

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Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance) (repealed)

DIRECTIVE 2007/64/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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(Text with EEA relevance) (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having consulted the European Economic and Social Committee,

Having regard to the opinion of the European Central Bank⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

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 27 national legal systems.
- (3) Several Community acts have already been adopted in this area, namely Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers⁽³⁾ and Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro⁽⁴⁾, but these have not sufficiently remedied this situation any more than have Commission Recommendation 87/598/EEC of 8 December 1987 on a European Code of Conduct relating to electronic payment (relations between financial institutions, traders and service establishments, and consumers)⁽⁵⁾, Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems, and in particular the relationship between cardholder and card issuer⁽⁶⁾, or Commission Recommendation 97/489/EC

of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder⁽⁷⁾. These measures continue to be insufficient. The co-existence of national provisions and an incomplete Community framework gives rise to confusion and a lack of legal certainty.

- (4) It is vital, therefore, to establish at Community level a modern and coherent legal framework for payment services, whether or not the services are compatible with the system resulting from the financial sector initiative for a single euro payments area, which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer cost, safety and efficiency, as compared with the present national systems.
- (5) That legal 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 and providers. 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. The provisions 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 payment service 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 their transport is executed solely in bank notes and coins or where the transfer is based on a paper cheque, paper-based bill of exchange, promissory note or other instrument, paper-based vouchers or cards drawn upon a payment service provider or other party with a view to placing funds at the disposal of the payee. Furthermore, a differentiation should be made in the case of means offered by telecommunication, information technology or network operators to facilitate purchasing of digital goods or services, such as ring tones, music or digital newspapers, besides traditional voice services and their distribution to digital devices. The content of these goods or services may be produced either by a third party or by the operator, who may add intrinsic value to them in the form of access, distribution or search facilities. In the latter case, where the goods or services are distributed by one of those operators, or, for technical reasons, by a third party, and where they can be used only through digital devices, such as mobile phones or computers, that legal framework should not apply as the activity of the operator goes beyond a mere payment transaction. However, it is appropriate for that legal framework to apply to cases where the operator acts only as an intermediary who simply arranges for payment to be made to a third-party supplier.
- (7) Money remittance is a simple payment service that is usually based on cash provided by a payer to a payment service provider, which remits the corresponding amount, for example via communication network, to a payee or to another payment service provider acting on behalf of the payee. In some Member States supermarkets, merchants and other retailers provide to the public a corresponding service enabling the payment of

utility and other regular household bills. Those bill-paying services should be treated as money remittance as defined in this Directive, unless the competent authorities consider the activity to fall under another payment service listed in the Annex.

- (8) It is necessary to specify the categories of payment service providers which may legitimately provide payment services throughout the Community, namely, credit institutions which take deposits from users that can be used to fund payment transactions and which should continue to be subject to the prudential requirements under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁽⁸⁾, electronic money institutions which issue electronic money that can be used 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 and prudential supervision of the business of electronic money institutions⁽⁹⁾, and post office giro institutions which are so entitled under national law.
- (9) This Directive should lay down rules on the execution of payment transactions where the funds are electronic money, as defined in Article 1(3)(b) of Directive 2000/46/EC. This Directive should, however, neither regulate issuance of electronic money nor amend the prudential regulation of electronic money institutions as provided for in Directive 2000/46/EC. Therefore, payment institutions should not be allowed to issue electronic money.
- (10) 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 electronic money. It is appropriate, therefore, to introduce a new category of payment service providers, 'payment institutions', by providing for the authorisation, subject to a set of strict and comprehensive conditions, of legal persons outside the existing categories to provide payment services throughout the Community. Thus, the same conditions would apply Community-wide to such services.
- (11) The conditions for granting and maintaining 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. In this connection, there is a need for a sound regime of initial capital combined with ongoing capital which could be elaborated in a more sophisticated way in due course depending on the needs of the market. Due to the range of variety in the payments services area, this Directive should allow various methods combined with a certain range of supervisory discretion to ensure that the same risks are treated the same way for all payment service providers. The requirements for the payment institutions should reflect the fact that payment institutions engage in more specialised and limited activities, thus generating risks that are narrower and easier to monitor and control than those that arise across the broader spectrum of activities of credit institutions. In particular, payment institutions should be prohibited from accepting deposits from users and permitted to use funds received from users only 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.

