



**СЪВЕТ НА
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ПРИДРУЖИТЕЛНО ПИСМО

от:	Генералния секретариат
до:	Комитета на постоянните представители/Съвета
Относно:	Предложение за директива на Европейския парламент и на Съвета относно платежните услуги във вътрешния пазар и за изменение на Директиви 97/7/ЕО, 2000/12/ЕО и 2002/65/ЕО – Резултат от първо четене в Европейския парламент (Страсбург, 22—26 април 2007 г.)

I. INTRODUCTION

In accordance with the provisions of Article 251(2) of the EC Treaty and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.

In this context, the rapporteur, Mr Jean-Paul GAUZÈS (PPE-DE-FR), presented a package of compromise amendments to the proposal for a Directive, on behalf of the Committee on Budgetary Control. These amendments had been agreed during the informal contacts referred to above.

¹ OJ C 148, 28.5.1999, p.1.

II. VOTE

The plenary adopted the package of compromise amendments to the proposal for a Directive. No other amendments were adopted. The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the legal linguists¹ have scrutinized the text, the Council should be in a position to adopt the legislative act.

The text of the amendments adopted and the European Parliament legislative resolution are annexed to this note.

¹ Delegations with legal-linguistic observations can send them to the secretariat of the Council's legal-linguistic service (secretariat.jl-codecision@consilium.europa.eu) until 16.5.2007, in order to prepare better the legal-linguistic meeting with national experts.

Законодателна резолюция на Европейския парламент от 24 април 2007 г. относно предложението за директива на Европейския парламент и на Съвета относно платежните услуги във вътрешния пазар и за изменение на Директиви 97/7/ЕО, 2000/12/ЕО и 2002/65/ЕО (COM(2005)0603 – C6-0411/2005 – 2005/0245(COD))

(Процедура на съвместно вземане на решение: първо четене)

Европейският парламент,

- като взе предвид предложението на Комисията до Европейския парламент и до Съвета (COM(2005)0603)¹,
 - като взе предвид член 251, параграф 2, член 47, параграф 2, първо и трето изречение, и член 95 от Договора за ЕО, съгласно които Комисията е внесла предложението (C6-0411/2005),
 - като има предвид писмото от 1 март 2007 г., изпратено до председателя на Европейския парламент от председателя на работната група по член 29 от Директива 95/46/ЕО във връзка с въпросите, свързани със защитата на данните, по-специално при действието на системата *SWIFT*,
 - като взе предвид член 51 от своя правилник,
 - като взе предвид доклада на Комисията по икономически и парични въпроси и становищата на Комисията по вътрешен пазар и защита на потребителите и на Комисията по правни въпроси (A6-0298/2006),
1. Одобрява предложението на Комисията във вида, в който е изменено;
 2. Призовава Комисията да отнесе въпроса отново до Парламента, в случай че възнамерява да внесе съществени изменения в предложението или да го замени с друг текст;
 3. Възлага на своя председател да предаде позицията на Парламента на Съвета и на Комисията.

¹ Все още непубликувано в ОВ.

Position of the European Parliament adopted at first reading on 24 April 2007 with a view to the adoption of Directive 2007/.../EC of the European Parliament and Council on payment services in the internal market and amending Directives 97/7/EC, 2000/12/EC and 2002/65/EC*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2) and Article 95 thereof,

Having regard to the proposal from the *Commission*,

Having *consulted* the European Economic and Social Committee,

Having regard to the opinion of the European Central Bank¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

- (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.

* *Amended text is highlighted in bold and italics, deletions are indicated by the following symbol ■.*

¹ *OJ C 109, 9.5.2006, p. 10.*

² *Position of the European Parliament of 24 April 2007.*

- (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 27 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 transfers¹ and Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro², *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 consumers³), Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems, and in particular the relationship between cardholder and card issuer⁴, or Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder⁵. *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*.
- (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.*
- (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.

¹ OJ L 43, 14.2.1997, p. 25.

² OJ L 344, 28.12.2001, p. 13.

³ OJ L 365, 24.12.1987, p. 72.

⁴ OJ L 317, 24.11.1988, p. 55.

⁵ OJ L 208, 2.8.1997, p. 52.

- (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. *Furthermore, a differentiation should be made in the case of means offered by telecommunication, IT or network operators to facilitate purchasing of digital goods or services such as ring tones, music or digital newspapers besides traditional voice services and its distribution to digital devices. The content of these goods or services may be produced either by a third party or by the operator, who may add intrinsic value to them in the forms of access, distribution or search facilities. In the latter case, where the goods or services are distributed by one of these operators, or for technical reasons, by a third party, and can be used only through digital devices such as mobile phones or computers, this legal framework should not apply as the activity of the operator goes beyond a mere payment transaction. However, it is appropriate for it to apply to cases where the operator solely acts exclusively as an intermediary who simply arranges for the payment to be made to a third party supplier.*
- (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. These bill paying services should be treated as money remittance as defined in this Directive unless the competent authorities consider the activity to fall under another payment service of the Annex.*

- (7) It is necessary to specify the categories of payment service providers 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***¹, 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 institutions², 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.***
- (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.

¹ ***OJ L 177, 30.6.2006, p. 1.***

² OJ L 275, 27.10.2000, p. 39.

- (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. *Here there is a need for a sound regime of initial capital combined with ongoing capital which could be elaborated in a more sophisticated way in due course depending on the needs of the market. Due to the range of variety in the payments services area the directive allows various methods combined with a certain range of supervisory discretion to ensure that the same risks are treated the same way for all payment service providers. 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.
- (9a) *Payment institutions should draw up their annual accounts and consolidated accounts for the previous financial year according to Council Directive 78/660/EC of 25 July 1978 on the annual accounts of certain types of companies¹, and where applicable Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts² and Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions³. The annual accounts and consolidated accounts should be audited, unless the payment institution is exempted from this obligation under Directive 78/660/EEC, and where applicable Directive 83/349/EEC and Directive 86/635/EEC.*

¹ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2006/46/EC.

² OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

³ OJ L 316, 23.11.1988, p. 51.

- (9b) *This Directive regulates granting of credit only if it is closely linked to payment services, i.e. credit lines and issuing credit cards. Only in this context, where credit is granted in order to facilitate payment services and is of short term nature and not granted by the payment service provider for a period exceeding twelve months, including on a revolving basis, it is appropriate to permit it with regard to cross border activities of payment institutions where it is refinanced mainly using the payment institution's own funds, as well as other funds from the capital markets, but not the funds held on behalf of clients for payment services. The above should be without prejudice to Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit¹ or other relevant Community or national legislation regarding aspects not harmonised by this directive with regard to the conditions for granting of credit to consumers.*
- (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.
- (11) █
- (12) *Given the desirability of registering the identity and whereabouts of all persons providing remittance 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 and bring all persons providing remittance service within the ambit of certain minimum legal and regulatory requirements, it is appropriate and in line with the rationale of Special Recommendation VI of the Financial Action Task Force on Money Laundering (FATF) to provide a mechanism whereby payment providers unable to meet all those conditions may nevertheless be treated as payment institutions. For those purposes, Member States should enter such persons in the register of payment institutions while not applying all or part of the conditions for authorisation.*

¹ OJ L 42, 12.2.1987, p. 48. Directive as last amended by Directive 98/7/EC of the European Parliament and of the Council (OJ L 101, 1.4.1998, p. 17).

