

Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance) (repealed)

TITLE II

PAYMENT SERVICE PROVIDERS

CHAPTER 1

Payment institutions

Section 1

General rules

Article 5

Applications for authorisation

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

- (a) a programme of operations, setting out in particular the type of payment services envisaged;
- (b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- (c) evidence that the payment institution holds initial capital provided for in Article 6;
- (d) for the payment institutions referred to in Article 9(1), a description of the measures taken for safeguarding payment service users' funds in accordance with Article 9;
- (e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
- (f) a description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds⁽¹⁾;
- (g) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of its participation in a national or international payment system;

- (h) the identity of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of Article 4(11) of Directive 2006/48/EC, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution;
- (i) the identity of directors and persons responsible for the management of the payment institution and, where relevant, persons responsible for the management of the payment services activities of the payment institution, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services as determined by the home Member State of the payment institution;
- (j) where applicable, the identity of statutory auditors and audit firms as defined in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts⁽²⁾;
- (k) the applicant's legal status and articles of association;
- (l) the address of the applicant's head office.

For the purposes of points (d), (e) and (g), the applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services.

Article 6

Initial capital

Member States shall require payment institutions to hold, at the time of authorisation, initial capital, comprised of the items defined in Article 57(a) and (b) of Directive 2006/48/EC as follows:

- (a) where the payment institution provides only the payment service listed in point 6 of the Annex, its capital shall at no time be less than EUR 20 000;
- (b) where the payment institution provides the payment service listed in point 7 of the Annex, its capital shall at no time be less than EUR 50 000; and
- (c) where the payment institution provides any of the payment services listed in points 1 to 5 of the Annex, its capital shall at no time be less than EUR 125 000.

Article 7

Own funds

1 The payment institution's own funds, as defined in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC, may not fall below the amount required under Articles 6 or 8 of this Directive, whichever the higher.

2 Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the payment institution belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking. This paragraph shall also apply where a payment institution has a hybrid character and carries out activities other than providing payment services listed in the Annex.

3 If the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply Article 8 of this Directive to payment institutions which are included in the consolidated supervision of the parent credit institution pursuant to Directive 2006/48/EC.

Article 8

Calculation of own funds

1 Notwithstanding the initial capital requirements set out in Article 6, Member States shall require payment institutions to hold, at all times, own funds calculated in accordance with one of the following three methods, as determined by the competent authorities in accordance with national legislation:

Method A

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

Method B

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

- (a) 4,0 % of the slice of PV up to EUR 5 million,
plus
- (b) 2,5 % of the slice of PV above EUR 5 million up to EUR 10 million,
plus
- (c) 1 % of the slice of PV above EUR 10 million up to EUR 100 million,
plus
- (d) 0,5 % of the slice of PV above EUR 100 million up to EUR 250 million,
plus
- (e) 0,25 % of the slice of PV above EUR 250 million.

Method C

The payment institution's own funds shall amount to at least the relevant indicator defined in point (a), multiplied by the multiplication factor defined in point (b) and by the scaling factor k defined in paragraph 2.

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

- interest income,
- interest expenses,
- commissions and fees received, and
- other operating income.

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

- (b) The multiplication factor shall be:
- (i) 10 % of the slice of the relevant indicator up to EUR 2,5 million;
 - (ii) 8 % of the slice of the relevant indicator from EUR 2,5 million up to EUR 5 million;
 - (iii) 6 % of the slice of the relevant indicator from EUR 5 million up to EUR 25 million;
 - (iv) 3 % of the slice of the relevant indicator from EUR 25 million up to 50 million;
 - (v) 1,5 % above EUR 50 million.
- 2 The scaling factor k to be used in Methods B and C shall be:
- a 0,5 where the payment institution provides only the payment service listed in point 6 of the Annex;
 - b 0,8 where the payment institution provides the payment service listed in point 7 of the Annex;
 - c 1 where the payment institution provides any of the payment services listed in points 1 to 5 of the Annex.

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

Article 9

Safeguarding requirements

1 The Member States or competent authorities shall require a payment institution which provides any of the payment services listed in the Annex and, at the same time, is engaged in other business activities referred to in Article 16(1)(c) to safeguard funds which have been

received from the payment service users or through another payment service provider for the execution of payment transactions, as follows:

either:

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

or

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

2 Where a payment institution is required to safeguard funds under paragraph 1 and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements under paragraph 1. Where that portion is variable or unknown in advance, Member States may allow payment institutions to apply this paragraph on the basis of a representative portion assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the competent authorities.