- (12) Payment institutions should draw up their annual and consolidated accounts in accordance with Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies⁽¹⁰⁾ and, where applicable, Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts⁽¹¹⁾ and Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions⁽¹²⁾. The annual accounts and consolidated accounts should be audited, unless the payment institution is exempted from this obligation under Directive 78/660/EEC and, where applicable, Directives 83/349/EEC and 86/635/EEC.
- (13) This Directive should regulate the granting of credit by payment institutions, i.e. the granting of credit lines and the issuance of credit cards, only where it is closely linked to payment services. Only if credit is granted in order to facilitate payment services and such credit is of a short-term nature and is granted for a period not exceeding twelve months, including on a revolving basis, is it appropriate to allow payment institutions to grant such credit with regard to their cross-border activities, on condition that it is refinanced using mainly the payment institution's own funds, as well as other funds from the capital markets, but not the funds held on behalf of clients for payment services. The above should be without prejudice to Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit⁽¹³⁾ or other relevant Community or national legislation regarding conditions for granting credit to consumers not harmonised by this Directive.
- (14) It is necessary for the Member States to designate the authorities responsible for granting authorisations to payment institutions, carrying out controls and deciding on the withdrawal of those authorisations. In order to ensure equality of treatment, Member States should apply to payment institutions no requirements 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, in line with the fourth indent of Article 105(2) of the Treaty, is a task to be carried out by the European System of Central Banks.
- (15) Given the desirability of registering the identity and whereabouts of all persons providing remittance services and of according them all a measure of acceptance, irrespective of whether they are able to meet the full range of conditions for authorisation as payment institutions, so that none are forced into the black economy and bring all persons providing remittance service within the ambit of certain minimum legal and regulatory requirements, it is appropriate and in line with the rationale of Special Recommendation VI of the Financial Action Task Force on Money Laundering to provide a mechanism whereby payment service providers unable to meet all those conditions may nevertheless be treated as payment institutions. For those purposes, Member States should enter such persons in the register of payment institutions while not applying all or part of the conditions for authorisation. However, it is essential to

make the possibility of waiver subject to strict requirements relating to the volume of payment transactions. Payment institutions benefiting from a waiver should have neither the right of establishment nor the freedom to provide services, nor should they indirectly exercise those rights when being a member of a payment system.

- (16) It is essential for any payment service provider to be able to access the services of technical infrastructures of payment systems. Such access should, however, be subject to appropriate requirements in order to ensure integrity and stability of those systems. Each payment service provider applying for a participation in a payment system should furnish proof to the participants of the payment system that its internal arrangements are sufficiently robust against all kinds of risk. These payment systems typically include e.g. the four-party card schemes as well as major systems processing credit transfers and direct debits. In order to ensure equality of treatment throughout the Community as between the different categories of authorised payment service providers, according to the terms of their licence, it is necessary to clarify the rules concerning access to the provision of payment services and access to payment systems. Provision should be made for the non-discriminatory treatment of authorised payment institutions and credit institutions so that any payment service provider competing in the internal market is able to use the services of the technical infrastructures of these payment systems under the same conditions. It is appropriate to provide for different treatment for authorised payment service providers and for those benefiting from a waiver under this Directive as well as from the waiver under the Article 8 of the Directive 2000/46/EC, due to the differences in their prudential framework. In any case differences in price conditions should be allowed only when this is motivated by differences in costs induced by the payment service providers. This should be without prejudice to Member States' right to limit access to systemically important systems in accordance with Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems⁽¹⁴⁾ and without prejudice to the competence of the European Central Bank and the European System of Central Banks (ESCB), as laid down in Article 105(2) of the Treaty and Article 3(1) and Article 22 of the Statute of the ESCB, concerning access to payment systems.
- (17) The provisions of the access to payment systems should not apply to systems set up and operated by a single payment service provider. Those payment systems can operate either in direct competition to payment systems, or, more typically, in a market niche not adequately covered by payment systems. They typically cover three-party schemes, such as three party card schemes, payment services offered by telecommunication providers or money remittance services where the scheme operator is the payment service provider to both the payer and payee as well as internal systems of banking groups. In order to stimulate the competition that can be provided by such payment systems to established mainstream payment systems, it should in principle not be appropriate to grant third parties access to these payment systems. Nevertheless, such systems should always be subject to Community and national competition rules which may require that access be granted to the schemes in order to maintain effective competition in payments markets.

