



COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0245 (COD)

Implementing the Community Lisbon programme:

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on payment services in the internal market

and amending Directives 97/7/EC, 2000/12/EC and 2002/65/EC

(presented by the Commission)

{SEC(2005) 1535}

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Modern economies are based on efficient and secure payment systems. Payment systems facilitate the purchase of goods and services and provide for 231 billion transactions (cash and non-cash) per year in the Community with a total value of EUR 52 trillion. However, the current payment system has high cost. The Commission's objective is to create a Single Payment Market where improved economies of scale and competition would help to reduce the cost of the payment system. Based on Articles 47(2) and 95(1) of the EC Treaty the Commission's proposal will establish a common framework for the Community payments market creating the conditions for integration and rationalisation of national payment systems. This is complemented by industry's initiative for a Single Euro Payment Area (SEPA), aimed at integrating national payment infrastructures and payment products for the euro-zone.

A modern and technology based economy needs an efficient and modern payment system. This will have a direct and positive impact on competitiveness of the financial sector and will improve the competitiveness of the economy as a whole.

The Commissions' initiative will focus on electronic payments as an alternative to expensive cash. Modern electronic payments are recognised to stimulate consumer spending and economic growth¹. Best practice shows that modernisation of payment systems and increased use of the most cost-effective services can half the average cost of producing payments over a period shorter than ten years. If, for example, the use of cash would be reduced to the level of countries with the lowest usage, this would generate a surplus of EUR 5.3 billion².

Throughout Europe, there is room for further product standardization and consolidation of payment services. Based on a harmonised legal framework it will be possible for providers to rationalise payment infrastructures and services and for users to enjoy increased choice and a high level of protection. The overall results will be greater economies of scale and improve efficiency of payment systems in the European Community. For example if unit cost levels were to decrease to 20 percent above the best practice level in the EU, this would generate EUR 10 billion additional savings overall. Standardisation of technical and legal requirements of payments will allow banks to offer faster and more economic end-to-end automatable payments and facilitate invoicing for businesses. As a consequence businesses would have access to quicker and more reliable settlement and improved cash flow. This is crucial for cross-border trade and essential for reaping savings from automation - businesses report potential gains of up to EUR 50–100 billion a year.

Opening up national payment markets for new providers and ensuring a level-playing

¹ Studies (e.g. VISA International and the Commonwealth Business Council, 2004) claim that for every ten per cent increase in the share of electronic payments in an economy, consumption is stimulated by as much as half a percent.

² Estimates of savings are based on a McKinsey study, 2005.

field will increase competition and foster cross-border provision of services. Consumers of financial services will benefit from increased competition, transparency and choice in the payment services market. This should foster price convergence between Member States and reduce the current price range of a factor 1:8³. If price levels in the most expensive countries, for example, were to fall to the current average this would create enormous savings and a seamless payment experience for consumers and businesses e.g. Italian and Spanish users would see savings of respectively EUR 5.4 billion and EUR 1.3 billion. Or alternatively, merchants report if they were able to buy services from the most competitive providers in the EU, they would in some cases pay up to 20 times less for card payments.

For realising the full potential of the Single Payment Market, industry has to play a pivotal role. It is the payment service providers, which will be faced with the challenge to find the best way to integrate national fragmented payment infrastructures, in order to benefit from the potential savings and offer new technologically advanced and efficient payment services. Similarly businesses will have to take steps to ready themselves to interact with these new payment systems. This will require significant investments from providers and businesses.

However, payments industry has committed itself in the SEPA program to make these investments and to complete SEPA by 2010. The substantial benefits are considered worth the initial investment costs. The Commission's proposal will facilitate these investments and industry's work on SEPA.

- **General context**

The current state of the payments system is unsatisfactory and the full potential of the Internal Market remains unexploited. The rules on infrastructure for payments in the Community are national, not yet adapted to fit the Single Market. They are not geared to handle cross-border payments as efficiently as national ones and do not compete with each other. The few existing cross-border payment systems suffer from a lack of critical mass (only 3 % of payments) and operate with much higher costs per unit than national systems. The consequence of this is, that:

- The current payment system is too expensive. Studies⁴ show that the current fragmented nationally based payment systems cost around 2–3 % of GDP. Banks themselves bear a large slice of this cost. At present banks are spending a third of their operating costs on payments. But in the end the whole economy and all users of financial services bear the cost of an inefficient and uncompetitive payment system.
- Consumers are complaining about the effect of fragmentation on them. They have limited access to products that function EU-wide (e.g. efficient direct debits are not available on a cross-border basis). But worse they do not have access to those providers from other EC countries which might provide them with a cheaper and swifter service.

³ CapGemini, 2005.

⁴ McKinsey, 2005 and others e.g. Van Hove, De Grauwe, T. ten Raa, EPC, Dutch National Bank, Sveriges Riskbank.

- The lack of competition in the market is hurting retailers. In some Member States, where payment service providers may exercise a de facto monopoly, retailers are charged up to 5 % of their total card sales. The Commission's anti-trust authority and national authorities are already investigating the market for debit and credit cards in the EU.
- Corporates also suffer from this fragmentation. They are unable to integrate their invoicing with their payments.

- **Existing provisions in the area of the proposal**

Progress on harmonizing the legal framework for payments is rather limited. The European Community has adopted three legal acts:

- o Recommendation (97/489/EC) providing for the protection of customers using electronic payment verification instruments, such as payment cards.
- o Directive (97/5/EC) facilitating cross-border credit transfers in establishing common customers' protection requirements;
- o Regulation (2560/2001) on cross-border payments eliminated the difference of price between cross-border and national payments.

Although Community legislation, in particular the Regulation on cross-border payments, has made it easier and cheaper for customers to perform many types of payments in euro within the Internal Market and has 'kick-started' industries' initiative for a Single Euro Payment Area (SEPA) it did not go far enough to achieve a true Single Market.

- **Consistency with other policies and objectives of the Community**

The creation of the Single Market in 1992 and the introduction of the euro in 1999 laid the foundation for integration of EC financial markets. The initiative for an integrated and efficient EC payments market is one of the key actions of the Community Lisbon programme⁵ and makes an essential contribution to the Lisbon partnership for growth and employment⁶, and is in line with recent EC financial market policy objectives (e.g. Financial Services Action Plan). The proposed new legal framework for the EC payments market will also benefit from the Commission's efforts to increase competition through the application of competition policy.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission has consulted stakeholders, through two permanent expert groups⁷,

⁵ COM (2005) 330 and SEC (2005) 981 of 20.7.2005.

⁶ COM (2005) 24 of 2.2.2005.

⁷ Payment System Government Expert Group and Payment System Market Group.

numerous bilateral meetings and several rounds of consultations on the complex and technical matters of this Directive. The Commission has benefited significantly from the input given by stakeholders and interested parties. The sectors consulted cover the EU-25 and are: payments industry (banks, e-money and mobile payment providers, money remitters infrastructure providers, payment cards organisations, etc.), retail associations (Eurocommerce), industry general, corporate treasurers (EACT, TWIST), SME-organisation, national and European consumer associations (BEUC, FIN-USE), payments experts, consulting firms, etc.

From 2000–2002 the Commission prepared⁸ a Communication and two working documents⁹ and seven surveys for a public consultation on a possible legal framework for payments and to assess the current state of the market in Member States. In 2003 the Commission prepared a Communication¹⁰ for wide public consultation on the possible scope and content of a new legal framework. The final proposal was prepared in 2004–2005 in intensive collaboration with the two permanent expert groups and consultation with stakeholders and based on six working documents containing the possible draft provisions and impact assessment.

Summary of responses and how they have been taken into account

Summarising the results of the Commission's consultations, all respondents saw a need for legal measures to achieve a Single Payment Market. Views varied, however, on the scope and degree of the legal measures required. All respondents considered the objectives of rationalisation and consolidation of existing Community instruments to be desirable. A future legal framework should update and draw together the various pieces of Community law and harmonise relevant national legislation in one coherent legal instrument.

Three open consultations¹¹ were conducted over the internet on 31.1.2000, on 14.5.2002 and from 2.12.2003 to 15.2.2004. The results are available on http://europa.eu.int/comm/internal_market/payments/framework/index_en.htm.

• **Collection and use of expertise**

The Commission made wide use of external expertise during the preparation of this proposal. Public consultation and input of two expert groups provided valuable expertise.