3 The Member States or competent authorities may require that payment institutions which are not engaged in other business activities referred to in Article 16(1)(c) shall also comply with the safeguarding requirements under paragraph 1 of this Article.

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

Article 10

Granting of authorisation

1 Member States shall require undertakings other than those referred to in Article 1(1) (a) to (c), (e) and (f) and other than legal or natural persons benefiting from a waiver under Article 26, who intend to provide payment services, to obtain authorisation as a payment institution before commencing the provision of payment services. An authorisation shall only be granted to a legal person established in a Member State.

2 An authorisation shall be granted if the information and evidence accompanying the application complies with all the requirements under Article 5 and if the competent authorities' overall assessment, having scrutinised the application, is favourable. Before an authorisation

is granted, the competent authorities may, where relevant, consult the national central bank or other relevant public authorities.

3 A payment institution which under the national law of its home Member State is required to have a registered office, shall have its head office in the same Member State as its registered office.

4 The competent authorities shall grant an authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, the payment institution has robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures; those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.

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

6 The competent authorities shall refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of a payment institution, they are not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

7 Where close links as defined in Article 4(46) of Directive 2006/48/EC exist between the payment institution and other natural or legal persons, the competent authorities shall grant an authorisation only if those links do not prevent the effective exercise of their supervisory functions.

8 The competent authorities shall grant an authorisation only if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of their supervisory functions.

9 An authorisation shall be valid in all Member States and shall allow the payment institution concerned to provide payment services throughout the Community, either under the freedom to provide services or the freedom of establishment, provided that such services are covered by the authorisation.

Article 11

Communication of the decision

Within three months of receipt of an application or, should the application be incomplete, of all the information required for the decision, the competent authorities shall inform the applicant whether the authorisation has been granted or refused. Reasons shall be given whenever an authorisation is refused.

Article 12

Withdrawal of authorisation

- 1 The competent authorities may withdraw an authorisation issued to a payment institution only where the institution:
 - a does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorisation to lapse in such cases;
 - b has obtained the authorisation through false statements or any other irregular means;
 - c no longer fulfils the conditions for granting the authorisation;
 - d would constitute a threat to the stability of the payment system by continuing its payment services business; or
 - e falls within one of the other cases where national law provides for withdrawal of an authorisation.
- 2 Reasons shall be given for any withdrawal of an authorisation and those concerned shall be informed accordingly.
- 3 The withdrawal of an authorisation shall be made public.

Article 13

Registration

Member States shall establish a public register of authorised payment institutions, their agents and branches, as well as of natural and legal persons, their agents and branches, benefiting from a waiver under Article 26, and of the institutions referred to in Article 2(3) that are entitled under national law to provide payment services. They shall be entered in the register of the home Member State.

This register shall identify the payment services for which the payment institution is authorised or for which the natural or legal person has been registered. Authorised payment institutions shall be listed in the register separately from natural and legal persons that have been registered in accordance with Article 26. The register shall be publicly available for consultation, accessible online, and updated on a regular basis.

Article 14

Maintenance of authorisation

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

Article 15

Accounting and statutory audit

1 Directive 78/660/EEC and, where applicable, Directives 83/349/EEC and 86/635/EEC and Regulation (EC) 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards⁽³⁾ shall apply to payment institutions *mutatis mutandis*.

2 Unless exempted under Directive 78/660/EEC and, where applicable, Directives 83/349/EEC and 86/635/EEC, the annual accounts and consolidated accounts of payment institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC.

3 For supervisory purposes, Member States shall require that payment institutions provide separate accounting information for payment services listed in the Annex and activities referred to in Article 16(1), which shall be subject to an auditor's report. That report shall be prepared, where applicable, by the statutory auditors or an audit firm.

4 The obligations established in Article 53 of Directive 2006/48/EC shall apply *mutatis mutandis* to the statutory auditors or audit firms of payment institutions in respect of payment services activities.

Article 16

Activities

1 Apart from the provision of payment services listed in the Annex payment institutions shall be entitled to engage in the following activities:

- a the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;
- b the operation of payment systems, without prejudice to Article 28;
- c business activities other than the provision of payment services, having regard to applicable Community and national law.

2 When payment institutions engage in the provision of one or more of the payment services listed in the Annex, they may hold only payment accounts used exclusively for payment transactions. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of Article 5 of Directive 2006/48/EC, or electronic money within the meaning of Article 1(3) of Directive 2000/46/EC.

3 Payment institutions may grant credit related to payment services referred to in points 4, 5 or 7 of the Annex only if the following conditions are met:

- a the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;
- b notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed in accordance with Article 10(9) and Article 25 shall be repaid within a short period which shall in no case exceed twelve months;

- c such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction; and
- d the own funds of the payment institution shall at all times and to the satisfaction of the supervisory authorities be appropriate in view of the overall amount of credit granted.