However, it is essential to make the possibility of derogation subject to strict requirements relating to the volume of transactions. Waived payment institutions have neither the right of establishment nor the freedom to provide services nor should they indirectly exercise those rights when being a member of a payment system.

- (12a) It is essential for any payment service provider to be able to access the services of technical infrastructures of payment systems. However, access is subject to appropriate requirements in order to ensure system integrity and stability. Each payment service provider applying for a participation in a payment system has to furnish proof to the participants of the payment system that its internal arrangements are sufficiently robust against all kinds of risk. 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. 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. In any case differences in price conditions should only be allowed when this is motivated by differences in costs induced by the payment service providers. This should be without prejudice to Member States' rights to limit access to systemically important systems in accordance with Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems¹ 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.*

¹ OJ L 166, 11.6.1998, p. 45.

- (12b) *The provisions of the access to payment systems would not apply to systems set up and operated by a single payment service provider. These systems can operate either in direct competition to payment systems, or, more typically, in a market niche not adequately covered by payment systems. These payment systems typically cover three-party schemes, such as three party card schemes, payment services offered by telecommunication providers or money remittance services where the scheme operator is the payment service provider to both the payer and payee as well as internal systems of banking groups. In order to stimulate the competition that can be provided by such payment systems to established mainstream payment systems, it would in principle not be appropriate to grant third parties access to these payment systems. Nevertheless, such systems would always be subject to Community and national competition rules which may require to access to be granted to these schemes in order to maintain effective competition in payments markets.*
- (13) A set of rules should be established in order to ensure transparency of conditions *and information requirements* 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.*
- (15) █
- (15a) *As consumers and enterprises are not in the same position, they do not need the same 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, Member States should have the possibility to provide that micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹, should be treated in the same way as consumers. In any case, some core provisions of this Directive should always be applicable irrespective of the status of the user.*

¹ OJ L 124, 20.5.2003, p. 36.

- (16) This Directive should specify the obligations *on* payment service providers *as regards the provision of information* to *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 *the 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 the internal market in payment services, Member States should not be able to adopt information provisions other than those laid down in this Directive.*
- (17) *Consumers should be protected against unfair and misleading practices in line with Directive 2005/29/EC of the European Parliament and the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market¹ as well as Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Electronic Commerce Directive)² and Directive 2002/65/EC of the European Parliament and the Council of 23 September 2002 concerning the distance marketing of consumer financial services³. The additional provisions in these existing legal acts continue to be applicable. However, the relationship of the pre-contractual information requirements 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* framework *contract* which provides for *the* series of payment transactions.

¹ OJ L 149, 11.6.2005, p. 22.

² OJ L 178, 17.7.2000, p. 1.

³ OJ L 271, 9.10.2002, p. 16.

- (18a) In practice, framework contracts and the transactions covered by them are 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, such as printouts by account printers, floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail can be stored, and Internet sites, as long as such sites are accessible for future reference for a period of time adequate for the purposes of information and allow the unchanged reproduction of the information stored. 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 the payment account is made available on-line.*
- (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 may request prior information as well as the framework contract, on paper, 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 the above mentioned Directive 2002/65/EC. The explicit provisions on free information in this Directive should not have the effect of allowing charges to be imposed for the provision of information to consumers under other applicable Directives.

(18ca) The way in which the required information should be given by the payment service provider to the payment service user should take into account the needs of the latter as well as practical technical aspects and cost-efficiency depending on the situation with regard to the agreement in the respective payment service contract. Thus, the directive distinguishes between two ways in which information should be given by the payment service provider: Either the information has to be provided, i.e. actively communicated by the payment service provider at the appropriate time as required by this directive without further prompting by the payment service user. Or the information should be made available to the payment service user, taking into account any request he may have for further information. In this case, the payment service user has to take some active initiative to get to the information such as requesting it explicitly from the payment service provider, logging into bank account mail box or inserting a bank card into printer for account statements. For such purposes the payment service provider has to ensure that access to the information is possible and that the information is available to the payment service user.

- (18d) *In addition, the consumer should receive basic information on executed transactions without additional charges. In the case of a single payment transaction the payment service provider should not charge separately for this information. Similarly, the subsequent monthly information on payment transactions under a framework contract should be given 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. In order to take into account different national practices, Member States would be allowed to set rules requiring that monthly paper-based statements of payment accounts should always be given free of charge.*
- (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 should not be agreed for longer than a month, and for payment service providers not shorter than two months. The payment service provider's obligation to terminate the payment service contract or block the use of a payment instrument in exceptional circumstances under other relevant Community or national legislation, such as legislation on money laundering and terrorist financing, any action targeting on the freezing of funds or any specific measure linked to the prevention and investigation of crimes, is not affected by this Directive.*
- (20) *Low value payments instruments* should be a cheap and easy-to-use alternative in the case of low-priced goods and services and should not be overburdened by excessive requirements. The relevant information requirements and rules on their execution should therefore be *limited to essential information, taking also into account technical capabilities that can justifiably be expected from instruments dedicated to low value payments. Despite the lighter regime payment service users would benefit from adequate protection considering the limited risks posed by these instruments, especially with regard to prepaid instruments.*

- (20a) *In order to reduce the risks and consequences of unauthorised or incorrectly executed payment transactions the payment service user should inform the payment service provider as soon as possible about any contestations concerning allegedly unauthorised or incorrectly executed payment transactions provided that the payment service provider has fulfilled his information duties according to Title III of this Directive. If this notification deadline is met by the payment service user, he should be able to pursue those claims within the prescription periods pursuant to national law. Other claims between payment service users and payment service providers remain unaffected by the provisions of this directive.***
- (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.***
- (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 according to national law. Contractual terms and conditions relating to the provision and use of an 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.***
- (21b) *However, Member States may set less stringent rules than mentioned above 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. Member States may reduce or completely waive the payer's liability except where the payer has acted fraudulently.***