• **Impact assessment**

In order to achieve the stated objectives of the new legal framework for payments due consideration was given to the type of policy intervention (no action vs. regulatory approach vs. combination of regulation and market self-regulation) and the type of legal instrument (Regulation vs. Directive) in the impact assessment. The Commission

⁸ Most of the documents have been made publicly available on http://europa.eu.int/comm/internal_market/payments/.

⁹ MARKT/208/2001 and MARKT/4007/2002.

¹⁰ COM (2003) 718 final.

¹¹ COM (2000) 36 final, public working document on a new legal framework (2002), COM (2003) 718 final.

considered the following alternatives in the chosen scope of this Directive:

Objective 1: Enhance competition between national markets and ensure a level-playing-field.

Alternative 1. Keep status quo of nationally fragmented market access requirements

Alternative 2. Harmonisation of market access requirements for non-credit institution payment service providers and introduction of a specific license for payment institutions

An assessment of the potential social and economic impacts of differentiated market access conditions between Member States confirmed that the current situation is detrimental to the functioning of the Single Market and creates substantial barriers to market entry. Fragmented market access requirements distort competition and lead to higher prices for users and high profits for dominating providers in national markets and lower levels of innovation.

The Commission carried out a risk assessment for the business activities of non-credit institution providers and found that the associated risks are hugely different from those of credit institutions. No empirical evidence of problems in the sector or events of bankruptcy were found which would warrant similar requirements as for the business of credit institutions. Particular protection objectives are not present: no depositor protection, no systemic importance of the systems concerned and no threat to the integrity and stability of the financial system. A well balanced set of qualitative prudential requirements seems to best respond to the operational and limited financial risks payment institutions face in the course of their business. Quantitative requirements (such as capital requirements) are considered disproportionate to the risk and would potentially overburden smaller providers and new entrants to the market.

Objective 2: Increase market transparency for both providers and users

Alternative 1. Market self-regulation

Alternative 2. Keep divergent national regimes

Alternative 3. Standardised transparency and information requirements at EU-level

The option of market self-regulation has been dismissed given the currently low levels of compliance with consumer information requirements and lack of transparency. National rules have the advantage to take into account country specific payment services but limit efficiency, market transparency and choice for consumers in a wider European market. Standardisation was the preferred option of a majority of payment industry and user associations. The highest economic benefits due to simplification and legal certainty are expected from EC legislation codifying all Community and national information requirements in one legal instrument.

Objective 3: Rights and obligations of users and providers

Alternative 1. Keep status quo of different national rules

Alternative 2. Provide legal certainty on core rights and obligations for users and

providers in the interests of a high level of consumer protection and improved efficiency.

Currently there are 25 different sets of national rules which served the payments market well as long as cross-border payments and the Single Market did not play an important role. With the creation of the Single Market and furthermore with the introduction of the euro harmonisation becomes a necessity. In particular where national rules which maintain national differences, hinder cross border payments and prevent the roll out of more efficient pan-European payment services.

A consistent approach concerning the rights and obligations of providers and users will allow for more efficiency, a higher level of automation and pan-European straight-through processing.

The Commission carried out a full impact assessment listed in the Work Programme, whose report is accessible on http://europa.eu.int/comm/secretariat_general/impact/docs/SEC_2005_1535_1_en.pdf

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The three main building blocks of the proposal are:

Right to provide payment service to the public (Title II)

The harmonisation of market access requirements of non-credit institution payment service providers is designed to create a level-playing field, instil more competition in national markets and reflect market developments in recent years, , triggering market entry of a new generation of providers. The new license for payment institutions will also transpose Special Recommendation VI of the OECD Financial Action Task Force in a uniform way. The introduction of a derogation for certain categories of money remitters shall facilitate the gradual migration of these providers from the unofficial economy to the official sector.

Transparency and information requirements (Title III)

The Commission considers that competition, consumer choice and protection would be enhanced by clear and consistent rules on transparency for payment services. The Directive will introduce clear and succinct information requirements for payment services replacing 25 sets of national rules.

Rights and obligations of users and providers of payment services (Title IV)

Clarity and certainty on core rights and obligations of users and providers of payment services are essential for the' development of modern efficient electronic payment systems, for the trust of users and efficiency of modern business in a modern payment market.

- **Legal basis**

The legal basis for the proposal are Articles 47(2) and 95(1) of the EC Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The rules governing payments are enshrined in multiple national legal acts often preventing the creating of European payment standards, conventions and infrastructures. Legal uncertainty for providers and users of payment services and a lack of harmonisation of core rights of providers and users hinders the roll-out of pan-European payment systems, the free provision of services and competition of national payment markets.

Community action will better achieve the objectives of the proposal for the following reason(s).

The magnitude and complexity of the integration process of electronic retail payment markets is similar to the introduction of the euro and Member States on their own cannot overcome the current obstacles and coordinate all involved players.

The co-existence of three community legal acts and the already existing diversity of national rules in the 25 Member States create a fragmented and sometimes overlapping legal framework which has become an obstacle to the integration of payment markets.

The proposal will effect full harmonisation of issues necessary to overcome the obstacles to the development of a Single Payment Market and that where identified during open stakeholder consultation.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The proposed Directive will leave maximum room for self-regulation of industry. It will only harmonise what is necessary to overcome legal barriers to a Single Market, avoiding regulating issues which would go beyond this matter. The proposed actions are also proportional with regard to existing national legislation in this field such as civil law or criminal law. In certain areas national exceptions are possible and subject to mutual recognition. Member States are allowed where appropriate to introduce national alternatives or keep practices that are currently more efficient than envisaged in the Directive.

All of the proposed rules have been subject to a proportionality test and intensive consultation to ensure appropriate and proportionate regulation. This is reflected in the rules for payment institutions and the waiver clause, in information requirements calibrated to the particular services and differentiation between users groups.

- **Choice of instruments**

Proposed instruments: The establishment of a Single Payment Market requires both, self-regulation of industry in order to integrate national fragmented payment infrastructures and services and regulatory action to provide the necessary legal foundations for this process. Therefore the Commission proposes a Directive underpinning and facilitating self-regulation of industry.

The means are adequate for the following reason(s).

The Commission proposes a Directive rather than a Regulation as this takes into account subsidiarity and proportionality needs. A Directive combined with full harmonisation will achieve the necessary level of legal certainty while leaving room to targeted national implementation.

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

5) **ADDITIONAL INFORMATION**

- **Simulation, pilot phase and transitional period**

There will be a transitional period for certain already established payment service providers with regard to compliance with the provisions in Title II of this Directive.

- **Simplification**

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EC or national), and simplification of administrative procedures for private parties.

The proposed Directive will provide a simplified and fully harmonised framework replacing Directive 97/5/EC, Recommendations 87/598/EEC, 88/590/EEC and 97/489/EC, and Article 8 of Directive 97/7/EC and Article 8 of Directive 2002/65/EC.

Supervision of payment service providers will follow a harmonised and coherent approach with the same rules for all Member States, which will help to simplify administrative procedures.

The proposal simplifies procedures for private parties by replacing 25 national sets of rules by one set of rules for the entire market.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

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(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 Commission¹²,

Having regard to the opinion of the European Economic and Social Committee¹³,

Having regard to the opinion of the European Central Bank¹⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁵,

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.
- (2) Currently, the payment services markets of the Member States are organised separately, along national lines and the legal framework for payment services is fragmented into 25 national legal systems.
- (3) The situation has not been sufficiently remedied by the Community acts already adopted, namely, Directive 97/5/EC of the European Parliament and of the Council of

¹² OJ C , , p. .

¹³ OJ C , , p. .

¹⁴ OJ C , , p. .

¹⁵ OJ C , , p. .

27 January 1997 on cross-border credit transfers¹⁶ and Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro¹⁷, nor by Commission Recommendation 87/598/EEC of 8 December 1987 on a European Code of Conduct relating to electronic payment (relations between financial institutions, traders and service establishments, and consumers)¹⁸, Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems, and in particular the relationship between cardholder and card issuer¹⁹, or Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder²⁰. Rather, the co-existence of national provisions and an incomplete Community framework has given rise to confusion and a lack of legal certainty, owing to regulatory overlaps.