4 Payment institutions shall not conduct the business of taking deposits or other repayable funds within the meaning of Article 5 of Directive 2006/48/EC.

5 This Directive shall be without prejudice to national measures implementing Directive 87/102/EEC. This Directive shall also be without prejudice to other relevant Community or national legislation regarding conditions for granting credit to consumers not harmonised by this Directive that are in conformity with Community law.

Section 2

Other requirements

Article 17

Use of agents, branches or entities to which activities are outsourced

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

- a the name and address of the agent;
- b a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC; and
- c the identity of directors and persons responsible for the management of the agent to be used in the provision of payment services and evidence that they are fit and proper persons.

2 When the competent authorities receive the information in accordance with paragraph 1 then they may list the agent in the register provided for in Article 13.

3 Before listing the agent in the register, the competent authorities may, if they consider that the information provided to them is incorrect, take further action to verify the information.

4 If, after taking action to verify the information, the competent authorities are not satisfied that the information provided to them pursuant to paragraph 1 is correct, they shall refuse to list the agent in the register provided for in Article 13.

5 If the payment institution wishes to provide payment services in another Member State by engaging an agent it shall follow the procedures set out in Article 25. In that case, before the agent may be registered under this Article, the competent authorities of the home Member State shall inform the competent authorities of the host Member State of their intention to register the agent and take their opinion into account.

6 If the competent authorities of the host Member State have reasonable grounds to suspect that, in connection with the intended engagement of the agent or establishment of the branch, money laundering or terrorist financing within the meaning of Directive 2005/60/EC is taking place, has taken place or been attempted, or that the engagement of such agent or establishment of such branch could increase the risk of money laundering or terrorist financing,

they shall so inform the competent authorities of the home Member State, which may refuse to register the agent or branch, or may withdraw the registration, if already made, of the agent or branch.

7 Where a payment institution intends to outsource operational functions of payment services, it shall inform the competent authorities of its home Member State accordingly.

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

For the purposes of the second subparagraph, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation requested under this Title or its other obligations under this Directive, or its financial performance, or the soundness or the continuity of its payment services. Member States shall ensure that when payment institutions outsource important operational functions, the payment institutions comply with the following conditions:

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

8 Payment institutions shall ensure that agents or branches acting on their behalf inform payment service users of this fact.

Article 18

Liability

1 Member States shall ensure that, where payment institutions rely on third parties for the performance of operational functions, those payment institutions take reasonable steps to ensure that the requirements of this Directive are complied with.

2 Member States shall require that payment institutions remain fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.

Article 19

Record-keeping

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

Section 3

Competent authorities and supervision

Article 20

Designation of competent authorities

1 Member States shall designate as the competent authorities responsible for the authorisation and prudential supervision of payment institutions which are to carry out the duties provided for under this Title either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law, including national central banks.

The competent authorities shall guarantee independence from economic bodies and avoid conflicts of interest. Without prejudice to the first subparagraph, payment institutions, credit institutions, electronic money institutions, or post office giro institutions shall not be designated as competent authorities.

The Member States shall inform the Commission accordingly.

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

3 Where there is more than one competent authority for matters covered by this Title on its territory, Member States shall ensure that those authorities cooperate closely so that they can discharge their respective duties effectively. The same applies in cases where the authorities competent for matters covered by this Title are not the competent authorities responsible for the supervision of credit institutions.

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

5 Paragraph 1 shall not imply that the competent authorities are required to supervise business activities of the payment institutions other than the provision of payment services listed in the Annex and the activities listed in Article 16(1)(a).

Article 21

Supervision

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

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

- a to require the payment institution to provide any information needed to monitor compliance;
- b to carry out on-site inspections at the payment institution, at any agent or branch providing payment services under the responsibility of the payment institution, or at any entity to which activities are outsourced;
- c to issue recommendations, guidelines and, if applicable, binding administrative provisions; and

d to suspend or withdraw authorisation in cases referred to in Article 12.

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

3 Notwithstanding the requirements of Article 6, Article 7(1) and (2) and Article 8, Member States shall ensure that the competent authorities are entitled to take steps described under paragraph 1 of this Article to ensure sufficient capital for payment services, in particular where the non-payment services activities of the payment institution impair or are likely to impair the financial soundness of the payment institution.

Article 22

Professional secrecy

1 Member States shall ensure that all persons working or who have worked for the competent authorities, as well as experts acting on behalf of the competent authorities, are bound by the obligation of professional secrecy, without prejudice to cases covered by criminal law.