- (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.
- (23) ***This Directive should lay down rules for a refund to protect the consumer when the executed payment transaction exceeds the amount which could reasonably have been expected. Payment service providers may provide even more favourable terms to their customers and, for example, refund any disputed payment transactions.*** In cases where the user makes a claim for refund of a payment transaction refund rights should not affect the liability of the payer vis-à-vis the payee ***from the underlying relationship, e.g. 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 a point in time at which rights and obligations start to take effect. The relevant point in time is when the payment service provider receives the payment order including when he has had the opportunity to receive it through the means of communication agreed in the payment service contract, notwithstanding any prior involvement in the process leading up to the creation and transmission of the payment order, e.g. security and availability of funds checks, information on the use of the PIN, issuance of a payment promise. Furthermore, the receipt of a payment order should occur when the payer's payment service provider receives the payment order to be debited from the payer's account. The day or moment in time when a payee transmits to his service provider payment orders for the collection e.g. of card payment or of direct debits or when the payee is granted a pre-financing on the related amounts by his payment service provider (by way of a contingent credit to his account) should have no relevance in this respect. Users should be able to rely on the proper execution of a complete and valid 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 *in time* payment orders cannot be revoked without high manual intervention costs, it is necessary to specify a clear deadline for *payment* revocations. *However, depending on the type of the payment service and the payment order the point in time may be varied by agreement between the parties. 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.*
- (24a) *Such irrevocability should not affect a payment service provider's right or obligation under the laws of some Member States, 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 of goods and services. Such reimbursement should be considered a new payment order. Except for those cases, legal dispute arising within the relationship underlying the payment order should be settled solely between the payer and the payee.*
- (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. *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. While the payee should be free to levy charges for the use of a certain payment instrument, Member States may decide whether they forbid or set limits to any such practice where, in their view, this may be warranted in view of abusive pricing or pricing which may have a negative impact on the use of a certain payment instrument taking into account the need to encourage competition and the use of efficient payment instruments.*

- (27) In order to improve the efficiency of 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 *payer* setting a longer execution time, the *same* one-day execution time should apply. *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. When a direct debit scheme is used the payee's payment service provider should transmit the collection order within the time limits agreed between the payee and his payment service provider, enabling settlement at the agreed due date.* 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*.
- (28) *The* provisions 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.
- (29) It is essential for payment service users to know the real costs and charges of 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.

- (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 under abnormal and unforeseeable circumstances*, to *impose liability* on the payment service provider in respect of execution of a payment transaction accepted from the user, *except for the payee's payment service provider's acts and omissions for whose selection solely the payee is responsible*. However, *in order not leave the payer unprotected in unlikely constellations where it may remain open (non liquet) whether the payment amount was duly received by the payee's payment service provider or not, the corresponding burden of proof should lie upon the payer's payment service provider. As a rule, it can be expected that the intermediary institution (usually a "neutral" body like a central bank or a clearing association) transferring the payment amount from the sending to the receiving payment service provider will store the account data and be able to furnish the latter whenever this may be necessary. Whenever the payment amount has been credited to the receiving payment service provider's account, the payee shall immediately have a claim against his payment service provider as expressly foreseen in this directive (for credit to his account).*

- (30a) *The payment service provider should assume liability for correct payment execution, including, in particular the full amount of the payment transaction and execution time, and full responsibility for any failure by other parties in the payment chain up to the account of 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's payment service provider, correct the payment transaction or without undue delay refund to the payer the relevant amount of the transaction, without prejudice to any other claims which may be made in accordance with national law. This Directive concerns only contractual obligations and responsibilities between the payment service user and his payment service provider. However, the proper functioning of credit transfers and other payment services requires that payment service providers and their intermediaries, such as processors, have contracts where their mutual rights and duties are agreed upon. Questions related to liabilities form an essential part of these uniform contracts. To ensure the reliability among payment service providers and intermediaries taking part in a payment transaction, legal certainty is necessary that a non-responsible payment service provider gets compensated for its losses incurred or sums paid under the articles of liability. Further rights and details of content of recourse and how to handle claims towards the payment service provider or intermediary attributable to a defective payment transaction may be left to be defined by 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. **However, this should not prevent Member States from requiring the payment service provider of the payer to act in due diligence and verify, where technically possible and without requiring manual intervention, the coherence of the unique identifier, and where the unique identifier is found to be incoherent, to refuse the payment order and inform the payer thereof. 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.

- (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 data¹.
- (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 action in*** the courts, Member States should ensure an accessible and *cost sensitive* resolution of conflicts between payment service providers and ***consumers arising*** 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 undermined by any contractual terms on law applicable.***
- (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.

¹ OJ L 281, 23.11.1995, p. 31. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- (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. *With regard to global integration of financial services and harmonized consumer protection also beyond the efficient functioning of this Directive focal points of the review should be the possible need to expand the scope of application with regard to non-EU currencies and to payment transactions where only one payment service providers concerned is located in the Community.*
- (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 contracts¹ and Directive 2002/65/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 financing² should therefore be amended accordingly.*

¹ OJ L 144, 4.6.1997, p. 19; Directive as last amended by Directive 2005/29/EC (OJ L 149, 11.6.2005, p. 22).

² **OJ L 309, 25.11.2005, p. 15.**

- (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 Commission¹.
- (42a) *The Council, in accordance with paragraph 34 of the Interinstitutional agreement on better law-making, should encourage Member States to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and make them public.*

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ L 184, 17.7.1999, p. 23.

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*;
- (b) electronic money institutions within the meaning of *Article 1(3)(a) of Directive 2000/46/EC*;
- (c) post office giro *institutions which* are entitled under national *law to* provide payment services;
- (d) *payment* institutions *within the meaning of this Directive*;
- (da) *the European Central Bank and national central banks when they are not acting in their capacity as monetary authority or other public authorities*;
- (db) *Member States or their regional or local authorities when they are not acting in their capacity as public authorities*.

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 as a regular occupation or business *activity*.

Article 2 Scope

1. This Directive shall ***apply to payment*** services ***within*** the Community. However, ***with the exception of Article 64a***, 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.***
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.***
3. ***Member States may waive the application of all or part of the provisions of this Directive to those institutions referred to in Article 2, except the first and second indent, of Directive 2006/48/EC.***

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) *services 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*;
- (e) *money exchange business*, that is to say, cash to cash operations, where the funds are not *held on* a payment account;
- (f) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
 - (i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing for a Uniform Law for Cheques;
 - (ii) paper cheques similar to those referred to in point (i) and governed by the law of Member States which are not party to the 1931 Geneva Convention;
 - (ii a) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 which provides for a uniform law on bills of exchange and promissory notes;*
 - (iii) paper-based vouchers;
 - (iv) paper-based traveller's cheques;
 - (v) paper-based promissory notes;
 - (va) 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*;

- (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;*
- (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 goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not solely act as an intermediary between the payment service user and the supplier of the goods and services;*
- (k) payment transactions carried out between payment service providers *for their own account* as well as *between* agents or *branches for their own account*;
- (ka) *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.*
- (kb) *services by providers to withdraw cash by means of automated teller machines (ATM) acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed in the Annex.*

Article 4 Definitions

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

- (1) “*home Member State*” means any of the following:
 - (i) **■**.
 - (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*;
- (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*;
- (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 and the payee*;
- (3) “*payment system*” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;

- (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*;
- (5) “*payee*” means a natural or legal person who is the *intended recipient* of funds which have been the subject of a payment transaction;
- (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*;
- (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*;
- (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*;
- (6c) “*money remittance*” means *a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, 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*;
- (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;
- (8) “*funds*” means *banknotes and coins*, scriptural money and electronic money as referred to in Directive 2000/46/EC;
- (9) **I**

- (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***;
- (13) “*authentication*” means a procedure which allows the payment service provider to verify the ***use of a specific payment instrument, including its personalised security features***;
- (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***;
- (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***;
- (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***;
- (19a) “*micro-enterprise*” means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined in Articles 1 and 2(1) and (3) of Title I of the Annex to Recommendation 2003/361/EC in the version of 6 May 2003;
- (19b) “*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;
- (19c) “*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 consent given to the payee, or payee’s payment service provider or to the payer’s own payment service provider;
- (19d) “*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 a head office in another Member State shall be regarded as a single branch;
- (19e) “*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.