- (4) It is vital, therefore, to establish at Community level a modern and coherent legal framework for payment services.
- (5) That framework should ensure the coordination of national provisions on prudential requirements, the access of new payment service providers to the market, information requirements, and the respective rights and obligations of payment services users. Within that framework, the provisions of Regulation (EC) No 2560/2001, which created a single market for euro payments as far as prices are concerned, should be maintained. Those of Directive 97/5/EC and the recommendations made in Recommendations 87/598/EEC, 88/590/EEC and 97/489/EC should be integrated in a single act with binding force.
- (6) However, it is not appropriate for that legal framework to be fully comprehensive. Its application should be confined to providers whose main activity consists in the provision of payment services to payment service users. Nor is it appropriate for it to apply to services where the transfer of funds from the payer to the payee or its transport is executed solely in bank notes and coins or where the transfer is based on a cheque, bill, promissory note or other instruments, vouchers or cards drawn upon a payment service provider or other party with a view to placing funds at the disposal of the payee. Although the legal framework should apply to payment service users and their relationship with payment service providers whenever they use payment services, some provisions should not apply to transactions above a certain amount since the user is likely to be in a position to negotiate more specific and more appropriate terms and conditions with the payment service provider.
- (7) It is necessary to specify the categories of payment service provider which may legitimately provide those services throughout the Community, namely, credit institutions which take deposits from users to fund payment transactions and which should continue to be subject to the prudential requirements under Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit

¹⁶ OJ L 43, 14.2.1997, p. 25.

¹⁷ OJ L 344, 28.12.2001, p. 13.

¹⁸ OJ L 365, 24.12.1987, p. 72.

¹⁹ OJ L 317, 24.11.1988, p. 55.

²⁰ OJ L 208, 2.8.1997, p. 52.

institutions²¹, 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 institutions²², and post office giro institutions which are so entitled under national or Community law.

- (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 fourth 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.
- (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. Those requirements should reflect the fact that payment institutions engage in more specialised and restricted activities, thus generating risks that are much narrower and easier to monitor and control than those that arise across the 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.
- (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) Given the desirability of registering the identity and whereabouts of all persons providing payment services and of according them all a measure of acceptance, irrespective of whether they are able to meet the full range of conditions for authorisation as payment institutions, so that none are forced into the black economy, it is appropriate to provide a mechanism whereby payment providers unable to meet all those conditions may nevertheless be treated as payment institutions. For those purposes, it is appropriate to allow the Member States to enter such persons in the register of payment institutions while not applying all of the conditions for

²¹ OJ L 126, 26.5.2000, p. 1.

²² OJ L 275, 27.10.2000, p. 39.

authorisation. However, it is essential to make the possibility of derogation subject in each case to strict requirements relating to volume of transactions and importance for the public interest. It is also important to provide that, in cases where the derogation has been applied, payment services provided within the Community may be provided only in the Member State of registration.

- (12) It is essential to the function of a payment service provider that it be able to operate within payment systems or to participate in such systems. In order to ensure equality of treatment throughout the Community as between the different categories of payment service provider, according to the terms of their prudential licence, it is necessary to clarify the rules concerning access to the provision of payment services and participation in payment systems. Provision should be made for the non-discriminatory treatment of payment institutions and credit institutions as regards their operation within payment systems and their access thereto.
- (13) A set of rules should be established in order to ensure transparency of conditions for payment services.
- (14) This Directive should not apply to payment transactions made in cash or to those based on paper cheques since, by their nature, they cannot be processed as efficiently as other means of payment, in particular electronic payments.
- (15) The rules contained in this Directive on transparency of conditions for payment services and those on rights and obligations linked to the provision and use of payment services should not apply where the amount of a payment transaction exceeds EUR 50 000 because payment above this amount are not generally processed on the same way, are often channelled through different networks and are submitted to different technical and legal procedures that should be maintained.
- (16) This Directive should specify the obligations which payment service providers should have in providing information to 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 requirements needed to ensure that necessary and sufficient information is provided to payment service users with regard to both the payment service contract and the payment transaction.
- (17) It is essential to harmonise the transparency of conditions for payment services, since the payment service user needs to have clear information about payment services in order to make well-informed choices as to which to use. Requirements should be laid down to ensure that, without saturating the payment service user with details, necessary and sufficient information is provided with regard to the payment service contract as well as to the authorisation and execution of a payment transaction.
- (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 for a framework agreement which provides for a series of payment transactions.
- (19) In order to facilitate customer mobility, it should be possible for payment service users to terminate a framework contract concluded for a lengthy period or an indefinite

period without incurring charges. However, that right should be made subject, where applicable, to a period of advance notice determined in the contract.

- (20) Micro payments 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 simplified. Clear rules should be laid down as to how the payment service user is to authorise transactions. That is important in order to guarantee user confidence and legal certainty for the parties involved in a payment transaction, since in the absence of proper authorisation those transactions would be invalid and the payer would be entitled to an immediate refund. It is essential to set out the obligations on both the payment service provider and the payment service user in order to ensure that the security of payment verification instruments is not compromised and to determine, according to the applicable national law, whether a breach of contract has occurred and to assess the consequences of such a breach.
- (21) In order to provide an incentive for the payment service user to notify his provider of any theft or loss of a payment verification instrument without undue delay and thus to reduce the risk of unauthorised transactions, the user should be liable only for a limited amount until such time as he notifies the payment service provider of the loss or theft, 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 verification instrument may have been compromised, the user should not be required to cover any further losses stemming from unauthorised use of that instrument. If the user's payment verification instrument has not been lost or stolen, he should not bear any financial consequence of unauthorised use.
- (22) Provision should be made for the allocation of losses in the case of unauthorised payment transactions. However, those provisions should not apply to payment service users which are enterprises exceeding the size of a micro enterprise as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, as published in the Official Journal of the European Union on 20 May 2003²³, since such enterprises are normally in a position to assess the risk of fraud and take countervailing measures.
- (23) In cases where the user makes a claim for refund of a payment transaction where the amount was not specified, refund rights should not affect the liability of the payer vis-à-vis the payee for goods or services ordered, consumed or legitimately charged or the users rights with regard to revocation of a payment order.
- (24) In view of the speed with which modern fully automated payment systems process payment transactions, which means that after a certain point payment orders cannot be revoked without high manual intervention costs, it is necessary to specify a clear deadline for revocations, in order to allow efficient processing while ensuring legal certainty for all the parties involved. It is appropriate to define that point in time as the point of acceptance by the payment service provider and to provide that it should be communicated explicitly or implicitly to the payment service user.

²³ OJ L 124, 20.5.2003, p. 36.

- (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 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 explicit agreement with his payment service provider under which the latter may deduct his own fees. That should apply only in the case of payments effected solely in the currency of a Member State and not involving currency exchanges and where both payment service providers are located in the Community.
- (26) With regard to fees, experience has shown that the sharing of fees between payer and payee is the most efficient system since it facilitates the straight-through processing of payments. Provision should therefore be made for fees to be levied directly on the payer and the payee by their respective payment service providers. However, that should apply only when both the payer's and the payee's payment service provider are located in the Community and where the transaction does not require currency exchange.
- (27) In order to improve the efficiency of payments throughout the Community, a maximum one-day execution time should be set for all payments initiated by the payer which do not require currency conversion, including credit transfers and money remittances. For all other payments, such as payments initiated by or through the payee, including direct debits and card payments, in the absence of an explicit agreement between the payment service provider and the payment service user setting a longer execution time, the one-day execution time should apply. In the case of purely national payment, however, 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 rules specifying an execution time shorter than one day.
- (28) Given the differences between the rules governing the operation of payment systems within the Community and those governing payment systems in third countries, it is appropriate that the provisions on execution for the full amount and execution time be restricted to cases where the payment service providers both of the payer and of the payee are located in the Community.
- (29) It is essential for the payment service user to know the real costs and charges of payment services in order to make an appropriate 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. However, in formal terms, there is little to prevent the provider from doing so. First, the provider is in a position to assess the risks involved in the payment transaction which it has accepted for execution. Secondly, it is the provider which provides the payment 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. Thirdly, the large number of payment transactions carried out makes it easier for the provider to mutualise the risk of errors or malfunctions in the payment system and to reflect that risk in its charges. In view of all those considerations, it is entirely appropriate to impose strict liability on the payment service provider in respect of the execution of a payment transaction accepted from the user. However, the provisions on strict liability should not apply in full where the payment service provider of the payee is located outside the Community.

