

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Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance) (repealed)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

RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES

CHAPTER 1

Common provisions

Article 51

Scope

1 Where the payment service user is not a consumer, the parties may agree that Article 52(1), the second subparagraph of Article 54(2), and Articles 59, 61, 62, 63, 66 and 75 shall not apply in whole or in part. The parties may also agree on a time period different from that laid down in Article 58.

2 Member States may provide that Article 83 does not apply where the payment service user is not a consumer.

3 Member States may provide that provisions in this Title are applied to micro enterprises in the same way as to consumers.

4 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.

Article 52

Charges applicable

1 The payment service provider may not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Title, unless otherwise specified in Articles 65(1), 66(5) and 74(2). Those charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.

2 Where a payment transaction does not involve any currency conversion, Member States shall require that the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider.

3 The payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument.

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However, Member States may forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.

Article 53

Derogation for low value payment instruments and electronic money

1 In the case of payment instruments which according to the framework contract, solely concern individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150 at any time payment service providers may agree with their payment service users that:

- a Article 56(1)(b) and Article 57(1)(c) and (d) as well as Article 61(4) and (5) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
- b Articles 59, 60 and Article 61(1) and (2) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;
- c by way of derogation from Article 65(1), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- d by way of derogation from Article 66, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee;
- e by way of derogation from Articles 69 and 70, other execution periods apply.

2 For national payment transactions, Member States or their competent authorities may reduce or double the amounts referred to in paragraph 1. They may increase them for prepaid payment instruments up to EUR 500.

3 Articles 60 and 61 shall apply also to electronic money within the meaning of Article 1(3)(b) of Directive 2000/46/EC, except where the payer's payment service provider does not have the ability to freeze the payment account or block the payment instrument. Member States may limit that derogation to payment accounts or payment instruments of a certain value.

CHAPTER 2

Authorisation of payment transactions

Article 54

Consent and withdrawal of consent

1 Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.

2 Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider.

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

3 Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 66. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.

4 The procedure for giving consent shall be agreed between the payer and the payment service provider.

Article 55

Limits of the use of the payment instrument

1 In cases where a specific payment instrument is used for the purposes of giving consent, the payer and his payment service provider may agree on spending limits for payment transactions executed through that payment instrument.

2 If agreed in the framework contract, the payment service provider may reserve the right to block the payment instrument for objectively justified reasons related to the security of the payment instrument, the suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his liability to pay.

3 In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless giving such information would compromise objectively justified security reasons or is prohibited by other relevant Community or national legislation.

4 The payment service provider shall unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking no longer exist.

Article 56

Obligations of the payment service user in relation to payment instruments

1 The payment service user entitled to use a payment instrument shall have the following obligations:

- a to use the payment instrument in accordance with the terms governing the issue and use of the payment instrument; and
- b to notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

2 For the purposes of paragraph 1(a), the payment service user shall, in particular, as soon as he receives a payment instrument, take all reasonable steps to keep its personalised security features safe.

Article 57

Obligations of the payment service provider in relation to payment instruments

1 The payment service provider issuing a payment instrument shall have the following obligations:

- a to make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 56;
- b to refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- c to ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Article 56(1)(b) or request unblocking pursuant to Article 55(4); on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that he made such notification; and
- d to prevent all use of the payment instrument once notification pursuant to Article 56(1)(b) has been made.

2 The payment service provider shall bear the risk of sending a payment instrument to the payer or of sending any personalised security features of it.

Article 58

Notification of unauthorised or incorrectly executed payment transactions

The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, including that under Article 75, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Title III.

Article 59

Evidence on authentication and execution of payment transactions

1 Member States shall require that, where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

2 Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of his obligations under Article 56.

Article 60

Payment service provider's liability for unauthorised payment transactions

1 Member States shall ensure that, without prejudice to Article 58, in the case of an unauthorised payment transaction, the payer's payment service provider refunds to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

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

Article 61

Payer's liability for unauthorised payment transactions

1 By way of derogation from Article 60 the payer shall bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from the misappropriation of a payment instrument.

2 The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations under Article 56 with intent or gross negligence. In such cases, the maximum amount referred to in paragraph 1 of this Article shall not apply.