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:

- (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;
- (ba) ***evidence that the payment institution has the amount of initial capital mentioned in Article 5b;***
- (bb) ***for the payment institutions mentioned in the first subparagraph of Article 5d(1), a description of the measures taken for safeguarding payment service users' funds in accordance with Article 5d;***
- (c) a description of the applicant's ***governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;***

- (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 *and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds*¹;
- (e) **■**.
- (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;
- (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) **■**.
- (i) the identity of *directors and persons responsible for the management of the payment institution* and, *where relevant, persons responsible for the management of the payment services activities of the payment institution, as well as* evidence that *they are of* good repute and *possess* appropriate knowledge and *experience* to perform payment services *as determined by the home Member State of the payment institution*;
- (ia) *where applicable, the identity of statutory auditors and audit firms as defined in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts*²;
- (j) the applicant's legal status *and the articles of association*;
- (k) the address *of the head office*.

For the purposes of *paragraph 1 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.

¹ OJ L 345, 8.12.2006, p. 1.

² OJ L 157, 9.6.2006, p. 87.

Article 5a (new)

Own funds

- 1. Payment institution's own funds, as defined in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC, shall not fall below the higher amount as referred to in Article 5b and in Article 5c.*
- 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, credit institution, investment firm, asset management company or insurance undertaking. This applies accordingly where a payment institution has a hybrid character and carries out activities other than those of the Annex.*
- 3. If the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply Article 5c to payment institutions which are included in the consolidated supervision of the parent credit institution pursuant to Directive 2006/48/EC.*

Article 5b (new)

Initial capital

- 1. Member States shall require payment institutions to hold, at the time of authorisation, initial capital, comprised of the items defined in points (a) and (b) of Article 57 of Directive 2006/48/EC as follows:*
 - (a) where the payment institution carries out only those activities mentioned in point 7 of the Annex, its capital shall at no time be less than EUR 20 000;*
 - (b) where the payment institution carries out any of the activities mentioned in point 8 of the Annex, its capital shall at no time be less than EUR 50 000;*
 - (c) where the payments institution carries out any of the activities mentioned in points 1, 2, 3, 4 and 5 of the Annex, its capital shall at no time be less than EUR 125 000.*

Article 5c (new)
On-going capital

1. Notwithstanding the minimum capital requirements set out in Article 5b, Member States shall require payment institutions to hold at all times own funds calculated in accordance with one of the following three methods, as determined by the competent authorities in accordance with national legislation:

Method A

The payment institutions own funds shall be an amount of at least equal to 10% of its fixed overheads of the preceding year. The competent authorities may adjust that requirement in the event of a material change in a payment institution's business since the preceding year. Where a firm has not completed a full year's business at the date of calculation, the requirement shall be 10% of the corresponding fixed overheads as projected in its business plan unless an adjustment to that plan is required by the competent authorities.

Method B

The payment institution's own funds shall be an amount of at least equal to the sum of the following elements multiplied by a scaling factor k , defined in paragraph 2 below, where Payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year:

(a) 4.0 % of that slice of PV up to EUR 5 Mio.

plus

(b) 2.5 % of that slice of PV above EUR 5 Mio up to EUR 10 Mio.

plus

(c) *1 % of that slice of PV above EUR 10 Mio up to EUR 100 Mio.*

plus

(d) *0.5 % of that slice of PV above EUR 100 Mio up to EUR 250 Mio.*

plus

(e) *0.25 % of that slice of PV above EUR 250 Mio.*

Method C

The payment institution's own funds shall be an amount of at least equal to the relevant indicator as defined in point (a) below multiplied by the multiplication factor, as defined in point (b) below, multiplied again by the scaling factor k, defined in paragraph 2 below:

(a) *The relevant indicator is the sum of the following:*

- interest income*
- interest expense*
- commissions and fees received, and*
- other operating income.*

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items may not be used in the calculation of the relevant indicator. Expenditure of the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under this Directive. The relevant indicator is calculated on the basis of the last twelve monthly observation at the end of the financial year. The relevant indicator shall be calculated over the last financial year. Nevertheless ongoing capital calculated according to that Method shall not fall below 80% of the average of the last three financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

(b) The multiplication factor shall be:

- i) 10 % of that slice of the relevant indicator up to EUR 2.5 Mio.,***
- ii) 8 % of that slice of the relevant indicator from EUR 2.5 Mio. up to EUR 5 Mio.,***
- iii) 6 % of that slice of the relevant indicator from EUR 5 Mio. up to EUR 25 Mio.,***
- iv) 3 % of that slice of the relevant indicator from EUR 25 Mio. up to 50 Mio.,***
- v) 1.5 % above EUR 50 Mio.***

2. The scaling factor k to be used in Method B and C above shall be:

- (a) 0.5 where the payment institution carries out only those activities mentioned in point 7 of the Annex;***
- (b) 0.8 where the payment institution carries out only any of the activities mentioned in point 8 of the Annex;***
- (c) 1.0 where the payments institution carries out any of the activities mentioned in points 1, 2, 3, 4 and 5 of the Annex.***

3. When applying paragraph 1 the competent authorities may, based on an evaluation of the risk management processes, risk loss data base and internal control mechanisms of the payment institution, require the payment institution to hold an amount which is up to 20 % higher than the amount which would result from the application of the method chosen in accordance with paragraph 1, or permit it to hold an amount which is up to 20 % lower than the amount which would result from the application of the method chosen in accordance with paragraph 1.

Article 5d (new)
Safeguarding requirements

1. Member States or the competent authorities shall require that a payment institution which carries out any of the payment services in the Annex and, at the same time, engages in other business activities under Article 10(1)(d) shall safeguard funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, as follows:

Either:

- (a) they shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and, where they are still held by the payment institution but not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets as defined by the competent authorities of the home Member State;*
- (b) they shall be insulated according to the national law of the Member States in the interest of those payment service users against the claims of other creditors of the payment institution , in particular in the event of insolvency;*

or

they shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution itself for an amount equivalent to that which would have been segregated that in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

2. Where a payment institution is required to safeguard funds under paragraph 1 and a portion of the amount of funds referred to in paragraph 1 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 the obligations under paragraph 1. Where this portion is variable or unknown in advance, Member States may allow payment institutions to 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.

3. Member States or the competent authorities may require that payment institutions, which are not engaged in business activities other than payment services under Article 10(1)d, shall also comply with the safeguarding requirements in paragraph (1).

