



BANK ĊENTRALI TA' MALTA  
EUROSISTEMA  
CENTRAL BANK OF MALTA

**Public Consultation on the implementation of  
the revised CBM Directive No.1  
on the Provision and Use of Payment Services\***

Published on: 9 of June 2017  
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\* Repealing CBM Directive No. 1 *Ref: CBM 01/2009* and modelled on the requisites of the Directive (EU) 2015/2366 on payment services in the internal market.

## Consultation Document

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## List of Acronyms

<b>AIS</b>	Account Information Service
<b>AISP</b>	Account Information Service Provider
<b>AMLD4</b>	The Fourth EU Anti-Money Laundering Directive <i>Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing</i>
<b>ASPSP</b>	Account Servicing Payment Service Provider
<b>CA</b>	Competent Authority
<b>CBM</b>	Central Bank of Malta
<b>EBA</b>	European Banking Authority
<b>EC</b>	European Community
<b>ECB</b>	European Central Bank
<b>EMV</b>	Europay, MasterCard and Visa
<b>EPC</b>	European Payments Council
<b>EU</b>	European Union
<b>ERPB</b>	Euro Retail Payments Board
<b>FIR/04</b>	MFSA Financial Institutions Rules on the Security of Internet Payments of Credit, Payment and Electronic Money Institutions
<b>GL</b>	EBA Guidelines
<b>IFR</b>	Interchange Fee Regulation <i>Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions</i>
<b>MFSA</b>	Malta Financial Services Authority
<b>OAFS</b>	Office of the Arbiter for Financial Services
<b>PIS</b>	Payment Initiation Service
<b>PISP</b>	Payment Initiation Service Provider
<b>POS</b>	Point of Sale
<b>PSD</b>	Payment Services Directive <i>Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market</i>
<b>PSD2</b>	Second / Revised Payment Services Directive <i>Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market</i>
<b>PSP</b>	Payment Services Provider
<b>PSU</b>	Payment Services User
<b>RTS</b>	EBA Regulatory Technical Standards
<b>SCA</b>	Strong Customer Authentication
<b>SCF</b>	SEPA Card Framework
<b>SEPA</b>	Single Euro Payments Area
<b>TPP</b>	Third Party Provider

## Disclaimer

Provisions included in this Consultation Paper are not binding and are subject to changes and revisions following both the feedback obtained from the stakeholders during the Consultation Process and the outcome of the cooperation process with other relevant Competent Authorities relating to the provisions falling jointly under their respective remits.

## 1. Introduction

### The revised Payment Services Directive

Whilst the first Payment Services Directive (PSD (EU) 2007/64) was seen as bringing about a revolution in the payment services market, the revised PSD (PSD2 (EU) 2015/2366) is rather an evolution – a natural process of adaptation to embrace the technological developments that have affected the payments landscape over the last few years. The revised Directive expands the scope of services offered by the Payment Services Providers (PSPs) in order to meet the expectations of the Payment Services Users (PSUs). PSD2 also fosters competition in the market, giving the PSUs further opportunities to choose the best providers and services.

In view of the implementation of the PSD2, the range of payment services previously in scope has been extended to include Payment Initiation Services (PIS) and Account Information Services (AIS). To this end, the PSD2 has also introduced a new category of PSPs - Third Party Payment Service Providers (TPPs), which serve as external entities in relation to both the PSUs and the traditional PSPs. These services are auxiliary to the 'normal' payment services, i.e. those resulting in the actual transfer of PSUs' funds. Noteworthy, the TPP does not enter into the possession of such funds at any point in time.

The Account Information Service Provider (AISP) provides the PSU with aggregated on-line information on at least one or more payment accounts serviced by one or more Account Servicing PSPs (ASPSPs). In this way, the customers gain the ability to immediately obtain a global picture of their current financial situation.

PIS occur when a PSU gives the Payment Initiation Service Provider (PISP) the right to access his/her internet banking facility in order to check the availability of funds, initiate a payment on his/her behalf , and then to inform the payer and the payee about such a payment order.

The revised Directive also modifies the Negative Scope, now referred to as Exclusions. Amongst the instances to which the PSD2 does not apply, the provision under Article 3(k) is mostly significant. The current negative scope has been extended as the PSD2 focuses not only on the Payment Service Providers (PSPs) involved in the issuing and processing of cards (Three-Party or Four-Party Models), but more specifically on the purpose for which cards are being issued, identifying several specific circumstances where such cards can be used in order to be considered to fall within the negative scope.