3 In cases where the payer has neither acted fraudulently nor with intent failed to fulfil his obligations under Article 56, Member States may reduce the liability referred to in paragraphs 1 and 2 of this Article, taking into account, in particular, the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated.

4 The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification in accordance with Article 56(1) (b), except where he has acted fraudulently.

5 If the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under Article 57(1)(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he has acted fraudulently.

Article 62

Refunds for payment transactions initiated by or through a payee

1 Member States shall ensure that a payer is entitled to a refund from his payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, if the following conditions are met:

- a the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and

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- b the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case.

At the payment service provider's request, the payer shall provide factual elements relating to such conditions.

The refund consists of the full amount of the executed payment transaction.

For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in the first subparagraph are not met.

2 However, for the purposes of point (b) of the first subparagraph of paragraph 1, the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with Articles 37(1)(d) and 42(3)(b) was applied.

3 It may be agreed in the framework contract between the payer and the payment service provider that the payer has no right to a refund where he has given his consent to execute the payment transaction directly to his payment service provider and, where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

Article 63

Requests for refunds for payment transactions initiated by or through a payee

1 Member States shall ensure that the payer can request the refund referred to in Article 62 of an authorised payment transaction initiated by or through a payee for a period of eight weeks from the date on which the funds were debited.

2 Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the bodies to which the payer may refer the matter in accordance with Articles 80 to 83 if he does not accept the justification provided.

The payment service provider's right under the first subparagraph to refuse the refund shall not apply in the case set out in the fourth subparagraph of Article 62(1).

CHAPTER 3

Execution of payment transactions

Section 1

Payment orders and amounts transferred

Article 64

Receipt of payment orders

1 Member States shall ensure that the point in time of receipt is the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received

by the payer's payment service provider. If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day. The payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.

2 If the payment service user initiating a payment order and his payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal, the point in time of receipt for the purposes of Article 69 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

Article 65

Refusal of payment orders

1 Where the payment service provider refuses to execute a payment order, the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user, unless prohibited by other relevant Community or national legislation.

The payment service provider shall provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 69.

The framework contract may include a condition that the payment service provider may charge for such a notification if the refusal is objectively justified.

2 In cases where all the conditions set out in the payer's framework contract are met, the payer's payment service provider shall not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by a payer or by or through a payee, unless prohibited by other relevant Community or national legislation.

3 For the purposes of Articles 69 and 75 a payment order of which execution has been refused shall be deemed not to have been received.

Article 66

Irrevocability of a payment order

1 Member States shall ensure that the payment service user may not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise specified in this Article.

2 Where the payment transaction is initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.

3 However, in the case of a direct debit and without prejudice to refund rights the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.

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4 In the case referred to in Article 64(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.

5 After the time limits specified in paragraphs 1 to 4, the payment order may be revoked only if agreed between the payment service user and his payment service provider. In the case referred to in paragraphs 2 and 3, the payee's agreement shall also be required. If agreed in the framework contract, the payment service provider may charge for revocation.

Article 67

Amounts transferred and amounts received

1 Member States shall require the payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers to transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

2 However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

3 If any charges other than those referred to in paragraph 2 are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. In cases where the payment transaction is initiated by or through the payee, his payment service provider shall ensure that the full amount of the payment transaction is received by the payee.

Section 2

Execution time and value date

Article 68

Scope

1 This Section shall apply to:

- a payment transactions in euro;
- b national payment transactions in the currency of the Member State outside the euro area concerned; and
- c payment transactions involving only one currency conversion between the euro and the currency of a Member State outside the euro area, provided that the required currency conversion is carried out in the Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

2 This Section shall apply to other payment transactions, unless otherwise agreed between the payment service user and his payment service provider, with the exception of Article 73, which is not at the disposal of the parties. However, when the payment service user and his payment service provider agree on a longer period than those laid down in Article 69, for intra-Community payment transactions such period shall not exceed 4 business days following the point in time of receipt in accordance with Article 64.

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Article 69

Payment transactions to a payment account

1 Member States shall require the payer's payment service provider to ensure that, after the point in time of receipt in accordance with Article 64, the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day. Until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days. These periods may be extended by a further business day for paper-initiated payment transactions.

2 Member States shall require the payment service provider of the payee to value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with Article 73.