4. Member States or the competent authorities may also limit such safeguarding requirements to funds of those payment service users whose funds individually exceed a threshold of 600 EUR.

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 other than 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.

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.

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.

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.

2 -a. Where a payment institution carries out any of the payment services in the Annex and, at the same time, engages in other business' activities, the competent authorities may require the establishment of a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or threaten to impair either the financial soundness of the payment institution or the ability of the competent authorities to monitor the payment institution's compliance with all obligations laid down by this Directive.

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.

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.

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.*

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. Reasons shall be given whenever an authorisation is refused.

Article 7a (new)

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**
- (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 there.*

3. *The withdrawal of authorisation shall be made public. It may also be communicated to the interested parties by the competent authority.*

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) which are entitled under national law to provide payment services. They shall be entered in the register of the home Member State.*

This register shall identify the payment services for which the payment institution is authorised or for which the natural or legal person has been registered. Authorised payment institutions shall be separately listed in the register from natural and legal persons that have been registered in accordance with Article 21. The register shall be publicly available for consultation, accessible online, and be updated on a regular basis.

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 9a (new)
Accounting and statutory audit

1. *The Fourth Council Directive 78/660/EEC and where applicable, the Seventh Council Directive 83/349/EEC and Directive 86/635/EEC and Regulation (EC) 1606/2002 are applicable mutatis mutandis to payment institutions.*
2. *Unless exempted under Directives 78/660/EEC and, where applicable, Directive 83/349/EEC and Directive 86/635/EEC, the annual accounts and consolidated accounts of payment institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC.*
3. *For supervisory purposes, Member States shall require that payment institutions provide separate accounting information for payment services set out in the Annex and activities referred to in Article 10 paragraph 1, which shall be subject to an auditor's report. This report shall be prepared, where applicable, by the statutory auditors or an audit firm.*
4. *The obligations established in Article 53 of Directive 2006/48/EC shall apply mutatis mutandis to the statutory auditors or audit firms of payment institutions in respect of payment services activities.*

Article 10
Activities

1. *Apart from the provision of payment services, set out in the Annex, payment institutions shall be entitled to engage in the following activities:*
 - (a) **I.**
 - (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;

- (c) *the operation of payment systems, without prejudice to Article 23;*
- (ca) *business activities other than the provision of payment services, having regard to applicable Community and national law.*

2. *When payment institutions engage in the provision of payment services under paragraph 1(a), they may only hold payment accounts used exclusively 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.*

2a. *Payment institutions may grant credit related to payment services referred to in points 4, 5 or 8 in the Annex only if the following requirements are met:*

- a) *the credit is ancillary and granted exclusively in connection with the execution of a transaction and*
- b) *notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed in accordance with Article 6 paragraph 3 and Article 20 shall be repaid within a short period which shall in no case exceed twelve months and*
- c) *such credit is not granted from the funds received or held for the purpose of executing a payment transaction and*
- d) *the own funds of the payment institution are at all times, to the satisfaction of the supervisory authority, appropriate in view of the overall amount of credit granted.*

2b. *Payment institutions may not conduct the business of taking deposits or other repayable funds within the meaning of Articles 5 of Directive 2006/48/EC.*

2c. This Directive shall be without prejudice to national measures implementing Directive 87/102/EC regarding the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. This Directive shall also be without prejudice to other relevant Community or national legislation regarding aspects not harmonised by this Directive with regards to the conditions for granting of credit to consumers, in conformity with Community law.

SECTION 2 OTHER REQUIREMENTS

Article 11

Use of agents, or entities to whom activities are outsourced

1. *When* a payment institution intends to provide payment services through *an agent* it shall communicate *the following information* to the competent authorities in its home Member State:

- a) the name and address of the agent;*
- b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC;*
- c) █*
- d) the identity of directors and persons responsible for the management of the agent 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 according to paragraph (1) (a) to (d) then they may list the agent in the register established under Article 8.

1b. Before listing the agent in the register, the competent authorities may, if they consider that the information provided to them is incorrect 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 agent in the register established under Article 8.

1d. If the payment institution wishes to carry on activities in another Member State by engaging an agent it must follow the procedures set out in Article 20. Before in that case the agent 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 and take its opinion into account.

1e. 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.

2. Where a payment institution intends to outsource operational functions of payment services, 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.

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. 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.*

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

SECTION 2 OTHER REQUIREMENTS

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 *ensure that the requirements of this Directive are met.*

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*.

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*.

Article 14
Place of the head office

I.

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 which are to carry out the duties provided for under* this Title either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law, *including national central banks*.

The competent authorities shall be such as to guarantee independence from economic *bodies* and to avoid conflicts of interest. *Without prejudice to the first subparagraph*, 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 the authorities competent for matters covered by this Title are not the competent authorities responsible for supervision of credit institutions.*

3a. The tasks of the competent authorities designated under paragraph 1 shall be the responsibility of the competent authorities of the home Member State.

3b. Paragraph 1 shall not imply that the competent authorities are required to supervise business activities of the payment institutions other than the provision of payment services, set out in the Annex, and the activities listed in point b) of Article 10 paragraph 1.

Article 16 **Ongoing** supervision

1. Member States shall ensure that the controls exercised by the competent authorities for checking continued compliance with this Title are proportionate, adequate and responsive to the risks to which payment institutions are exposed.

In order to check compliance with this Title, the competent authorities *are entitled to take the* following steps, *in particular*:

- (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;

- (c) to issue recommendations and guidelines *and, if applicable, binding administrative provisions*;
- (d) **l**;
- (e) to suspend or withdraw authorisation in cases *referred to in Article 7a*.

2. *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.*

3. *Notwithstanding the requirements of Article 5 a, paragraphs 1 and 2 and Article 5b and 5c, Member States shall ensure that the competent authorities are entitled to take steps described under paragraph 1 to ensure sufficient capital for payment services, in particular where the non-payment services activities of the payment institution impair or threaten to impair the financial soundness of the payment institution.*

Article 17 Professional secrecy

1. Member State 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.

2a. *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

1. 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.
2. The first paragraph shall apply also in respect of failure to act.

Article 19
Exchange of information

1. The competent authorities of the different Member States shall cooperate ***with each other and, where appropriate, with the European Central bank and the national central banks of the Member 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;
 - (c) other relevant authorities designated under this Directive, ***Directive 95/46/EC, Directive 2005/60/EC*** and other Community legislation applicable to payment service providers, ***such as legislation applicable to the protection of individuals with regard to the processing of personal data as well as money laundering and terrorist financing.***

Article 20

Exercise of the right of establishment and freedom to provide services

1. Any authorised payment institution wishing to ***provide payment services*** 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, ***the names of those responsible for the management of the branch, its organisational structure*** 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, ***an agent or outsourced entity*** 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, ***an agent or an outsourced entity. In this regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.***

4a. The above is without prejudice to the obligation of competent authorities under Directive 2005/60/EC and Regulation (EC) No. 1781/2006, in particular under Article 37 (1) of Directive 2005/60/EC and Article 15 (3) of Regulation (EC) No. 1781/2006 to supervise or monitor the compliance with the requirements laid down in that Directive and Regulation.