- (31) It should be possible for the payment service provider to specify unambiguously the information that it will require in order to execute a payment order. On the other hand, however, in order to avoid fragmentation and not to jeopardise the setting up of integrated payment systems in the Community, Member States should not be allowed to require a particular identifier to be used for payment transactions. The strict 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 data²⁴.
- (33) It is necessary to ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive. Appropriate procedures should therefore be established by means of which it will be possible to pursue complaints against payment service providers which do not comply with those provisions and to ensure that, where appropriate, proportionate and dissuasive penalties are imposed.
- (34) Without prejudice to the right of customers to bring their action before the courts, Member States should ensure an accessible and cost-sensitive resolution of conflicts between payment service providers and payment service users stemming from rights and obligations set out in this Directive.
- (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.
- (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 two years after the end of the transposition period of this Directive.
- (37) Since the provisions of Directive 97/5/EC have been completely changed, that Directive should be repealed.

²⁴ OJ L 281, 23.11.1995, p. 31.

- (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 contracts²⁵ and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC²⁶. Those Directives should therefore be amended accordingly.
- (39) Since, pursuant to Directive 2000/12/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 2000/12/EC should therefore be amended accordingly.
- (40) In the interests of legal certainty, it is appropriate to make transitional arrangements in accordance with which persons who have commenced the activities of payment institutions in accordance with the national law in force before the entry into force of this Directive to continue those activities within the Member State concerned for a specified period.
- (41) Since the objectives of the proposed action, that is to say, the establishment of a single market in payment services, cannot be sufficiently achieved by the Member States because it requires the harmonisation of a multitude of different rules currently existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (42) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁷,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

Subject-matter, scope and definitions

Article 1 *Subject matter*

This Directive lays down the rules in accordance with which Member States shall distinguish the following four categories of payment service provider:

²⁵ 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).

²⁶ OJ L 271, 9.10.2002, p. 16; Directive as amended by Directive 2005/29/EC.

²⁷ OJ L 184, 17.7.1999, p. 23.

- (a) credit institutions within the meaning of Directive 2000/12/EC;
- (b) electronic money institutions within the meaning of Directive 2000/46/EC;
- (c) post office giro institutions, as referred to in the second indent of Article 2(3) of Directive 2000/12/EC, which are entitled under national or Community law to provide payment services;
- (d) other natural or legal persons who have been granted authorisation in accordance with Article 6 of this Directive to provide and execute payment services throughout the Community, hereinafter “payment institutions”.

This Directive also lays down rules concerning transparency conditions, and the respective rights and obligations of users and providers, in relation to the provision of payment services as a regular occupation or business activity.

Central banks acting as monetary authorities and public authorities which provide payment services are not considered to be payment service providers.

Article 2 *Scope*

1. This Directive shall apply only to business activities, listed in the Annex, consisting in the execution of payment transactions on behalf of a natural or legal person, hereinafter “payment services”, where at least one of the payment service providers is located in the Community.

However, for payment services where the amount of the transaction exceeds EUR 50 000, Titles III and IV shall not apply.

For the purposes of this Directive, a payment transaction shall consist in the act, initiated by the payer or by the payee, of depositing, withdrawing or transferring funds from a payer to a payee, irrespective of any underlying obligations between the payment service users.

2. Save where otherwise provided, this Directive shall apply to payment services made in any currency.

Article 3 *Negative scope*

This Directive shall not apply to the following:

- (a) transactions consisting solely of a transfer of cash from the payer to the payee;
- (b) professional collection and delivery of cash, including its transport, without transforming the cash into scriptural money, or into electronic money within the meaning of Directive 2000/46/EC;

- (c) payment transactions consisting in the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
- (d) cash refunds provided by the payee to the payer after a payment transaction following an explicit request by the payment service user made just before the execution of a payment transaction through a payment card and completely independent of the cost of the good or services purchased;
- (e) change of foreign currency into local currency and *vice versa*, that is to say, cash to cash operations, where the funds are not held as a cash deposit 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;
 - (iii) paper-based vouchers;
 - (iv) paper-based traveller's cheques;
 - (v) paper-based promissory notes;
- (g) payment transactions carried out within a payment or security clearing and settlement system or between clearing or settlement agents, central counterparties and/or central banks, and payment service providers, as well as their tied agents or subsidiaries thereof, except for Article 23;
- (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 that can be used to acquire goods or services only within a limited network of affiliated service providers and are based on instruments like vouchers and cards in so far as such instruments are not redeemable;
- (j) payment transactions executed by means of a mobile telephone or any other digital or IT device, where all the following conditions are met:
 - (i) the service provider operating the telecommunication or IT system or network is closely involved in the development of the digital goods or electronic communication services provided;
 - (ii) the goods and services cannot be delivered in the absence of the service provider;

- (iii) there is no alternative option for remuneration.
- (k) payment transactions carried out between payment service providers as well as tied agents or subsidiaries, without prejudice to Article 23 which applies in any case.

Article 4 *Definitions*

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

- (1) *"home Member State"* means any of the following:
 - (i) if the payment institution is a natural person, the Member State where the head office of the payment service provider is situated;
 - (ii) if the payment institution is a legal person, the Member State in which its registered office is situated;
 - (iii) if the payment institution has, under its national law, no registered office, the Member State in which its head office is situated;
- (2) *"host Member State"* means the Member State other than the home Member State in which a payment service provider has a branch or a tied agent or provides payment services;
- (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 a natural or legal person who has the right of disposal of funds and who allows them to be transferred to a payee;
- (5) *"payee"* means a natural or legal person who is the intended final recipient of funds which have been the subject of a payment transaction;
- (6) *"payment service user"* means a natural or legal person who makes use of a payment service in the capacity of either payer or payee, or both;
- (7) *"payment account"* means an account held in the name of a payment service user which is used exclusively for payment transactions;
- (8) *"funds"* means cash, scriptural money and electronic money as referred to in Directive 2000/46/EC;
- (9) *"availability of funds"* means that the funds on a payment account may be used by the payment service user without fees being charged;
- (10) *"payment order"* means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

- (11) *"value date"* means a reference time used by a payment service provider for the calculation of interest on the funds transferred from or into a payment account;
- (12) *"reference exchange rate"* means the exchange rate which is used as the basis to calculate any currency exchange and which comes from a source which can be verified by both parties of a payment service agreement;
- (13) *"authentication"* means a procedure which allows the payment service provider to verify that the user issuing the payment order is authorised to do so;
- (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 a source which can be verified by both parties to a payment service agreement;
- (15) *"unique identifier"* means the information specified by the payment service provider and to be provided by the payment service user to identify unambiguously the other payment service user involved in a payment transaction, and consisting of the IBAN (International Bank Account Number), the BIC (Bank Identifier Code), a bank account number, a card number or a name;
- (16) *"tied agent"* means a natural or legal person which acts on behalf of a payment institution in carrying out payment services;
- (17) *"payment verification instrument"* means any personalised device(s) and/or set of procedures used by the payment service user in order to enable the payment service provider to authenticate a payment order. If it is not provided by the payment service provider, the payment service provider and the payment service user may agree on the use of any other instrument for the authentication of payment orders which may also serve other purposes;
- (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 information addressed personally to the payment service user to be stored in a manner 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; in particular, durable medium covers printouts by account printers, floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored but excludes Internet sites, unless such sites meet the criteria specified in the first sentence of this point.

TITLE II

Payment service providers

Chapter 1

Payment institutions

SECTION 1

GENERAL RULES

Article 5

Applications for authorisation

For authorisation as a payment institution, a written 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 service envisaged;
- (b) a business plan including a tentative budget calculation for the first three financial years which would allow the presumption that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- (c) a description of the applicant's administrative and accounting procedures, such as would allow the presumption that it conducts sound and adequate procedures and controls;
- (d) a description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to money laundering under Directive 2005/60/EC of the European Parliament and of the Council²⁸;
- (e) a description of the applicant's risk management procedures;
- (f) a description of the applicant's structural organisation and, where applicable, of its cooperation with 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 1(10) of Directive 2000/12/EC, and the size of their effective holding;
- (h) where the applicant is a legal person, the identity of the natural persons who are its representatives, its majority shareholders and who act as directors as well as evidence that those persons are of good repute and have appropriate knowledge and ability to perform payment services;

²⁸ OJ L 309, 25.11.2005, p. 15.

- (i) the identity of the lead manager and evidence that the person who effectively directs the applicant's business is of good repute and has appropriate knowledge and ability to perform payment services;
- (j) the applicant's legal status;
- (k) the address from which the relevant documents may be obtained.

For the purposes of point (c), the applicant shall provide a description of 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.

Article 6 *Granting*

Authorisation shall be granted if the information and evidence accompanying the application complies with all the requirements laid down in Article 5.

The application for authorisation shall not be examined in the light of requirements other than those laid down in Article 5.