3 Member States shall require the payee's payment service provider to transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and his payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed due date.

Article 70

Absence of payee's payment account with the payment service provider

Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the period specified in Article 69.

Article 71

Cash placed on a payment account

Where a consumer places cash on a payment account with that payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is made available and value dated immediately after the point of time of the receipt of the funds. Where the payment service user is not a consumer, the amount shall be made available and value dated at the latest on the next business day after the receipt of the funds.

Article 72

National payment transactions

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

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Article 73

Value date and availability of funds

1 Member States shall ensure that the credit value date for the payee's payment account is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

2 Member States shall ensure that the debit value date for the payer's payment account is no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

Section 3

Liability

Article 74

Incorrect unique identifiers

1 If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

2 If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction.

However the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction.

If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

3 If the payment service user provides information additional to that specified in Articles 37(1)(a) or 42(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

Article 75

Non-execution or defective execution

1 Where a payment order is initiated by the payer, his payment service provider shall, without prejudice to Article 58, Article 74(2) and (3), and Article 78, be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider

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received the amount of the payment transaction in accordance with Article 69(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

Where the payer's payment service provider is liable under the first subparagraph, he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

Where the payee's payment service provider is liable under the first subparagraph, he shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, his payment service provider shall regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

2 Where a payment order is initiated by or through the payee, his payment service provider shall, without prejudice to Article 58, Article 74(2) and (3), and Article 78, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 69(3). Where the payee's payment service provider is liable under this subparagraph, he shall immediately re-transmit the payment order in question to the payment service provider of the payer.

In addition, the payment service provider of the payee shall, without prejudice to Article 58, Article 74(2) and (3), and Article 78, be liable to the payee for handling the payment transaction in accordance with its obligations under Article 73. Where the payee's payment service provider is liable under this subparagraph, he shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under the first and second subparagraphs, the payer's payment service provider shall be liable to the payer. Where the payer's payment service provider is so liable he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, his payment service provider shall, regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

3 In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective execution of the payment transaction.

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Article 76

Additional financial compensation

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

Article 77

Right of recourse

1 Where the liability of a payment service provider under Article 75 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under Article 75.

2 Further financial compensation may be determined in accordance with agreements between payment service providers and/or intermediaries and the law applicable to the agreement concluded between them.

Article 78

No liability

Liability under Chapter 2 and 3 shall not apply in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by national or Community legislation.

CHAPTER 4

Data protection

Article 79

Data protection

Member States shall permit the processing of personal data by payment systems and payment service providers when this is necessary to safeguard the prevention, investigation and detection of payment fraud. The processing of such personal data shall be carried out in accordance with Directive 95/46/EC.

CHAPTER 5

Out-of-court complaint and redress procedures for the settlement of disputes

Section 1

Complaint procedures

Article 80

Complaints

1 Member States shall ensure that procedures are set up which allow payment service users and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to payment service providers' alleged infringements of the provisions of national law implementing the provisions of this Directive.

2 Where appropriate and without prejudice to the right to bring proceedings before a court in accordance with national procedural law, the reply from the competent authorities shall inform the complainant of the existence of the out-of-court complaint and redress procedures set up in accordance with Article 83.

Article 81

Penalties

1 Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2 Member States shall notify the Commission of the rules referred to in paragraph 1 and of the competent authorities referred to in Article 82 by 1 November 2009 and shall notify it without delay of any subsequent amendment affecting them.

Article 82

Competent authorities

1 Member States shall take all the measures necessary to ensure that the complaints procedures and penalties provided for in Articles 80(1) and 81(1) respectively are administered by the authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in this Section.

2 In the event of infringement or suspected infringement of the provisions of national law adopted pursuant to Titles III and IV, the competent authorities referred to in paragraph 1 shall be those of the home Member State of the payment service provider, except for agents and branches conducted under the right of establishment where the competent authorities shall be those of the host Member State.

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Section 2

Out-of-court redress procedures

Article 83

Out-of-court redress

1 Member States shall ensure that adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between payment service users and their payment service providers are put in place for disputes concerning rights and obligations arising under this Directive, using existing bodies where appropriate.

2 In the case of cross-border disputes, Member States shall make sure that those bodies cooperate actively in resolving them.