

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Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance) (repealed)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