- (18) A set of rules should be established in order to ensure transparency of conditions and information requirements for payment services.
- (19) This Directive should apply neither to payment transactions made in cash since a single payments market for cash already exists nor to payment transactions based on paper cheques since, by their nature, they cannot be processed as efficiently as other means of payment. Good practice in this area should, however, be based on the principles set out in this Directive.
- (20) As consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee consumers' rights by provisions which cannot be derogated from by contract, it is reasonable to let enterprises and organisations agree otherwise. However, Member States should have the possibility to provide that micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁽¹⁵⁾, should be treated in the same way as consumers. In any case, certain core provisions of this Directive should always be applicable irrespective of the status of the user.
- (21) This Directive should specify the obligations on payment service providers as regards the provision of information to the payment service users who should receive the same high level of clear information about payment services in order to make well-informed choices and be able to shop around within the EU. In the interest of transparency this Directive should lay down the harmonised requirements needed to ensure that necessary and sufficient information is given to the payment service users with regard to the payment service contract and the payment transactions. In order to promote smooth functioning of the single market in payment services, Member States should be able to adopt only those information provisions laid down in this Directive.
- (22) Consumers should be protected against unfair and misleading practices in line with Directive 2005/29/EC of the European Parliament and the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the Internal Market⁽¹⁶⁾ as well as Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)⁽¹⁷⁾ and Directive 2002/65/EC of the European Parliament and the Council of 23 September 2002 concerning the distance marketing of consumer financial services⁽¹⁸⁾. The additional provisions in those Directives continue to be applicable. However, the relationship of the pre-contractual information requirements between this Directive and Directive 2002/65/EC should, in particular, be clarified.
- (23) The information required should be proportionate to the needs of users and communicated in a standard manner. However, the information requirements for a single payment transaction should be different from those of a framework contract which provides for the series of payment transactions.
- (24) In practice, framework contracts and the payment transactions covered by them are far more common and economically important than single payment transactions. If there is

a payment account or a specific payment instrument, a framework contract is required. Therefore, the requirements for prior information on framework contracts should be quite comprehensive and information should always be provided on paper or on another durable medium, such as printouts by account printers, floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail can be stored, and Internet sites, as long as such sites are accessible for future reference for a period of time adequate for the purposes of information and allow the unchanged reproduction of the information stored. However, it should be possible for the payment service provider and the payment service user to agree in the framework contract on the manner in which subsequent information on executed payment transactions is given, for instance, that in Internet banking all information on the payment account is made available online.

- (25) In single payment transactions only the essential information should always be given on the payment service provider's own initiative. As the payer is usually present when he gives the payment order, it is not necessary to require that information should in every case be provided on paper or on another durable medium. The payment service provider may give information orally over the counter or make it otherwise easily accessible, for example by keeping the conditions on a notice board on the premises. Information should also be given on where other more detailed information is available (e.g. the address of the website). However, if the consumer so requests, the essential information should be given on paper or on another durable medium.
- (26) This Directive should provide for the consumer's right to receive relevant information free of charge before he is bound by any payment service contract. The consumer should also be able to request prior information as well as the framework contract, on paper, free of charge at any time during the contractual relationship, so as to enable him to compare payment service providers' services and their conditions and in case of any dispute verify his contractual rights and obligations. Those provisions should be compatible with Directive 2002/65/EC. The explicit provisions on free information in this Directive should not have the effect of allowing charges to be imposed for the provision of information to consumers under other applicable Directives.
- (27) The way in which the required information is to be given by the payment service provider to the payment service user should take into account the needs of the latter as well as practical technical aspects and cost-efficiency depending on the situation with regard to the agreement in the respective payment service contract. Thus, this Directive should distinguish between two ways in which information is to be given by the payment service provider: either the information should be provided, i.e. actively communicated by the payment service provider at the appropriate time as required by this Directive without further prompting by the payment service user, or the information should be made available to the payment service user, taking into account any request he may have for further information. In the latter case, the payment service user should take some active steps in order to obtain the information, such as requesting it explicitly from the payment service provider, logging into bank account mail box or inserting a bank card into printer for account statements. For such purposes the payment service provider should ensure that access to the information is possible and that the information is available to the payment service user.