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.

Article 7 *Communication of decision*

Within three months of receiving the application or, should the application be incomplete, within three months of receiving 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 8 *Registration*

Member States shall establish a register of payment institutions.

The register shall be updated on a regular basis. It shall be publicly available for consultation and accessible online.

Article 9 *Maintenance of authorisation*

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

Article 10
Activities

1. Payment institutions shall be entitled to engage in the following activities:
 - (a) the provision of payment services;
 - (b) the provision of operational and related ancillary services such as the guaranteeing execution of payment transactions, foreign exchange services, safekeeping activities, and storage and processing of data;
 - (c) the accessing and operation of payment systems for the purposes of transferring, clearing and settling funds, including any instruments and procedures relating to the systems.

In the context of point (a), 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 3 of Directive 2000/12/EC, or electronic money within the meaning of Directive 2000/46/EC.

2. Funds received from payment service users and specifically accepted in connection with a payment service shall not be used by payment institutions to support other business activities other than payment services. The payment institution shall keep separately in its books the payment service users funds, accepted for a payment transaction, from other funds accepted for activities other than payment services.
3. The business activities of authorised payment institutions shall be non-exclusive and shall not be restricted to payment services, having regard to the applicable national and Community law.

SECTION 2
OTHER REQUIREMENTS

Article 11
Use of tied agents, outsources or subsidiaries

1. In cases where a payment institution intends to provide payment services through a tied agent or a subsidiary, it shall communicate the name and address of the tied agent or subsidiary to be used to the competent authorities in its home Member State.
2. Where a payment institution intends to outsource some or all of its operations, it shall inform the competent authority accordingly.
3. Payment institutions shall ensure that tied agents or subsidiaries acting on their behalf inform payment service users accordingly.

Article 12
Liability

1. Member States shall ensure that, where payment institutions rely on third parties for the performance of operational functions, those payment institutions take reasonable steps to avoid undue operational risk.
2. Member States shall require that payment institutions remain fully liable for any acts of their managers, employees, or any tied agent or subsidiary, pursuant to this Directive.

Article 13
Record-keeping

Member States shall require payment institutions to keep records of all services and transactions for a reasonable time, but not more than five years.

Article 14
Place of the head office

Member States shall require any payment institution which is a legal person and which, under the national law of its home Member State, has a registered office to have its head office in the same Member State as its registered office.

Any payment institution not covered by the first paragraph shall be required to have its head office in the Member State in which it actually carries on its business.

SECTION 3
COMPETENT AUTHORITIES AND SUPERVISION

Article 15
Designation of competent authorities

1. Member States shall designate as the competent authorities responsible for implementation of this Title either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law.

The competent authorities shall be such as to guarantee independence from economic actors and to avoid conflicts of interest. They shall not be payment institutions, credit institutions electronic-money institutions, or post office giro institutions.

The Member States shall inform the Commission accordingly.

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

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

Article 16
Supervision

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 may take only the following steps:

- (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, an outsourced entity, a tied agent or a subsidiary under the responsibility of the payment institution;
- (c) to issue recommendations and guidelines;
- (d) to issue warnings and impose proportionate penalties in cases of non-compliance;
- (e) to suspend or withdraw authorisation in cases where the conditions for authorisation in accordance with Article 5 are no longer fulfilled.

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.

Article 18
Right to apply to the courts

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

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

Article 19
Exchange of information

The competent authorities of the different Member States shall cooperate and, in particular, exchange information in order to ensure proper application of this Directive.

Member States shall, in addition, allow exchanges of information between their competent authorities and the following:

- (a) the competent authorities of the host Member State responsible for the authorisation and supervision of payment institutions;
- (b) central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- (c) other relevant authorities designated under this Directive and other Community legislation applicable to payment service providers.

Article 20
Exercise of the right of establishment and freedom to provide services

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

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

2. In order to carry out the controls and take the necessary steps provided for in Article 16 in respect of a branch, a tied agent or a subsidiary 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 relevant information, in particular in the case of infringements or suspected infringements by a branch, a tied agent or a subsidiary.

SECTION 4 DEROGATION

Article 21 Conditions

1. By way of derogation from point (d) of the first paragraph of Article 1, Member States may, on a case by case basis, allow natural or legal persons to be entered in the register established under Article 8, without application of the procedure set out in Section 1, where both the following conditions are satisfied:
 - (a) the total business activities of the person concerned, including any tied agent or subsidiary for which it assumes full responsibility, generates a total amount of funds outstanding which were accepted for the provision of payment services and which does not exceed EUR 5 million on average over a month and EUR 6 million at any given point in time;
 - (b) such registration is considered to be in the public interest for either of the following reasons:
 - (i) the person concerned plays a vital role in financial intermediation, providing access to payment services for underprivileged social groups, in particular where the provision by other providers of the services in question is unlikely or would take a long time;
 - (ii) it is necessary for the effective implementation of money laundering rules or mechanisms to prevent terrorist financing.
2. The persons referred to in paragraph 1 shall be treated as payment institutions.

However, they shall be allowed to provide payment services within the Community only within the Member State of registration.

Member States may also provide that they may engage only in certain of the activities listed in Article 10.
3. The persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the condition specified in point (a) of paragraph 1.

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 payment service providers concerned and shall, on an annual basis, inform the Commission of the total amount of funds outstanding, as referred to in point (a) of Article 21.

Chapter 2

Common provisions

Article 23

Access to and operation of payment systems

1. Member States shall ensure that rules on access to and operation of payment systems shall be objective and proportionate and shall not inhibit access more than is necessary to safeguard against specific risks and to protect the financial safety of the payment system.

Payment systems may not impose any of the following requirements:

- (a) a ban on participation in other payment systems;
 - (b) a rule which discriminates between authorised 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 be without prejudice to requirements imposed on participants in a payment and securities settlement system by Community legislation and in particular by Directive 98/26/EC of the European Parliament and of the Council²⁹.

²⁹ OJ L 166, 11.6.1998, p. 45.

TITLE III

Transparency of conditions for payment services

Chapter 1

Single payment transactions

Article 24 *Scope*

This Chapter applies to single payment transactions not covered by a framework contract within the meaning of Article 29.

Article 25 *Prior general information*

1. Member States shall require that the payment service provider is to communicate to the payment service user on paper or on another durable medium available and accessible to him the conditions in accordance with Article 26.

The payment service provider shall do so in good time before the payment service user is bound by any payment service contract covering a single payment transaction or the offer.

2. If the payment transaction 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 his obligation under the first subparagraph of paragraph 1 as soon as reasonably possible after the conclusion of the contract.

Article 26 *Communication of conditions*

1. Member States shall ensure that the conditions communicated comprise the following:
 - (a) a description of the respective obligations and liabilities of the payment service provider and the payment service user, in relation to the provision and use of the payment service, including in particular the following:
 - (i) 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;
 - (ii) the execution time for the payment service to be provided;

- (iii) where applicable, the conditions concerning the provision and use of the payment service, including in particular safekeeping requirements for payment verification instruments and the risks involved if these are not taken and how to notify the payment service provider for the purposes of Article 46(b);
 - (iv) the liability for the execution of a payment transaction;
 - (v) the information to be provided in accordance with Directive 2005/.../EC;
 - (vi) the availability of appropriate funds;
- (b) a clear reference to the point in time of acceptance of a payment order as defined in Article 54(1);
 - (c) all charges payable by the payment service user to the payment service provider and, where applicable, the exchange rate applied to the payment transaction;
 - (d) an indication of the law applicable to the contract and the competent court;
 - (e) an indication of the redress and complaint procedures available to the payment service user in accordance with Chapter 4 of Title IV and the method of accessing them;
 - (f) an indication of where any other information may be made available and be consulted.

In the case of payment transactions covered by Article 58(2), the payment service provider shall, for the purposes of point (c), give a *bona fide* estimate of any deductions to be envisaged for the payment transaction.

2. The conditions specified in paragraph 1 shall be set out in easily understandable words and in a clear and readable form, in an official language of the Member State where the payment service is offered or in any other language agreed by the parties.

Article 27

Information to be made available to the payer after acceptance

Subsequent to the acceptance of the payment order for execution, the payment service provider shall make available to the payer, in the same way as provided for in Articles 25(1) and 26(2), at least the following information:

- (a) a reference enabling the payment service user to identify the payment transaction and, where appropriate, the information relating to the payee;
- (b) the amount of the payment transaction and of any commission fees and charges applied to the payment transaction that the payer had to pay to his payment service provider;

- (c) where relevant, the exchange rate used in the payment transaction if it is applied by the payer's payment service provider.