The liability provisions for an unauthorised transaction have also been changed in the PSD2. The payer's liability has been limited by an obligation applicable to the PSP to return immediately to the payer the amount of the unauthorised transaction. In view of the PSD2, payers are also not liable if they are not aware of the loss, theft or misappropriation of their payment instrument. Furthermore, the revised

Directive reduces the threshold of liability of the payer for losses caused by an unauthorised payment transaction from EUR 150 to EUR 50.

The PSD2 also changes the provisions related to the responsibility of the PSP when the Strong Customer Authentication (SCA) for the transaction is not required. In the case where the payer maintains a good faith regarding the affected transaction, the full responsibility for the unauthorized transaction shall be borne by the PSP. The PSP also bears the burden of proving the lack of the payer's good faith. This change aims at encouraging the use of more effective methods of verifying the payer's identity and therefore promoting wider use of SCA. Due to the need for SCA, the initiation of a transaction will require the so-called Two-Factor Authentication (two out of the following three: something that only the PSU knows (e.g. password); something only he/she possesses (e.g. internet key or token); or something the PSU is (biometrical solution, e.g. finger print). Alongside SCA, the revised Directive introduces also the provisions related to secure communication between relevant service providers, including: ASPSPs, PISPs, AISP, and other PSPs involved.

Finally, in the case of a transaction with an unknown amount, the prior authorisation of the payer on the exact amount is required in order to block the funds.

### **The Central Bank of Malta as the Competent Authority**

In order to meet the expectations of both the PSUs and PSPs, it is important from the legislator's point of view to ensure that the national transposition of the PSD2 takes into account the interests of all the stakeholders concerned. The revised CBM Directive No.1, based on a Public Consultation process, shall endeavour to find a common ground between the applicability of the relevant PSD2 articles and the characteristics of the Maltese payment landscape. The Central Bank of Malta (the Bank) trusts that the market players, which will be directly affected by the changes, will take an active approach to and participate in the consultative process. In view of the fact that the worlds of FinTech and FinReg are constantly developing, it is crucial to note the needs of the stakeholders, while simultaneously leaving a space for innovations.

With respect to PSD2 articles allowing derogations to the Member States, the Bank proposes options which should meet the expectations of the parties involved. The suggested text of the revised CBM Directive No. 1, which can be found in Section 5 of this document, combines the changes brought about by the PSD2 with the vision of the Bank regarding the future of the Maltese payments market.

Prior to developing the draft transposition text, the Bank performed an analysis of the current landscape of payment services in Malta, the legacy of the original CBM Directive No. 1 on the Maltese PSPs and the technological and regulatory developments taking place in Europe.

## **The vision on the future of payments in Malta**

In view of the changing European legislation affecting the payments landscape, including the PSD2, technological migration roadmaps, and in line with the strategies being adopted by European institutions, international card schemes and major market players in the global payments arena, it is opportune that the Bank uses this Public Consultation to declare its expectations related to several aspects of the provision and use of payment services in Malta not directly tackled by the PSD2. The over-arching objectives of these expectations are to make payment instruments and transactions more efficient, safer, cheaper and faster both for the payers and the payees.

## **Consultation Document and Procedures**

The Bank invites individuals and corporates to submit feedback on proposals put forward in this paper and, in particular, on the specific proposed legislation under Section 3. In line with the general approach taken by the European Authorities<sup>1</sup> and in order to facilitate the analysis and evaluation process, the Bank appreciates comments which:

- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the Bank should consider.

Responses should be submitted via email addressed to [regulation@centralbankmalta.org](mailto:regulation@centralbankmalta.org) by 7 July 2017. Comments submitted after this deadline, or submitted via other means may not be processed.

For the purpose of data protection rights and market sensitivity, all responses will be treated as confidential and the Public Consultation Report to be issued by the Bank will only present aggregated feedback.

The protection of individuals with regard to the processing of personal data by the Bank is based on Data Protection Act (*CAP. 440*).

The Bank reserves the right to draft the final transposed text in line with its regulatory and policy-making role and discard responses which do not satisfy the above-mentioned criteria without further explanation.

This Public Consultation is in line with the provisions of Directive no. 6 on Consultation Exercises with Stakeholders. More information can be found on <http://www.konsultazzjoni.gov.mt>.

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<sup>1</sup> Based on the EBA approach

Following the 4 weeks consultation period, the Report on the Consultation Process together with the revised draft transposition text will be published on the Bank's website.

In view of the fact that both the Bank and the Malta Financial Services Authority (MFSA) have been designated as Competent Authorities for the national transposition of the PSD2, the Bank notes that the Public Consultation Paper and the proposed draft transposition text cover the provisions falling under the remit of the Bank and represents exclusively the position and policy of the Bank. Any comments provided in respect to those PSD2 Articles which are outside the remit of the Bank will not be processed. Moreover the Bank reserves the right to share information received during the Public Consultation with other authorities, as deemed necessary.