- (28) In addition, the consumer should receive basic information on executed payment transactions for no additional charge. In the case of a single payment transaction the payment service provider should not charge separately for this information. Similarly, the subsequent monthly information on payment transactions under a framework contract should be given free of charge. However, taking into account the importance of transparency in pricing and differing customer needs, the parties should be able to agree on charges for more frequent or additional information. In order to take into account different national practices, Member States should be allowed to set rules requiring that monthly paper-based statements of payment accounts are always to be given free of charge.
- (29) In order to facilitate customer mobility, it should be possible for consumers to terminate a framework contract after the expiry of a year without incurring charges. For consumers, the period of notice agreed should be no longer than a month, and for payment service providers no shorter than two months. This Directive should be without prejudice to the payment service provider's obligation to terminate the payment service contract in exceptional circumstances under other relevant Community or national legislation, such as legislation on money laundering and terrorist financing, any action targeting the freezing of funds, or any specific measure linked to the prevention and investigation of crimes.
- (30) Low value payment instruments should be a cheap and easy-to-use alternative in the case of low-priced goods and services and should not be overburdened by excessive requirements. The relevant information requirements and rules on their execution should therefore be limited to essential information, taking also into account technical capabilities that can justifiably be expected from instruments dedicated to low value payments. Despite the lighter regime payment service users should benefit from adequate protection considering the limited risks posed by those payment instruments, especially with regard to prepaid payment instruments.
- (31) In order to reduce the risks and consequences of unauthorised or incorrectly executed payment transactions the payment service user should inform the payment service provider as soon as possible about any contestations concerning allegedly unauthorised or incorrectly executed payment transactions provided that the payment service provider has fulfilled his information obligations under this Directive. If the notification deadline is met by the payment service user, he should be able to pursue those claims within the prescription periods pursuant to national law. This Directive should not affect other claims between payment service users and payment service providers.
- (32) In order to provide an incentive for the payment service user to notify, without undue delay, his provider of any theft or loss of a payment instrument and thus to reduce the risk of unauthorised payment transactions, the user should be liable only for a limited amount, unless the payment service user has acted fraudulently or with gross negligence. Moreover, once a user has notified a payment service provider that his payment instrument may have been compromised, the user should not be required to cover any further losses stemming from unauthorised use of that instrument. This

Directive should be without prejudice to the payment service providers' responsibility for technical security of their own products.

- (33) In order to assess possible negligence by the payment service user, account should be taken of all the circumstances. The evidence and degree of alleged negligence should be evaluated according to national law. Contractual terms and conditions relating to the provision and use of a payment instrument, the effect of which would be to increase the burden of proof on the consumer or to reduce the burden of proof on the issuer should be considered null and void.
- (34) However, Member States should be able to establish less stringent rules than mentioned above in order to maintain existing levels of consumer protection and promote trust in the safe usage of electronic payment instruments. The fact that different payment instruments involve different risks should be taken into account accordingly thus promoting the issuance of safer instruments. Member States should be allowed to reduce or completely waive the payer's liability except where the payer has acted fraudulently.
- (35) Provisions should be made for the allocation of losses in the case of unauthorised payment transactions. Different provisions may apply to payment service users who are not consumers, since such users are normally in a better position to assess the risk of fraud and take countervailing measures.
- (36) This Directive should lay down rules for a refund to protect the consumer when the executed payment transaction exceeds the amount which could reasonably have been expected. Payment service providers should be able to provide even more favourable terms to their customers and, for example, refund any disputed payment transactions. In cases where the user makes a claim for the refund of a payment transaction refund rights should affect neither the liability of the payer *vis-à-vis* the payee from the underlying relationship, e.g. for goods or services ordered, consumed or legitimately charged, nor the users rights with regard to revocation of a payment order.
- (37) For financial planning and the fulfilment of payment obligations in due time, consumers and enterprises need to have certainty on the length of time that the execution of a payment order takes. Therefore, this Directive should introduce a point in time at which rights and obligations take effect, namely, when the payment service provider receives the payment order, including when he has had the opportunity to receive it through the means of communication agreed in the payment service contract, notwithstanding any prior involvement in the process leading up to the creation and transmission of the payment order, e.g. security and availability of funds checks, information on the use of the personal identity number or issuance of a payment promise. Furthermore, the receipt of a payment order should occur when the payer's payment service provider receives the payment order to be debited from the payer's account. The day or moment in time when a payee transmits to his service provider payment orders for the collection e.g. of card payment or of direct debits or when the payee is granted a pre-financing on the related amounts by his payment service provider (by way of a contingent credit to his account) should have no relevance in this respect. Users should be able to rely on the proper execution of a complete and valid payment order if the payment service provider has no contractual or statutory ground for refusal. If the payment service provider

