cards).<sup>214</sup>

(6) Deleted.<sup>215</sup>

(7) Money remittance.

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<sup>214</sup> As in ECON 280.

<sup>215</sup> Point deleted because due to the definition of funds in Article 4(8) payment transactions where the funds are e-money are already covered by point (3).

(8) Execution of payment transactions by any means of communication at a distance such as mobile telephones or other digital or IT devices by the service provider operating the telecommunication or IT system or network acting on behalf of the payment service user, except where the digital goods or electronic communication services are provided essentially using the device itself and the payment is made directly to the service provider operating the telecommunication or IT system or network for its own account, not as an intermediary to a third party.<sup>216</sup>

(9) deleted<sup>217</sup>

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<sup>216</sup> Consequential to the change made in Article 3(j). Compatible with ECON 283.

<sup>217</sup> As in ECON 284.