## 2. Explanatory Part

The Bank has taken several decisions relating to the provisions of the PSD2 which are designed to have a positive effect on the payments landscape in Malta. This Section provides comprehensive rationale for the measures undertaken.

### Scope

In view that the PSD2 grants a derogation to apply provisions of Titles III and IV<sup>2</sup> to microenterprises in the same way as to consumers, the Bank has decided to follow the approach taken at the time of implementation of the first PSD and treat both groups of Payment Services Users equally. However, an exemption to this rationale is applied to Paragraphs 52 and 53<sup>3</sup> which relate to the rules governing the SEPA Direct Debit B2B Scheme.

### Exclusions

The Bank, assuming its regulatory and policy making role, aims at promoting competition within the payments market. Paragraph 12(2)<sup>4</sup> provides legal basis for opening access to payment systems, including three-party schemes, such as three-party card schemes, which do not fall within the scope of Paragraph 6(k)<sup>5</sup>. The PSD2 introduces the rationale whereby limited networks, or as commonly referred to 'close-loop payment systems', should only operate in a market niche not adequately covered by payment systems. The Bank understands that the national payments landscape does not host payment systems operating entirely in such a niche.

Due to significant misinterpretation from the rationale of the provisions of the Article 3(k) under PSD1, leading to a situation whereby some payment schemes used extensively and often in an unjustified manner the limited network exclusions, the PSD2 now contains detailed and precise applicability of the exclusion clause. The PSD2 focuses not only on the PSPs involved in the production and processing of the card (whether they are 3-party card schemes or 4-party card schemes), but rather on the purpose for which the card is being issued, identifying several specific instances, where such cards can be used. With such clear text, it leaves no doubt that none of the local debit card schemes fit into the limited network exclusion under PSD2.

Moreover, the Bank acknowledges that the European Payments Council (EPC) has revoked the SEPA Cards Framework (SCF) including the provisions laid out in the Letter EPC124-09, with effect from 1 January 2016. The SCF was an important milestone of self-regulation within SEPA for cards as from

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<sup>2</sup> Titles III and IV of the revised CBM Directive No.1 cover the provisions of Titles III and IV under the PSD2.

<sup>3</sup> Articles 76 and 77 of the PSD2

<sup>4</sup> Article 36 of the PSD2

<sup>5</sup> Article 3(k) of the PSD2

2006 onwards, which has now been superseded with numerous legislative and regulatory measures that have been adopted in the area of card payments since then.

### **Access to accounts maintained with a credit institution**

Despite the fact that the Bank is not directly involved in the procedures relating to granting payment institutions access to credit institutions' payment accounts services, it is understood that an effective cooperation between market players has a significant impact on the development of the local payments landscape, which the Bank promotes and fosters.

### **Charges applicable**

Paragraph 38<sup>6</sup> refers to charges applied by the PSP on the PSU. In this aspect the Bank aims at promoting an effective migration towards electronic means of payments. To this end, the PSPs shall not prevent the payees, e.g. merchants, from steering their consumers towards the use of electronic payment instruments, and/or offering them a reduction in price for such use.

### **Rules on access to payment account in the case of payment initiation services and account information services**

PSD2 introduces legal provisions relating to two types of services delivered by providers which are commonly known as Third Party Providers. They offer services within the relationship between the PSU and the traditional ASPSP. Payment Initiation Services and Account Information Services are playing an important role in providing a better user experience to the PSU, support competition and foster innovation. On the other hand, including these two services under the PSD2 creates more level playing between service providers, safeguards the requirements relating to the liability of PSPs, imposes a level of secure communications between providers and protects the security of consumers' credentials.

### **Complaints procedure**

The Bank acknowledges that the Arbiter for Financial Service Act (*CAP. 555*) grants the Office of the Arbiter of Financial Services (OAFS) powers enabling it to deal with the submission of complaints filed by eligible customers related to alleged infringements of the revised CBM Directive No. 1 and the ADR procedure. It gives the power to the Arbiter to mediate, investigate and adjudicate such complaints. When submitting a complaint, the complainants are advised to include information related but not limited to:

- a. The identity and contact details of the complainant;
- b. An indication whether the complainant is a natural or legal person;
- c. An indication whether or not the complainant is a payment service user;

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<sup>6</sup> Article 62 of the PSD2

- d. The identity of the payment service provider(s) that has/have given rise to the complaint of an alleged infringement of this Directive
- e. A description of the situation that gave rise to the complaint of an alleged infringement of this Directive

### **National payment transactions**

Article 86 of the PSD2<sup>7</sup> refers to national payment transactions and allows the Member States to provide for shorter maximum execution times. Due to the infrastructural inefficiencies still present in Malta, it is the opinion of the Bank that such a provision is not deemed to be technically possible to implement.

