

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Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance) (repealed)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

FINAL PROVISIONS

Article 86

Full harmonisation

1 Without prejudice to Article 30(2), Article 33, Article 34(2), Article 45(6), Article 47(3), Article 48(3), Article 51(2), Article 52(3), Article 53(2), Article 61(3), and Articles 72 and 88 insofar as this Directive contains harmonised provisions, Member States shall not maintain or introduce provisions other than those laid down in this Directive.

2 Where a Member State makes use of any of the options referred to in paragraph 1, it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make the information public on a web-site or other easily accessible means.

3 Member States shall ensure that payment service providers do not derogate, to the detriment of payment service users, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.

However, payment service providers may decide to grant more favourable terms to payment service users.

Article 87

Review

No later than 1 November 2012, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank a report on the implementation and impact of this Directive, in particular on:

- the possible need to extend the scope of the Directive to payment transactions in all currencies and to payment transactions where only one of the payment service providers is located in the Community,
- the application of Articles 6, 8 and 9 concerning prudential requirements for payment institutions, in particular as regards own funds requirements and safeguarding requirements (ringfencing),
- the possible impact of the granting of credit by payment institutions related to payments services, as set out in Article 16(3),
- the possible impact of the authorisation requirements of payment institutions on competition between payment institutions and other payment service providers as well as on barriers to market entry by new payment service providers,

- the application of Articles 34 and 53 and the possible need to revise the scope of this Directive with respect to low value payment instruments and electronic money, and
- the application and functioning of Articles 69 and 75 for all kinds of payment instruments,

accompanied, where appropriate, by a proposal for its revision.

Article 88

Transitional provision

1 Without prejudice to Directive 2005/60/EC or other relevant Community legislation, Member States shall allow legal persons who have commenced before 25 December 2007 the activities of payment institutions within the meaning of this Directive, in accordance with the national law in force to continue those activities within the Member State concerned until 30 April 2011, without authorisation under Article 10. Any such persons who have not been granted authorisation within this period shall be prohibited in accordance with Article 29 to provide payment services.

2 Notwithstanding paragraph 1, an exemption to the authorisation requirement under Article 10 shall be granted to financial institutions that have commenced activities listed in point 4 of Annex I to Directive 2006/48/EC and meet the conditions of point (e) of the first subparagraph of Article 24(1), of that Directive in accordance with national law before 25 December 2007. However, they shall notify the competent authorities of the home Member State of these activities by 25 December 2007. Furthermore, this notification shall include the information demonstrating that they have complied with Article 5(a), (d), (g) to (i), (k) and (l) of this Directive. Where the competent authorities are satisfied that those requirements are complied with, the financial institutions concerned shall be registered in accordance with Article 13 of this Directive. Member States may allow their competent authorities to exempt those financial institutions from the requirements under Article 5.

3 Member States may provide that legal persons referred to in paragraph 1 shall be automatically granted authorisation and entered into the register provided for in Article 13 if the competent authorities already have evidence that the requirements laid down in Articles 5 and 10 are complied with. The competent authorities shall inform the entities concerned before the authorisation is granted.

4 Without prejudice to Directive 2005/60/EC or other relevant Community legislation, Member States may allow natural or legal persons who have commenced the activities of payment institutions within the meaning of this Directive, in accordance with the national law in force before 25 December 2007 and who are eligible for waiver under Article 26 to continue those activities within the Member State concerned for a transitional period not longer than 3 years without being waived in accordance with Article 26 and entered into the register provided for in Article 13. Any such persons who are not waived within this period shall be prohibited in accordance with Article 29 to provide payment services.

Article 89

Amendment of Directive 97/7/EC

Article 8 of Directive 97/7/EC shall be deleted.

Article 90

Amendments of Directive 2002/65/EC

Directive 2002/65/EC is hereby amended as follows:

1. in Article 4 the following paragraph shall be added:
5. Where Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market⁽¹⁾ is also applicable, the information provisions under Article 3(1) of this Directive, with the exception of paragraphs (2)(c) to (g), (3)(a), (d) and (e), and (4)(b), shall be replaced with Articles 36, 37, 41 and 42 of that Directive.;
2. Article 8 shall be deleted.

Article 91

Amendments of Directive 2005/60/EC

Directive 2005/60/EC is hereby amended as follows:

1. Article 3(2)(a) shall be replaced by the following:
 - (a) an undertaking other than a credit institution which carries out one or more of the activities listed in points 2 to 12 and 14 of Annex I to Directive 2006/48/EC, including the activities of currency exchange offices (bureaux de change);
2. in Article 15 paragraphs 1 and 2 shall be replaced by the following:
 1. Where a Member State permits credit and financial institutions referred to in Article 2(1)(1) or (2) situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit institutions and persons referred to in Article 2(1) situated in its territory to recognise and accept, in accordance with Article 14, the outcome of the customer due diligence requirements laid down in Article 8(1)(a) to (c), carried out in accordance with this Directive by an institution referred to in Article 2(1)(1) or (2) in another Member State, with the exception of currency exchange offices and payment institutions as defined in Article 4(4) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market⁽²⁾, which mainly provide the payment service listed in point 6 of the Annex to that Directive, including natural and legal persons benefiting from a waiver under Article 26 of that Directive, and meeting the requirements laid down in Articles 16 and 18 of this Directive, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.
 2. Where a Member State permits currency exchange offices referred to in Article 3(2)(a) and payment institutions as defined in Article 4(4) of Directive 2007/64/EC, which mainly provide the payment service listed in point 6 of the Annex to that Directive, situated in its territory to be relied on as a third party domestically, that Member State shall in any case permit them to recognise and accept, in accordance with Article 14 of this Directive, the outcome of the customer due

diligence requirements laid down in Article 8(1)(a) to (c), carried out in accordance with this Directive by the same category of institution in another Member State and meeting the requirements laid down in Articles 16 and 18 of this Directive, even if the documents or data on which these requirements have been based are different to those required in the Member State to which the customer is being referred.;

3. the second sentence of Article 36(1) shall be deleted.

Article 92

Amendments of Directive 2006/48/EC

Annex I to Directive 2006/48/EC is hereby amended as follows:

1. point 4 shall be replaced by the following:
 - (4) Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market⁽³⁾
2. point 5 shall be replaced by the following:
 - (5) Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4.

Article 93

Repeal

Directive 97/5/EC shall be repealed with effect from 1 November 2009.

Article 94

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 November 2009. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 95

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 96

Addressees

This Directive is addressed to the Member States.

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

- (1) OJ L 319, 5.12.2007, p. 1’;
- (2) OJ L 319, 5.12.2007, p. 1’;
- (3) OJ L 319, 5.12.2007, p. 1’;