Article 28

Information to be made available to the payee after receipt of the funds

Subsequent to making funds received for the payee available to him, the payment service provider shall make available to the payee, in the same way as provided for in Articles 25(1) and 26(2), at least the following information:

- (a) the reference of the payer and the information transferred with the payment transaction enabling the payee to identify the payment transaction;
- (b) the full amount of the payment transaction transferred from the payer;
- (c) the amount of any commission fees and charges applied to the payment transaction payable by the payee to his payment service provider or to any intermediary for receiving the payment;
- (d) where applicable, the exact exchange rate used in the payment transaction if it was applied by the payee's payment service provider.

Chapter 2

Framework Contracts

Article 29

Scope

This Chapter applies to payment transactions covered by a payment service agreement characterised by the fact that it commits a payment service provider to execute in the future successive payment transactions or individual payment transactions on the order of the payer if the agreed conditions are met. That agreement, hereinafter “framework contract”, may contain the obligations and conditions for setting up a payment account;

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 the offer, the payment service provider is to communicate to the payment service user on paper or on another durable medium, available and accessible to the payment service user, the conditions in accordance with Article 31.
2. If the 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 his obligations under that paragraph as soon as reasonably possible after the conclusion of the contract.

Article 31
Communication of conditions

1. Member States shall ensure that the conditions communicated comprise the following:
 - (a) the technical requirements with respect to the payment service user's communication equipment authorised for use, including the way in which it can be used and the means of communication agreed by the parties for the transmission of information under this Directive;
 - (b) a description of the respective obligations and liabilities of the payment service provider and the payment service user in relation to the provision and use of the payment service, including in particular the following:
 - (i) 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;
 - (ii) the execution time and the relevant maximum execution time for the payment services to be provided;
 - (iii) an indication of the right of the payment service user to terminate an initial payment service agreement and any agreements relating to that right in accordance with Article 34;
 - (iv) where appropriate, a description of the steps that the payment service user is to take in order to keep safe a payment verification instrument, the risks involved if the steps are not taken and how to notify the payment service provider for the purposes of Article 46(b);
 - (v) where applicable, an explicit reference in accordance with Article 43(2) to the fact that the payment service provider reserves the right to block a payment verification instrument if the spending pattern gives rise to the suspicion of fraudulent use, and the person that the payment service provider must contact in such cases, if applicable;
 - (c) spending ceilings envisaged for specific payment services in accordance with Article 43(1);
 - (d) a definition of the point in time of acceptance of a payment order as defined in Article 54(1);
 - (e) all charges and interest payable by the payment service user to the payment service provider;
 - (f) where applicable, the interest and exchange rates applied to payment transactions, including, if applicable, the reference interest or exchange rate, the relevant date for determining such a rate and the way to calculate the applied interest or exchange rate based on the reference rate;
 - (g) the law applicable to the contract and the competent court;

- (h) an indication of the redress and complaint procedures available to the payment service user in accordance with Chapter 4 of Title IV and the method of accessing them;
- (i) any information on how the payment service user can access the information specified in Article 32.

In cases where an aggregate fee is charged, such as a merchant service charge or account management fee, the information provided for the purposes of point (e) shall make transparent the prices of the different service elements covered by the aggregate fee.

2. The conditions shall be set out in easily understandable words and in a clear and readable form, in an official language of a Member State or in any other language agreed by the parties.

Article 32

Information to be provided after entry into force

After the entry into force of a framework agreement, the payment service provider shall make available to a payment service user in an easily accessible manner all the conditions specified in Article 31(1).

In addition and where relevant, the payment service provider shall make available in the same way further information on duties and rights under Community and national legislation directly relating to the execution of specific payment transactions, such as reporting obligations, declarations and tax issues. This shall apply only in so far as the payment service provider has received, or could reasonably be expected to have received, notification of those duties and rights.

Article 33

Changes in contractual conditions

1. Any change in the contractual conditions communicated to the payment service user pursuant to Article 31(1) shall be proposed by the payment service provider in the same way as provided for in Articles 30(1) and 31(2) and not less than one month before the date of its proposed application.

The payment service provider and user may agree that the user is to be deemed to have accepted changes in the conditions if he does not notify the payment service provider by the date of their entry into force that he does not accept them.

2. Paragraph 1 shall not apply in the case of changes in the interest rates if the reference interest rate laid down for their calculation in the framework agreement has fluctuated and the payment service provider has duly informed the payment service user of his contractually agreed right to change the interest rates according to an agreed formula.

In such cases, any change in the interest rates may be applied immediately, provided that the payment service user is informed of the change at the earliest opportunity in the same way as provided for in Articles 30(1) and 31(2).

*Article 34
Termination*

1. The termination of a framework contract which has been concluded for a period of 12 months or more or for an indefinite period shall be free of charges for the payment service user.

Fees for payment services charged on a regular basis shall be payable only proportionally up to the termination of the contract. If such fees are paid in advance, they shall be reimbursed proportionally.

2. Save where the payment service provider and the payment service user have explicitly agreed on a period of notice for the termination of a framework contract, framework contracts may be terminated immediately.

The period of notice may not exceed one month.

*Article 35
Information before execution of an individual payment transaction*

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

In cases covered by Article 58(2), a *bona fide* estimate of any deductions shall be provided in advance.

*Article 36
Information to be provided to the payer subsequent to the execution
of an individual payment transaction*

1. Subsequent to the execution of a payment transaction, the payment service provider shall provide the payer with at least the following information:
 - (a) a reference enabling the payment service user to identify each payment transaction and, where appropriate, the information relating to the payee;
 - (b) the full amount of the payment transaction transferred from the payer;
 - (c) the amount of any fees or charges for the payment transaction that the payer had to pay to his payment service provider. In cases where an aggregate fee such as a merchant service charge or account management fee is charged, the information shall make transparent the fees and charges for the different service elements covered by the aggregate fee;

- (d) where relevant, the exchange rate used in the payment transaction if it is applied by the payer's payment service provider.
2. It may be a condition of a framework contract that the information referred to in paragraph 1 is to be provided on a regular basis, with a specified frequency. In any case, this information shall be supplied in the same way as provided for in Articles 30(1) and 31(2).

Article 37

Information to be provided to the payee after receipt of the funds

1. Subsequent to making the funds received for the payee available to the latter, the payment service provider shall provide the payee, in the same way as provided for in Articles 30(1) and 31(2), with at least the following information:
- (a) the reference of the payer;
 - (b) appropriate information transferred by the payer with the payment and enabling the payee to identify the payment;
 - (c) the full amount of the payment transaction transferred from the payer;
 - (d) the amount of any commission, fees and charges applied to the payment transaction payable by the payee to his payment service provider for receiving the payment;
 - (e) where relevant, the exchange rate used in the payment transaction if it was applied by the payee's payment service provider.

In cases where an aggregate fee such as a merchant service charge or account management fee is charged, the information provided for the purposes of point (d) shall make transparent the fees and charges for the different service elements covered by the aggregate fee.

2. It may be a condition of a framework contract that the information referred to in paragraph 1 is to be provided on a regular basis, with a specified frequency. In any case, this information shall be supplied in the same way as provided for in Articles 30(1) and 31(2).

Article 38

Micro payments

1. By way of derogation from Articles 29 to 33, in the case of a contract concerning payments where no individual payment can exceed EUR 50, the payment service provider shall communicate to the payment service user in the manner provided for in Articles 30(1) and 31(2) only the main characteristics of the payment service to be provided, the way in which it can be used and all charges applicable.

2. The payment service provider shall make all further information required under Articles 29 to 33 and applicable to the payment service provided available to the payment service user in an easily accessible manner.
3. Following the execution of a micro payment the payment service provider shall, by way of derogation from Articles 36 and 37, provide the payment service users involved in the manner provided for in Articles 30(1) and 31(2) with at least a reference enabling the payment service user to identify the payment transaction, the amount of the transaction and the fees applied to it.

Chapter 3

Common provisions

Article 39

Transaction currency and currency conversion

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

The payer shall explicitly agree to the service on that basis.

Article 40

Additional charges

1. Where, for the use of a given payment verification instrument, the payee requests a surcharge or offers a reduction, agreement shall be reached between the payee and the payer on those matters prior to the initiation of the payment transaction.
2. Where, for the use of a given payment verification instrument, a payment service provider or a third party requests a surcharge, agreement shall be reached between the payment service user and the payment service provider on those matters prior to the initiation of the payment transaction.