refuses a payment order, the refusal and the reason therefor should be communicated to the payment service user at the earliest opportunity subject to the requirements of Community and national law.

- (38) In view of the speed with which modern fully automated payment systems process payment transactions, which means that after a certain point in time payment orders cannot be revoked without high manual intervention costs, it is necessary to specify a clear deadline for payment revocations. However, depending on the type of the payment service and the payment order, the point in time may be varied by agreement between the parties. Revocation, in this context, is applicable only to the relationship between a payment service user and payment service provider, thus being without prejudice to the irrevocability and finality of payment transactions in payment systems.
- (39) Such irrevocability should not affect a payment service provider's right or obligation under the laws of some Member States, based on the payer's framework contract or national laws, regulations, administrative provisions or guidelines, to reimburse the payer with the amount of the executed payment transaction in the event of a dispute between the payer and the payee. Such reimbursement should be considered to be a new payment order. Except for those cases, legal disputes arising within the relationship underlying the payment order should be settled only between the payer and the payee.
- (40) It is essential, for the fully integrated straight-through processing of payments and for legal certainty with respect to the fulfilment of any underlying obligation between payment service users, that the full amount transferred by the payer should be credited to the account of the payee. Accordingly, it should not be possible for any of the intermediaries involved in the execution of payment transactions to make deductions from the amount transferred. However, it should be possible for the payee to enter into an agreement with his payment service provider under which the latter may deduct his own charges. Nevertheless, in order to enable the payee to verify that the amount due is correctly paid, subsequent information provided on the payment transaction should indicate not only the full amount of funds transferred but also the amount of any charges.
- (41) With regard to charges, experience has shown that the sharing of charges between a payer and a payee is the most efficient system since it facilitates the straight-through processing of payments. Provision should therefore be made for charges to be levied, in the normal course, directly on the payer and the payee by their respective payment service providers. However, that should apply only where the payment transaction does not require currency exchange. The amount of any charges levied may also be zero as the provisions of this Directive do not affect the practice whereby the payment service provider does not charge consumers for crediting their accounts. Similarly, depending on the contract terms, a payment service provider may charge only the payee (merchant) for the use of the payment service, which has the effect that no charges are imposed on the payer. The charging of the payment systems may be in the form of a subscription fee. The provisions on the amount transferred or any charges levied have no direct impact on pricing between payment service providers or any intermediaries.
- (42) In order to promote transparency and competition, the payment service provider should not prevent the payee from requesting a charge from the payer for using a specific

payment instrument. While the payee should be free to levy charges for the use of a certain payment instrument, Member States may decide whether they forbid or limit any such practice where, in their view, this may be warranted in view of abusive pricing or pricing which may have a negative impact on the use of a certain payment instrument taking into account the need to encourage competition and the use of efficient payment instruments.