SECTION 4 DEROGATION

Article 21 Conditions

1. Notwithstanding Article 8, 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 to 3 with the exception of Article 15, 17 to 19 and allow natural or legal persons to be entered in the register established under Article 8, where

- (a) ***the average of the preceding twelve months total amount of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million per month; this requirement shall be assessed on the projected total amount of payment transactions in its business plan unless an adjustment to that plan is required by the competent authorities;***

and

- (b) ***none of the natural persons responsible for the management or operation of the business have been convicted of offences relating to money laundering or terrorist financing or other financial crimes.***

1a. *Any natural or legal person registered in accordance with this Article shall be required to have its head office or place of residence in the Member State in which it actually carries on its business.*

2. The persons referred to in paragraph 1 shall be treated as payment institutions. However, *Article 6(3) and 20 shall not apply to them.*

2a. Member States may also provide that *any natural or legal person registered in accordance with this Article* 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 take the steps necessary to ensure that where the conditions of this Article are no longer fulfilled, the person shall seek authorisation within 30 calendar days according to the procedure in Article 6.*

3a. *This waiver shall not be applied in respect of provisions as laid down in Directive 2005/60/EC or national anti money laundering provisions.*

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 total amount of *payment transactions executed as at the 31st December of each calendar year*, as referred to in point (a) of *Article 21(1)*.

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 *such as settlement risk, operational risk and business risk* 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) *payment systems meeting all of the following requirements:*

- *a sole payment service provider (whether as a single entity or as a group) is or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system; and*
- *where that sole payment service provider (whether as a single entity or as a group) licenses other payment service providers to participate in the system, the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees;*

Article 23a (new)

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.

TITLE III

Transparency of conditions *and information requirements* for payment services

Chapter -I

General rules

Article 23b (new)

Scope

1. 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.

2. Member States may provide that provisions in this Title shall be applied to micro-enterprises in the same way as to consumers.

3. This Directive shall be without prejudice to national measures implementing Directive 87/102/EC. This Directive shall also be without prejudice to other relevant Community or national legislation regarding aspects not harmonised by this Directive with regards to the conditions for granting of credit to consumers, in conformity with Community law.

Article 23c (new)

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 Directive 2002/65/EC is also applicable, the information provisions under Article 3 (1) of said Directive, with the exception of subparagraph (2)(c)-(g), 3(a) (d) and (e) and 4(b), shall be replaced with Articles 25, 26, 30 and 31 of this Directive.

Article 23 d (new)

Charges for information

1. The payment service provider may not charge the payment service user for providing information under this Title.

2. The payment service provider and the payment service user may agree on charges on additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.

3. *Where the payment service provider may impose charges for information under paragraph 2, they shall be appropriate and in line with the payment service provider's actual costs.*

Article 23 e (new)
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.

Article 23f (new)
Derogation from information requirements for low value payment instruments and electronic money

1. *In cases of payment instruments, which according to the framework contract solely concern individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150 at any time:*

- (a) by way of derogation from Articles 30, 31, and 35, the payment service provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an indication of where any other information required under Article 31 is made available in an easily accessible manner;*
- (aa) it may be agreed that, by way of derogation from Article 33, the payment service provider shall not be required to propose changes in the contractual conditions in the same way as provided for in Article 30 (1);*

(b) *it may be agreed that, by way of derogation from Articles 36 and 37, after the execution of a payment transaction:*

(i) *the payment service provider shall provide or make available only a reference enabling the payment service user to identify the payment transaction, its amount and charges for it and/or in the case of several payment transactions of the same kind made to the same payee, only information on the total amount and charges of these payment transactions;*

(ii) *the payment service provider shall not be required to provide or make available information referred to in point (i) if the payment instrument is used anonymously or if the payment service provider otherwise is not technically in a position to provide it. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.*

2. *For purely national payment transactions, Member States or their competent authorities may reduce or double the amounts referred to in paragraph 1. They may increase them for prepaid payment instruments up to EUR 500.*

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 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.*

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 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. 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*.

(2a) 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:*

- (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) *all* charges payable by the payment service user to *his* payment service provider and, where applicable, *the breakdown of the amounts of any charges*;
 - (ca) *where applicable, the actual or reference exchange rate to be applied to the payment transaction*;
2. *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.*

Article 27

Information *for* 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:

- (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*;
- (ba) *the amount of any charges for the payment transaction payable by the payer and, where applicable, the breakdown of the amounts of any charges*;
- (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*;
- (ca) *date of the receipt of the payment order.*

Article 28
Information *for* 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 *in the currency in which the funds are at the payee's disposal*;
- (c) the amount of *any charges for* the payment transaction payable by the payee *and, where applicable, the breakdown of the amounts of any charges*;
- (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*;
- (*da*) *the credit value date*.

Chapter 2
Framework *contracts*

Article 29
Scope

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

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.***

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.

(2a) 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 communication with the payment service provider;

- (b) 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;*

(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;**(c) the form of and procedure for transmitting consent to execute a payment transaction and withdrawal of such consent in accordance with Articles 41 and 56;*
- (d) a reference to the point in time of receipt of a payment order as defined in Article 54(1) and the cut-off time, if any, established by the payment service provider;*
- (e) the maximum execution time for the payment services to be provided;*
- (f) whether there is a possibility to agree on spending ceilings for the use of the payment instrument in accordance with Article 43(1);*

(3) charges, interest and exchange rates

- (a) all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of any charges;*

- (b) *where applicable, the interest and exchange rates to be applied or, if 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;*
 - (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);*
- (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 in which and frequency with which information under this Directive is to be provided or made available;*
 - (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 the contractual terms of the framework contract and information and conditions according to Article 32;*
- (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(1)(b);*
 - (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 within what period of 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;*
- (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;*
- (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 that he does not accept 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;*
- (7) *redress*
 - (a) *any contractual clause on law applicable to the framework contract and/or the competent court;*
 - (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

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.

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*.

Where applicable in accordance with Article 31(6)(a), the payment service provider shall 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 proposed 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 the proposed application of the changes.

2. *Changes in the interest or exchange rates may be applied immediately and 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 Article 31(3)(b) and (c). The payment service user shall be informed of any 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. However, changes in interest or exchange rates which are more favourable to the payment service users, may be applied without notice.*

(2a) 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.

Article 34
Termination

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

1. *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.*

1a. *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 by the payment service user. 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 parties to declare the framework contract voided or null and void.*

2b. *Member States may provide more favourable provisions for payment service users.*

Article 35

Information before execution of an individual payment transaction

In the case of *an individual* payment transaction under a framework contract *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 applicable, the breakdown of the amounts of any charges*.

Article 36

Information *for* 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 *without undue delay 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;
- (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*;
- (c) *where applicable*, the amount of *any charges* for the payment transaction, *and the breakdown thereof, or the interest payable by the payer*;
- (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*;
- (da) *the debit value date or the date of receipt of the payment order*.

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*.