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

Chapter 1
Authorisation of payment transactions

Article 41
Consent

Member States shall ensure that a payment transaction is considered to be authorised only if the payer has consented to the respective payment order addressed to the payment service provider.

Consent shall consist in an explicit authorisation for the payment service provider to effect a payment transaction or a series of transactions.

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

A payment transaction may be authorised by the payer prior or subsequent to the execution of the payment transaction.

Article 42
Transmission of consent

1. The payer may transmit his consent for the purposes of Article 41 using a payment verification instrument.

The consent may be communicated directly to his payment service provider or indirectly via the payee.

2. The procedure for transmitting consent shall be agreed between both the payment service provider and the payer in the manner laid down in Article 31(1)(a).

Article 43
Use of the payment verification instrument

1. In cases where specific payment verification instruments are used for the purposes of transmitting consent, the payment service provider and the payment service user may agree on regular 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 verification instrument even within the agreed spending ceiling provided that, in its view, the spending pattern gives rise to the suspicion of fraudulent use.

However, the payment service provider may block the payment verification instrument only if he has previously made *bona fide* efforts to contact the holder of the payment verification instrument in order to verify whether fraud has been taking place.

Article 44
Record-keeping

The payment service provider shall keep for at least one year internal records in order for payment transactions to be traced and errors to be rectified, without prejudice to Directive 2005/.../EC or other relevant Community legislation.

Article 45
Unauthorised transactions
and withdrawal of consent

1. On becoming aware of any unauthorised transaction, errors or other irregularity in the payments made from his account and contained in the information received in accordance with Article 36, the payer shall notify his payment service provider thereof without undue delay.
2. In the case of a series of transactions, authorisation may be withdrawn and any subsequent payment transaction shall be considered as unauthorised without prejudice to Article 56.

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

The payment service user shall meet the following obligations:

- (a) to use a payment verification instrument in accordance with the terms governing the issuing and use of the 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 verification instrument or of its unauthorised use.

For the purposes of point (a), the payment service user shall, in particular, as soon as the payment service user receives a payment verification instrument, take all reasonable steps to keep its security features safe.

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

The payment service provider shall meet the following obligations:

- (a) to make sure that the personalised security features of a payment verification instrument are not accessible to parties other than the holder of the payment verification instrument;
- (b) to refrain from sending an unsolicited payment verification instrument, except where a payment verification instrument already held by the payment service user is to be replaced because it has expired or because of the need to add or change security features ;
- (c) to ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Article 46(b).

For the purposes of point (c), the payment service provider shall provide the payment service user with the means to prove that he has made such a notification.

Article 48
Disputed authorisation

1. Member States shall require that, where a payment service user denies having authorised a completed payment transaction, the payment service provider is to provide at least evidence that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.
2. If, on production of the evidence required under paragraph 1, the payment service user continues to deny having authorised the payment transaction, he shall provide factual information or elements to allow the presumption that he could not have authorised the payment transaction and that he did not act fraudulently or with gross negligence with regard to the obligations incumbent upon him under Article 46(b).
3. For the purposes of rebutting the presumption referred to in paragraph 2, the use of a payment verification instrument recorded by the payment service provider shall not, of itself, be sufficient to establish either that the payment was authorised by the payment service user or that the payment service user acted fraudulently or with gross negligence with regard to his obligations under Article 46.
4. Paragraphs 2 and 3 shall be without prejudice to the legal provisions concerning the evidential status of handwritten signatures or advanced electronic signatures as defined in Directive 1999/93/EC of the European Parliament and of the Council³⁰.

Article 49
Provider liability for losses
in respect of unauthorised payment transactions

Member States shall ensure that, in the case of an unauthorised payment transaction, the payment service provider refunds to the payment service user forthwith the amount of the

³⁰ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

unauthorised payment transaction or, where applicable, restores the payment account that had been debited with that amount to the situation that would have existed if the unauthorised payment transaction had not taken place.

Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payment service provider and the payment service user.

Article 50
User liability for losses
in respect of unauthorised payment transactions

1. The payment service user shall bear the loss, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment verification instrument and occurring before he has fulfilled his obligation to notify his payment service provider under Article 46(b).

Member States may reduce that maximum amount further provided that such reduction does not apply to payment service providers authorised in other Member States.

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

Article 51
Micro-enterprises
and electronic money

1. Articles 49 and 50 of this Directive shall not apply where a payment service user is an enterprise exceeding the size of a micro enterprise within the meaning of Articles 1 and 2(1) and (3) of Title I of the Annex to Recommendation 2003/361/EC.
2. Articles 48, 49 as well as 50(1) and (2) of this Directive shall not apply to electronic money within the meaning of Article 1(3)(b) of Directive 2000/46/EC.

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

Article 52
Refunds

Member States shall ensure that a payer acting in good faith is entitled to a refund of an authorised payment transaction which has already been executed, if the following conditions are met:

- (a) the authorisation did not specify the exact amount of the payment transaction or the identification of the payee when it was made;
- (b) the amount of the transaction executed is not the amount that a reasonable payer would expect if he were in that payer's position.

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

Article 53
Requests for refunds

1. Member States shall ensure that the payer shall request the refund, at the latest within four weeks of being informed of the payment transaction in question by the payment service provider. The request shall include factual elements relating to the conditions laid down in Article 52.
2. Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the body to which the payer may refer the matter in accordance with Articles 72 to 75 if he does not accept the justification provided.

No fees shall be payable by the payer in the event of a claim for a refund.

3. Where the payment service user is an enterprise within the meaning of Article 1 of Title I of the Annex to Recommendation 2003/361/EC, the payment service provider may agree on time-limits other than those laid down in paragraphs 1 and 2.

Chapter 2

Execution of a payment transaction

SECTION 1

PAYMENT ORDERS, FEES AND AMOUNTS TRANSFERRED

Article 54

Acceptance of payment orders

1. Member States shall ensure that, in the case of a payment order initiated by a payer, or by or through a payee, and covered by the authorisation of a payer, the point in time of acceptance occurs when the following three conditions are met:
 - (i) the payment service provider has received the payment order;
 - (ii) the payment service provider has completed authentication of the order, including a possible check on the availability of funds;
 - (iii) the payment service provider has explicitly or implicitly accepted the obligation to execute the payment transaction ordered.

The point in time of acceptance shall not be later than the point in time when the payment service provider starts to execute the payment transaction.

2. In the case of electronically initiated payment transactions, the payment service provider shall inform the payment service user of acceptance of the order for execution. He shall do so without undue delay and, in any case, before the end of the next working day after the point in time of acceptance under paragraph 1.

Article 55

Refusal of payment orders

1. Where the payment order is refused, the reasons for the refusal and, if possible, the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user by means of a communication agreed for that purpose by the parties.

Notification shall be made without undue delay and, in any case, within three working days of the point in time of acceptance under Article 54(1).

2. In cases where all the conditions set out in the payment service contract in accordance with Article 31 are met, the payer's payment service provider shall not refuse to execute a payment order which has been initiated through a payment service provider other than the holder of the payer's payment account and which is covered by the authorisation given by the payer.

Article 56
Irrevocability of a payment order

1. Without prejudice to Article 46, Member States shall ensure that the payment service user may not revoke a payment order after the time of its acceptance by the payer's payment service provider for payments initiated by the payer or by the payee's payment service provider for payments initiated by or through the payee.
2. In the case of a payment order to be executed on a specific date in the future, the payment service provider and the payment service user may agree on a date of irrevocability that falls within the three working days preceding the point in time of acceptance for the order.

Article 57
Fees

Where a payment transaction is carried out solely in the currency of a Member State and does not involve any currency exchanges and where the payment service providers of both the payer and the payee are located in the Community, Member States shall require that any fees be levied directly on the payer and the payee by their respective payment service providers, and that they each bear their own fees.

In the case of other payment transactions, the payer and the payee may, by mutual agreement, vary those requirements.

Article 58
Amounts transferred and amounts received

1. Where the payment service providers both of the payer and of the payee are located in the Community and where the payment transaction is carried out solely in the currency of a Member State, Member States shall require the payer's payment service provider to ensure that the full amount of the payment transaction is received by the payee. Intermediaries shall not deduct fees from the amount transferred.

However, explicit agreements may be arranged between the payee and his payment service provider under which the latter may deduct his own fees from the amount transferred before crediting it to the payee.