- (43) In order to improve the efficiency of payments throughout the Community, all payment orders initiated by the payer and denominated in euro or the currency of a Member State outside the euro area, including credit transfers and money remittances, should be subject to a maximum one-day execution time. For all other payments, such as payments initiated by or through a payee, including direct debits and card payments, in the absence of an explicit agreement between the payment service provider and the payer setting a longer execution time, the same one-day execution time should apply. The periods above could be extended by an additional business day, if a payment order is given on paper. This allows the continued provision of payment services for those consumers who are used to paper documents only. When a direct debit scheme is used the payee's payment service provider should transmit the collection order within the time limits agreed between the payee and his payment service provider, enabling settlement at the agreed due date. In view of the fact that national payment infrastructures are often highly efficient and in order to prevent any deterioration in current service levels, Member States should be allowed to maintain or set rules specifying an execution time shorter than one business day, where appropriate.
- (44) The provisions on execution for the full amount and execution time should constitute good practice where one of the service providers is not located in the Community.
- (45) It is essential for payment service users to know the real costs and charges of payment services in order to make their choice. Accordingly, the use of non-transparent pricing methods should not be allowed, since it is commonly accepted that those methods make it extremely difficult for users to establish the real price of the payment service. Specifically, the use of value dating to the disadvantage of the user should not be permitted.
- (46) The smooth and efficient functioning of the payment system depends on the user being able to rely on the payment service provider executing the payment transaction correctly and within the agreed time. Usually, the provider is in the position to assess the risks involved in the payment transaction. It is the provider that provides the payments system, makes arrangements to recall misplaced or wrongly allocated funds and decides in most cases on the intermediaries involved in the execution of a payment transaction. In view of all those considerations, it is entirely appropriate, except under abnormal and unforeseeable circumstances, to impose liability on the payment service provider in respect of execution of a payment transaction accepted from the user, except for the payee's payment service provider's acts and omissions for whose selection solely the payee is responsible. However, in order not to leave the payer unprotected in unlikely constellations where it may remain open (*non liquet*) whether the payment amount was duly received by the payee's payment service provider or not, the corresponding burden

of proof should lie upon the payer's payment service provider. As a rule, it can be expected that the intermediary institution, usually a 'neutral' body like a central bank or a clearing house, transferring the payment amount from the sending to the receiving payment service provider will store the account data and be able to furnish the latter whenever this may be necessary. Whenever the payment amount has been credited to the receiving payment service provider's account, the payee should immediately have a claim against his payment service provider for credit to his account.

- (47) The payer's payment service provider should assume liability for correct payment execution, including, in particular the full amount of the payment transaction and execution time, and full responsibility for any failure by other parties in the payment chain up to the account of the payee. As a result of that liability the payment service provider of the payer should, where the full amount is not credited to the payee's payment service provider, correct the payment transaction or without undue delay refund to the payer the relevant amount of that transaction, without prejudice to any other claims which may be made in accordance with national law. This Directive should concern only contractual obligations and responsibilities between the payment service user and his payment service provider. However, the proper functioning of credit transfers and other payment services requires that payment service providers and their intermediaries, such as processors, have contracts where their mutual rights and obligations are agreed upon. Questions related to liabilities form an essential part of these uniform contracts. To ensure the reliability among payment service providers and intermediaries taking part in a payment transaction, legal certainty is necessary to the effect that a non-responsible payment service provider is compensated for losses incurred or sums paid under the provisions of this Directive relating to liability. Further rights and details of content of recourse and how to handle claims towards the payment service provider or intermediary attributable to a defective payment transaction should be left to be defined by contractual arrangements.
- (48) It should be possible for the payment service provider to specify unambiguously the information required to execute a payment order correctly. On the other hand, however, in order to avoid fragmentation and jeopardising the setting-up of integrated payment systems in the Community, Member States should not be allowed to require a particular identifier to be used for payment transactions. However, this should not prevent Member States from requiring the payment service provider of the payer to act in due diligence and verify, where technically possible and without requiring manual intervention, the coherence of the unique identifier, and where the unique identifier is found to be incoherent, to refuse the payment order and inform the payer thereof. The liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user.
- (49) In order to facilitate effective fraud prevention and combat payment fraud across the Community, provision should be made for the efficient exchange of data between payment service providers who should be allowed to collect, process and exchange personal data relating to persons involved in payment fraud. All those activities should be conducted in compliance with Directive 95/46/EC of the European Parliament and

of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁹⁾.