2a. However, Member States may require the payment service provider to provide information on paper once a month free of charge.

Article 37

Information *for* 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 *without undue delay* 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*;
- (b) **1**;
- (c) *the amount* of the payment transaction *in the currency in which the payee's payment account is credited*;
- (d) *where applicable*, the amount of any charges *for* the payment transaction *and the breakdown thereof, or the interest payable by the payer*;
- (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*;
- (ea) *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*.

2a. However, Member States may require the payment service provider to provide information on paper once a month free of charge.

Article 38 Micro payments

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Chapter 3 Common provisions

Article 39 Transaction currency and currency conversion

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

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 exchange* rate to be used for converting the transaction.

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

Article 40
Information on additional charges or reductions

1. Where, for the use of a given ***payment instrument***, the payee requests a ***charge*** or offers a ***reduction***, ***the*** payee ***shall inform*** the payer ***thereof*** prior to the initiation of the payment transaction.
2. Where, for the use of a ***given payment*** instrument, a payment service provider or a third party requests a ***charge***, ***he*** shall ***inform*** the payment service user ***thereof*** prior to the initiation of the payment transaction.

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

Chapter –1
Common provisions

Article 40b(new)
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, 56 and 67 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.***
2. ***Member States may provide that provisions in this Title shall be applied to micro enterprises in the same way as to consumers.***
3. ***This Directive shall be without prejudice to national measures implementing Directive 87/102/EC. This Directive shall also be without prejudice to other relevant Community or national legislation regarding aspects not harmonised by this Directive with regards to the conditions for granting of credit to consumers, in conformity with Community law.***

Article 40c (new)
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.*
- 3. 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 forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.*

Article 40d (new)
Derogation for low value payment instruments and electronic money

- 1. In the case of payment instruments which according to the framework contract, solely concern individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150 at any time payment service providers may agree with their payment service users:*
 - (a) that Articles 46(1)(b), 47(1)(c) and (ca) as well as 50(3) and (4) do not apply if the payment instrument does not allow its freezing or prevention of further use;*
 - (b) that Articles 48, 49 and 50(1) and (2) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a transaction was authorised;*

- (c) *by way of derogation from Article 55(1), that the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;*
 - (d) *by way of derogation from Article 56, that the payer may not revoke the payment order after transmitting the payment order or his consent to it to the payee;*
 - (e) *by way of derogation from Articles 60 and 62, that other execution periods apply.*
2. *For purely national payment transactions, Member States or their competent authorities may reduce or double the amounts referred to in paragraph 1. They may increase them for prepaid instruments up to EUR 500.*
3. *Articles 49 and 50 shall apply also to electronic money within the meaning of Article 1 (3) (b) of Directive 2000/46/EC, unless the payer's payment service provider does not have the ability to freeze the account or instrument. Member States may limit this derogation to accounts or instruments of a certain value.*

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*. *A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.*
2. *Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider.*

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

2a. *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 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.*

2b. *The procedure for transmitting consent shall be agreed between the payer and his payment service provider.*

Article 42
Transmission of consent

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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 unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his liability to pay.*

2a. *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.*

2b. *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.*

Article 44
Record-keeping

1.

Article 45
Unauthorised transactions and withdrawal of consent

1.

Article 46
Obligations on the payment service user
in relation to *payment instruments*

1. The payment service user *entitled to use the payment instrument* shall meet the following obligations:

- (a) to use *the payment instrument* in accordance with the terms governing the *issue* 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 *he* receives a *payment instrument*, take all reasonable steps to keep its *personalised* security features safe.

Article 47
Obligations on the payment service provider
in relation to *payment instruments*

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

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

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.*

Article 47a (new)
Notification of unauthorised or incorrectly executed payment transactions

The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed transactions giving rise to a claim, including that under Article 67, and not later than 13 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

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

2. **1.**

3. *Where a payment service user denies having authorised an executed payment transaction*, the use of a *payment instrument* recorded by the payment service provider shall *in* itself *not necessarily* be sufficient to *prove* either 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.

4. **1.**

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 which*** would have existed if the unauthorised payment transaction had not taken place.
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 failed to fulfil his obligations under Article 46, 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.***

3. The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated *payment instrument* after the *notification in accordance with Article 46(1)(b)*, except where he has acted fraudulently.

4. 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 *he* has acted fraudulently.

Article 51

Electronic money

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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*
- (b) the amount of the *payment* transaction *exceeds* the amount *the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case*.

At the request of the payment service provider, the payer shall provide factual elements relating to such conditions.

The refund consists of the full amount of the executed payment transaction

For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in the first sentence are not met.

2. However, for the purposes of ***paragraph 1***, 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.

2a. It may be agreed in the framework contract between the payer and his payment service provider that the payer does not have the right to a refund where he has transmitted his consent to the payment order directly to his payment service provider and, where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or 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 a period of eight weeks from the date on which the funds were debited.***

2. Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the body to which the payer may refer the matter in accordance with Articles 72 to 75 if he does not accept the justification provided.

The payment service provider's right under sentence 1 to refuse the refund shall not apply in case of Article 52 paragraph 1 sentence 4.

Chapter 2
Execution of a payment transaction

SECTION 1
PAYMENT ORDERS AND AMOUNTS TRANSFERRED

Article 54
Receipt of payment orders

1. Member States shall ensure that ***the point in time of receipt is the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's payment service provider. If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order will be deemed to have been received on the next business day. 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 a 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. If the agreed day is not a business day for the payment service provider, the payment order received will be deemed to have been received on the next business day.***

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 at the earliest opportunity, 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.*

2a. *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 *once it has been received* by the payer's payment service provider, *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 after transmitting the payment order or his consent to it to the payee.*

1b. *However, in the case of a direct debit and without prejudice to refund rights the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.*

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.*

2a. 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 and 1b, the payee's agreement shall also be 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

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Article 57

Fees

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Article 58

Amounts transferred and amounts received

1. **Member States shall require *the payment* service provider *of the payer, the payment service provider of the payee and any intermediaries of the payment service providers to transfer* the full amount of the payment transaction *and refrain from deducting charges* from the amount transferred.**

2. ***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. *In that case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.***

2a. *If any charges other than those referred to in paragraph 2 are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. In cases where the payment transaction is initiated by or through the payee, his payment service provider shall ensure that the full amount of the payment transaction is received by the payee.*

SECTION 2 **EXECUTION TIME AND VALUE DATE**

Article 59 Scope

1. This Section shall apply to:

- (a)** *euro currency payment transactions;*
- (b)** *national payment transactions in the currency of the Member State concerned;*
- (c)** *payment transactions involving only one currency conversion between the euro and the currency of a non-euro Member State, provided that the required currency conversion is carried out in the Member State of the non-euro currency concerned and, in the case of cross-border transactions, the cross-border transfer takes place in euro.*

1a. *This Section shall apply to other payment transactions, unless otherwise agreed between the payment service user and his payment service provider, with the exception of Article 64a which is not at the disposal of the parties. However, when the payment service user and his payment service provider agree on a longer period than those laid down in Article 60, for intra community payment orders such period shall not exceed four business days following the point in time of receipt in accordance with Article 54.*

Article 60
Payment transactions *to a payment account*

1. Member States shall require the payer's payment service provider to ensure 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 *service provider's* account at the latest *by* the end of the *next business* day. *Until 1 January 2012*, a payer and his payment service provider may agree on a period no longer than three *business* days. *These periods may be extended by a further business day for paper-initiated payment transactions.*

1a. Member States shall require the payment service provider of the payee to value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with Article 64a.