2. Member States shall, in either of the following situations, require the payment service provider to give a *bona fide* estimate of any deductions to be envisaged for the payment transaction:
 - (a) where the payment service providers of both the payer and the payee are located in the Community, but the payment transaction is denominated, in whole or in part, in a currency other than that of a Member State;
 - (b) where the payment service provider of either the payer or the payee is not located in the Community.

SECTION 2 EXECUTION TIME

Article 59 Scope

This Section shall apply only if the payment service providers of both the payer and the payee are located in the Community.

It shall not apply to payment transactions which are considered to be micro payments.

Article 60 Payment transactions initiated by the payer

1. Member States shall require the payer's payment service provider to ensure that, after the point in time of acceptance, the amount ordered is credited to the payee's payment account at the latest at the end of the first working day following the point in time of acceptance. However, up to 1 January 2010, a payer and his payment service provider may agree on a period no longer than three days.
2. Where the transaction is initiated by the payer and includes a currency conversion, the payer and his payment service provider may provide otherwise by explicit agreement.

Article 61 Payment transactions initiated by or through the payee

1. For a payment transaction initiated by or through the payee, Member States shall require the payment service provider to ensure that, after the point of time of acceptance, the amount ordered is credited to the payee's payment account at the latest at the end of the first working day following the day on which the point in time of acceptance falls, unless otherwise explicitly agreed between the payee and his payment service provider.
2. If the payer's payment service provider refuses to release the funds which are the subject of the payment transaction, the payment service provider shall, within the period specified in paragraph 1, inform the payee accordingly by means of a communication agreed for that purpose by the parties.

The payment service provider shall be deemed to have fulfilled its obligations under paragraph 1 of this Article and under Article 58.

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 him within the period specified in Articles 60(1) and 61(1).

Article 63
Cash deposits

In the case of a cash deposit by the payment service user into his own account, the payment service provider shall ensure that the amount is credited at the latest on the next working day after receipt of the funds.

Article 64
National payment transactions

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

SECTION 3
AVAILABILITY OF FUNDS
AND LIABILITY

Article 65
Availability of funds on a payment account

1. Member States shall ensure that the payment service provider of the payee makes funds available to the payee as soon as those funds are credited to the payee's payment account.

No fees may be levied for making the funds available.

2. The payment service provider of the payer shall cease to make funds available to the payer as soon as those funds are debited from the payer's payment account.
3. The credit value date for the payee's payment account shall be the point in time at which that account is credited.

The debit value date for the payer's payment account shall be the point in time at which that account is debited.

4. Paragraphs 1, 2 and 3 shall be without prejudice to debits effected on savings accounts covered by explicit agreements regarding the use of funds in savings arrangements.

Article 66
Incorrect unique identifiers

1. If a payment order is executed in accordance with the unique identifier provided by the user, the payment order shall be deemed to be executed correctly with regard to the payee specified. Where the IBAN was specified as the unique identifier it should take precedence over the name of the payee, if it is provided additionally. However, the payment service provider should, where possible, verify the consistency of the former with the latter.
2. If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable for the non-execution or defective execution of the transaction.

However, the payment service provider shall make a *bona fide* effort to recover the funds involved in the payment transaction.

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

Article 67
Non-execution or defective execution

1. After the point in time of acceptance in accordance with Article 54(1), a payment service provider shall be strictly liable for the non-execution or defective execution of a payment transaction made in accordance with Section 1.

In addition, the payment service provider shall be strictly liable for any charges, and for any interest charged to the payment service user as a consequence of the non-execution or defective execution of the payment transaction.

2. If the payment service user claims that a payment order has not been accurately executed, the payment service provider shall show, without prejudice to factual elements produced by the payment service user, that the payment order was accurately recorded, executed and entered in the accounts.

Article 68
Transfers to third countries

In cases where the payment service provider of the payee is not located in a Member State, the payment service provider of the payer shall be liable for the execution of the payment transactions only until the funds reach the payee's payment service provider.

Article 69
Additional financial compensation

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

Article 70
No liability

Liability under the first subparagraph of Articles 66(2), 67(1) and 68 shall not apply in cases of *force majeure* or where a payment service provider is bound by other legal obligations expressly covered by national or Community legislation, such as money laundering and anti-terrorist financing provisions.

Chapter 3 **Data protection**

Article 71
Exemption from, and restrictions on, the rules governing 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, detection and prosecution of payment fraud. The processing of such personal data shall be carried out in accordance with Directive 95/46/EEC.

Chapter 4 **Penalties** **and procedures for the settlement of disputes**

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 register complaints with regard to conflicts arising from the provisions of national law implementing the provisions of the Directive.
2. Where appropriate, complaints shall be referred to the competent authorities responsible for the application of penalties under Article 73. Where appropriate, the reply to the complainant shall make reference to the out-of-court body set up under Article 75.

Article 73
Penalties

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.

Member States shall notify those provisions 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

Member States shall take all the measures necessary to ensure that the complaints procedures and penalties provided for in Article 72(1) and the first paragraph of Article 73 respectively are administered by the authorities empowered to ensure compliance with the provisions of national law adopted pursuant to this Directive.

Article 75
Out-of-court redress

1. Member States shall take the necessary steps to set up and promote the use of appropriate and effective out-of-court complaints and redress procedures for the out-of-court settlement of disputes between payment service users and their payment service providers for all disputes concerning rights and obligations stemming from 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

Amendments and Payments Committee

Article 76 *Amendments and updating*

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), amend the list of activities in the Annex to this Directive, in accordance with Articles 2 to 4.

It may, in accordance with the procedure referred to in Article 77(2), update the amounts specified in Articles 2(1), 21(1)(a), 38 and 50(1) in order to take account of inflation and significant market developments.

Article 77 *Committee*

1. The Commission shall be assisted by a Payments Committee, hereinafter “the Committee”, composed of representatives of the Member States and chaired by a representative of the Commission.
2. Where reference is made to this paragraph in other articles, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.

TITLE VI

Final provisions

Article 78

Full harmonisation, mutual recognition and mandatory nature of the Directive

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

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

Article 79

Report

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

Article 80

Transitional provision

Without prejudice to Directive 2005/60/EC or other relevant Community legislation, Member States shall allow persons, including financial institutions within the meaning of Directive 2000/12/EC, 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*] to continue those activities within the Member State concerned for not more than 18 months after the date set out in the first paragraph of Article 85(1).

Article 81
Amendment of Directive 97/7/EC

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

Article 82
Amendment of Directive 2000/12/EC

In Article 19 of Directive 2000/12/EC, the following paragraph is added:

“Without prejudice to the fifth indent of the first paragraph, in so far as financial institutions provide payment services within the meaning of Directive [.../...] of the European Parliament and of the Council(*), they shall operate in accordance with the rules laid down in Title II of that Directive.

(*) OJ L [...], ..., p. [...].”

Article 83
Amendment of Directive 2002/65/EC

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

Article 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 [12 months after the date of adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and the provisions of this Directive.

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

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

Article 86
Entry into force

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

Article 87
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX
“PAYMENT SERVICES” UNDER ARTICLE 2(1)

- (1) Cash deposits on a payment account held either by the user's payment service provider or by another payment service provider as well as all the operations required for operating a payment account.
- (2) Cash withdrawals from a payment account held either by the user's payment service provider or by another payment service provider, as well as all the operations required for operating a payment account.
- (3) Execution of payment transactions, including transfer of funds, where the funds are held on deposit in 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 provided in accordance with Directive 98/7/EC of the European Parliament and of the Council amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit and other applicable Community legislation:
 - execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders.
- (5) Issuing of payment cards which allow the payment service user to transfer funds.
- (6) Execution of payment transactions, including transfer of funds, where the electronic money within the meaning of Directive 2000/46/EC is issued by the payment service provider.
- (7) Money remittance services where the cash, scriptural money or electronic-money is accepted by the payment service provider from the payment service user for the sole purpose of making a payment transaction and transferring the funds to the payee.
- (8) Execution of payment transactions by any means of communication at a distance such as mobile telephones or other digital or IT devices where the service provider operating the telecommunication or IT system or network is facilitating the payment of goods or services that are not digital goods or electronic communication services and so are not provided through the device itself.
- (9) Execution of payment transactions by any means of communication at a distance such as mobile telephones or other digital or IT devices where the service provider operating the telecommunication or IT system or network simply arranges a transfer of funds for the payment of digital goods or electronic communication services provided through the device, without any other intervention in the service provided.