- (50) 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, effective, proportionate and dissuasive penalties are imposed.
- (51) Without prejudice to the right of customers to bring action in the courts, Member States should ensure an easily accessible and cost-sensitive out-of-court resolution of conflicts between payment service providers and consumers arising from the rights and obligations set out in this Directive. Article 5(2) of the Rome Convention on the law applicable to contractual obligations⁽²⁰⁾ ensures that the protection afforded to consumers by the mandatory rules of the law of the country in which they have their habitual residence may not be undermined by any contractual terms on law applicable.
- (52) Member States should determine whether the competent authorities designated for granting authorisation to payment institutions might also be the competent authorities with regard to out-of-court complaint and redress procedures.
- (53) 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.
- (54) Since it is necessary to review the efficient functioning of this Directive and to monitor progress on the establishment of a single payment market, the Commission should be required to produce a report three years after the end of the transposition period of this Directive. With regard to the global integration of financial services and harmonised consumer protection also beyond the efficient functioning of this Directive focal points of the review should be the possible need to expand the scope of application with regard to non-EU currencies and to payment transactions where only one payment service provider concerned is located in the Community.
- (55) Since the provisions of this Directive replace those of Directive 97/5/EC, that Directive should be repealed.
- (56) It is necessary to lay down more detailed rules concerning the fraudulent use of payment cards, an area currently covered by Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts⁽²¹⁾ and Directive 2002/65/EC. Those Directives should therefore be amended accordingly.
- (57) Since, pursuant to Directive 2006/48/EC, financial institutions are not subject to the rules applicable to credit institutions, they should be made subject to the same requirements as payment institutions so that they are able to provide payment services throughout the Community. Directive 2006/48/EC should therefore be amended accordingly.

- (58) Since money remittance is defined in this Directive as a payment service which requires an authorisation for a payment institution or a registration for some natural or legal persons benefiting from a waiver clause under certain circumstances specified in the provisions of this Directive, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁽²²⁾ should be amended accordingly.
- (59) 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 may continue those activities within the Member State concerned for a specified period.
- (60) Since the objective of this Directive, namely, 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 that objective.
- (61) 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 Commission⁽²³⁾.
- (62) In particular, the Commission should be empowered to adopt implementing provisions in order to take account of technological and market developments. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (63) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽²⁴⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

- (1) [OJ C 109, 9.5.2006, p. 10.](#)
- (2) Opinion of the European Parliament of 24 April 2007 (not yet published in the Official Journal) and Council Decision of 15 October 2007.
- (3) [OJ L 43, 14.2.1997, p. 25.](#)
- (4) [OJ L 344, 28.12.2001, p. 13.](#)
- (5) [OJ L 365, 24.12.1987, p. 72.](#)
- (6) [OJ L 317, 24.11.1988, p. 55.](#)
- (7) [OJ L 208, 2.8.1997, p. 52.](#)
- (8) [OJ L 177, 30.6.2006, p. 1.](#) Directive as amended by Commission Directive 2007/44/EC ([OJ L 247, 21.9.2007, p. 1.](#)).
- (9) [OJ L 275, 27.10.2000, p. 39.](#)
- (10) [OJ L 222, 14.8.1978, p. 11.](#) Directive as last amended by Directive 2006/46/EC of the European Parliament and of the Council ([OJ L 224, 16.8.2006, p. 1.](#)).
- (11) [OJ L 193, 18.7.1983, p. 1.](#) Directive as last amended by Directive 2006/99/EC ([OJ L 363, 20.12.2006, p. 137.](#)).
- (12) [OJ L 372, 31.12.1986, p. 1.](#) Directive as last amended by Directive 2006/46/EC.
- (13) [OJ L 42, 12.2.1987, p. 48.](#) Directive as last amended by Directive 98/7/EC of the European Parliament and of the Council ([OJ L 101, 1.4.1998, p. 17.](#)).
- (14) [OJ L 166, 11.6.1998, p. 45.](#)
- (15) [OJ L 124, 20.5.2003, p. 36.](#)
- (16) [OJ L 149, 11.6.2005, p. 22.](#)
- (17) [OJ L 178, 17.7.2000, p. 1.](#)
- (18) [OJ L 271, 9.10.2002, p. 16.](#) Directive as amended by Directive 2005/29/EC.
- (19) [OJ L 281, 23.11.1995, p. 31.](#) Directive as amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1.](#)).
- (20) [OJ C 27, 26.1.1998, p. 34.](#)
- (21) [OJ L 144, 4.6.1997, p. 19.](#) Directive as last amended by Directive 2005/29/EC.
- (22) [OJ L 309, 25.11.2005, p. 15.](#)
- (23) [OJ L 184, 17.7.1999, p. 23.](#) Decision as amended by Decision 2006/512/EC ([OJ L 200, 22.7.2006, p. 11.](#)).
- (24) [OJ C 321, 31.12.2003, p. 1.](#)