

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Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance) (repealed)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

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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.

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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.

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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.