2 In the exchange of information in accordance with Article 24, professional secrecy shall be strictly applied to ensure the protection of individual and business rights.

3 Member States may apply this Article taking into account, *mutatis mutandis*, Articles 44 to 52 of Directive 2006/48/EC.

Article 23

Right to apply to the courts

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

2 Paragraph 1 shall apply also in respect of failure to act.

Article 24

Exchange of information

1 The competent authorities of the different Member States shall cooperate with each other and, where appropriate, with the European Central Bank and the national central banks of the Member States and other relevant competent authorities designated under Community or national legislation applicable to payment service providers.

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

- a the competent authorities of other Member States responsible for the authorisation and supervision of payment institutions;

- b the European Central Bank and the national central banks of Member States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- c other relevant authorities designated under this Directive, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to payment service providers, such as legislation applicable to the protection of individuals with regard to the processing of personal data as well as money laundering and terrorist financing.

Article 25

Exercise of the right of establishment and freedom to provide services

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

Within one month of receiving that information, the competent authorities of the home Member State shall inform the competent authorities of the host Member State of the name and address of the payment institution, the names of those responsible for the management of the branch, its organisational structure and of the kind of payment services it intends to provide in the territory of the host Member State.

2 In order to carry out the controls and take the necessary steps provided for in Article 21 in respect of the agent, branch or entity to which activities are outsourced of a payment institution located in the territory of another Member State, the competent authorities of the home Member State shall cooperate with the competent authorities of the host Member State.

3 By way of cooperation in accordance with paragraphs 1 and 2, the competent authorities of the home Member State shall notify the competent authorities of the host Member State whenever they intend to carry out an on-site inspection in the territory of the latter.

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

4 The competent authorities shall provide each other with all essential and/or relevant information, in particular in the case of infringements or suspected infringements by an agent, a branch or an entity to which activities are outsourced. In this regard, the competent authorities shall communicate, upon request, all relevant information and, on their own initiative, all essential information.

5 Paragraphs 1 to 4 shall be without prejudice to the obligation of competent authorities under Directive 2005/60/EC and Regulation (EC) No 1781/2006, in particular under Article 37(1) of Directive 2005/60/EC and Article 15(3) of Regulation (EC) No 1781/2006 to supervise or monitor the compliance with the requirements laid down in those instruments.

Section 4

Waiver

Article 26

Conditions

1 Notwithstanding Article 13, Member States may waive or allow their competent authorities to waive the application of all or part of the procedure and conditions set out in Sections 1 to 3, with the exception of Articles 20, 22, 23 and 24, and allow natural or legal persons to be entered in the register provided for in Article 13, where:

- a the average of the preceding 12 months' total amount of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million per month. That requirement shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the competent authorities; and
- b none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

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

3 The persons referred to in paragraph 1 shall be treated as payment institutions, save that Article 10(9) and Article 25 shall not apply to them.

4 Member States may also provide that any natural or legal person registered in accordance with paragraph 1 may engage only in certain activities listed in Article 16.

5 The persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the conditions specified in that paragraph. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer fulfilled, the persons concerned shall seek authorisation within 30 calendar days in accordance with the procedure laid down in Article 10.

6 This Article shall not be applied in respect of provisions of Directive 2005/60/EC or national anti-money-laundering provisions.

Article 27

Notification and information

If a Member State avails itself of the waiver provided for in Article 26, it shall notify the Commission accordingly by 1 November 2009 and it shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of natural and legal persons concerned and, on an annual basis, of the total amount of payment transactions executed as of 31 December of each calendar year, as referred to in Article 26(1)(a).

CHAPTER 2

Common provisions

Article 28

Access to payment systems

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

Payment systems shall impose on payment service providers, on payment service users or on other payment systems none of the following requirements:

- a any restrictive rule on effective participation in other payment systems;
- b any rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants; or
- c any restriction on the basis of institutional status.

2 Paragraph 1 shall not apply to:

- a payment systems designated under Directive 98/26/EC;
- b payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities; or
- c payment systems where a sole payment service provider (whether as a single entity or as a group):
 - acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system, and
 - licenses other payment service providers to participate in the system and the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.

Article 29

Prohibition for persons other than payment service providers to provide payment services

Member States shall prohibit natural or legal persons that are neither payment service providers nor explicitly excluded from the scope of this Directive from providing the payment services listed in the Annex.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 345, 8.12.2006, p. 1.
- (2) OJ L 157, 9.6.2006, p. 87.
- (3) OJ L 243, 11.9.2002, p. 1.