2. *Member States shall require the payee's payment service provider to transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and his payment service provider, enabling settlement, as far as direct debit is concerned, at the agreed due date.*

Article 61
Payment transactions initiated by or through the payee

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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

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 made available and value dated immediately after the point of time of the receipt of the funds. Where the payment service user is not a consumer, the amount shall be made available and value dated at the latest on the next business day after the receipt of the funds.

Article 64
National payment transactions

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

Article 64a (new)
Value date and availability of funds

1. Member States shall ensure that the credit value date for the payee's payment account is no later than the business day at which the amount of the payment transaction is credited to the payee's payment service provider's account.

The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

2. Member States shall ensure that the debit value date for the payer's payment account 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
Availability of funds on a payment account

I.

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.

Article 67
Non-execution or defective execution

1. *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 to the payer for correct execution of the payment transaction unless he can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 60(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.*

Where the payer's payment service provider is liable under the first sub-paragraph, he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state which would have existed if the defective payment transaction had not taken place.

Where the payee's payment service provider is liable under the first subparagraph, he shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, his payment service provider shall regardless of liability under this paragraph, upon request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

2. *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 to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 60 (2). Where the payee's payment service provider is liable under this sub-paragraph, he shall immediately re-transmit the payment order in question to the payment service provider of the payer.*

In addition, the payment service provider of the payee shall without prejudice to Articles 47a, 66(2) and (3) and 70, be liable to the payee for handling the payment transaction in accordance with its obligations under Article 64a. Where the payee's payment service provider is liable under this sub-paragraph, he shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under the first and second sub-paragraphs, the payer's payment service provider shall be liable to the payer. Where the payer's payment service provider is so liable, he shall, as applicable, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state which would have existed if the defective payment transaction had not taken place, in each case without undue delay.

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, his payment service provider shall regardless of liability under this paragraph 1b, upon request, make immediate efforts to trace the payment transactions and notify the payee of the outcome.

3. *In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective execution of the payment transaction.*

Article 68
Transfers to third countries

I.

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 69a (new)
Right of recourse

1. Where the liability of a payment service provider under Article 67 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred and/or sums paid under Article 67.

2. Further financial compensation may be determined in accordance with agreements between payment service providers and/or intermediaries and the law applicable to the agreement concluded between them.

Article 70
No liability

Liability under *Chapter 1 and 2* shall not apply in cases of *abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary*, or where a payment service provider is bound by other legal obligations covered by national or Community *legislation*.

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.

Article 73
Penalties

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

Article 74
Competent authorities

1. Member States shall take all the measures necessary to ensure that the complaints procedures and penalties provided for in *Articles 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 right of establishment the competent authorities of the host Member State.*

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 *are put in place for disputes* concerning rights and obligations *arising under* this Directive, using existing bodies where appropriate.
2. In the case of cross-border disputes, Member States shall make sure that these bodies cooperate actively in resolving them.

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) *change the definition of micro enterprise within the meaning of Article 4(19a) in accordance with an amendment of Recommendation 2003/361/EC;*

(c) *update the amounts specified in Articles 21(1) and 50(1) in order to take account of inflation and significant market developments.*

1a. None of the implementing measures enacted may change the essential provisions of this Directive.

Article 77
Committee

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

2. Where reference is made to this paragraph in other articles, *Articles 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 23b(2), 23e, 23f(3), 34(3), 36(3), 37(3), 40b(2) 40c(3a), 40d(3), 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.

1a. *Where a Member State makes use of any of the options referred to in paragraph 1, it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make information public by a web-site or in another easily accessible way.*

2. **1.**

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.

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,*
- *the application of Article 5b, Article 5c and Article 5d concerning prudential requirements for payment institutions, in particular as regards ongoing capital requirements and safeguarding requirements (ringfencing),*

- *the possible impact of the granting of credit related to payments services, as set out in Article 10(2a),*
- *the possible impact of the authorisation requirements of payment institutions on competition between payment institutions and other service providers as well as on barriers to market entry by new service providers,*
- *the application Articles 23f and 40d of this Directive and the possible need to revise the scope of this Directive with respect to low value payment instruments and electronic money, and*
- *the application and functioning of Articles 60 and 67 for all kinds of 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 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.***

1a. Notwithstanding paragraph 1, an exemption to the authorisation requirement under Article 6 shall be granted to financial institutions that have commenced activities within the meaning of point 4 of Annex I of Directive 2006/48/EC and meet the conditions of Article 24, paragraph 1, point (e) of subparagraph 1 of that Directive in accordance with national law before [date of entry into force of this Directive]. However, they shall notify the competent authorities of the home Member State of these activities by [date of entry into force of this Directive]. Furthermore, this notification shall information demonstrating that they meet the requirements of Article 5 (a), (bb), (f) to (i), (j) and (k). Where the competent authorities are satisfied that these requirements are met, these institutions shall be registered under Article 8 of this Directive. Member States may allow their competent authorities to exempt these financial institutions from the requirements under Article 5 of this Directive.

1b. 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.

1c. 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

Directive 2006/48/EC shall be amended as follows:

1. *Point 4 of Annex I shall be replaced by the following text:*
 - (4) *payment services" as defined in Article 4 (2a) of Directive [...] of the European Parliament and of the Council on payment services in the internal market(*)*
2. *The point 5 of Annex I shall be replaced by the following text;*
 - (5) *Issuing and administering other means of payment (e.g. travellers' cheques and bankers' draft as far as this activity is not covered by point 4*

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 Directive [...] of the European Parliament and the Council (*) is also applicable, the information provisions under Article 3(1) 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.*

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

Article 83a (new)
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) ”.

1a. Article 15(1) and (2) shall be replaced by the following text:

“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 institutions as defined in article 4 (2b) of Directive [] of the European Parliament and of the Council on payment services in the internal market, which mainly provide the payment services referred to in point 7 of the Annex of that Directive, including natural and legal persons, for which a derogation has been granted in accordance with Article 21 of that Directive, 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) and institutions as defined in article 4 (2b) of Directive [] of the European Parliament and of the Council on payment services in the internal market, which mainly provide the payment services referred to in point 7 of the Annex of that Directive, 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 **1 November 2009** at the latest. They shall forthwith communicate to the Commission the text of those **provisions**.

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

ANNEX
“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 *and/or acquiring of payment instruments*.
- (6) **I**.
- (7) *Money remittance*.
- (8) Execution of payment transactions *where the consent of the payer to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user*.
- (9) **I**.