### **Language of the communication between parties**

For the purpose of any communication between the parties based on the provisions of the revised CBM Directive No. 1 and in particular for the purpose Paragraphs 20(1) and 27(1)<sup>8</sup> the Bank is of the opinion that any information and conditions shall be given in easily understandable words and in a clear and comprehensible form, in English and/or Maltese or in any other language agreed between the parties. The provision allows the PSPs to agree with the PSU on the language of communication based on the internal policy and cost-benefit analysis of the former and the preferences of the latter, whilst it does not oblige the PSPs to unconditionally issue all communication in both official languages of Malta.

### **EBA Regulatory Technical Standards and Guidelines**

The PSD2 mandates the European Banking Authority (EBA) to develop and implement, in close cooperation with the European Central Bank (ECB), a number of draft regulatory technical standards (RTS) and guidelines (GLs). In particular, PSD2 confers 11 mandates on the EBA, three of which relate to operational and security risks, and authentication for electronic payments. Due to the oversight and supervisory obligations of the Bank and the MFSA respectively, the implementation of the below mentioned GLs and RTS is of significant interest to both authorities.

The mandates include:

1. Guidelines on the establishment, implementation and monitoring of the security measures, including certification processes where relevant (in relation to the management of operational and security risks)<sup>9</sup>

In developing such GL, the EBA took into account the existing EBA Guidelines on the Security of Internet Payments under first PSD as well as other standards and frameworks in other areas related to operational and security risk and has adopted them where appropriate to the specificities of payment

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<sup>7</sup> Not present in the revised CBM Directive No. 1

<sup>8</sup> Articles 44 and 51 of the PSD2

<sup>9</sup> Article 95 of the PSD2

services. The draft GL set out requirements on security measures that PSPs should implement in order to mitigate operational and security risks derived from the provision of payment services through the following requirements:

- governance
- risk assessment
- protection and detection
- business continuity
- testing of security measures
- situational awareness and continuous learning
- PSU relationship management

The GL should apply to all PSPs as from 13<sup>th</sup> January 2018.

2. Guidelines, addressed to (a) payment service providers, on the classification of major incidents, and on the content, the format, including standard notification templates, and the procedures for notifying such incidents; and (b) competent authorities, on the criteria on how to assess the relevance of the incident and the details of the incident reports to be shared with other domestic authorities<sup>10</sup>

The EBA, together with the ECB, established a framework for incident reporting through the issuance of guidelines aimed at both PSPs and Competent Authorities (CAs), these being:

- PSPs on the notification of major operational or security incidents to the CA in their home Member State
- CAs on the criteria on how to assess the relevance of the incident and the details of the incident reports to be shared with other domestic authorities
- CAs on the criteria on how to assess the relevant details of the incident reports to be shared with the EBA and the ECB and on the format and procedures for their communication

The draft guidelines applicable to PSPs set out requirements in relation to the criteria, thresholds and methodology to be taken into account for incident classification, the notification process and notification template, the possibility of delegated and consolidated reporting, as well as the operational and security policy. The draft guidelines that are applicable to CAs outline requirements on the assessment of the relevance of the incident, the information to be shared with other national authorities and the communication channel to be used.

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<sup>10</sup> Article 96 of the PSD2

Additionally, as per article 96(6) of the PSD2, member states need to ensure that PSPs provide, at least on an annual basis, statistical data on fraud relating to different means of payment to the CAs which are further required to provide both the EBA and the ECB with such data in an aggregated form. The EBA and the ECB are currently working on developing another set of GLs relating to this requirement. Such GL is expected to apply to all PSPs as from 13<sup>th</sup> January 2018

### 3. RTS on strong customer authentication (SCA) and communication<sup>11</sup>

The last mandate lays down that the EBA shall develop draft RTS addressed to PSP specifying:

- the requirements of SCA when the payer accesses its payment account online, initiates an electronic payment transaction or carries out any action, through a remote channel, which may imply a risk of payment fraud or other abuses;
- the exemptions from the application of Article 97 of the PSD2 on SCA, based on the level of risk involved in the service provided; the amount, the recurrence of the transaction, or both; or the payment channel used for the execution of the transaction;
- the requirements with which security measures have to comply in order to protect the confidentiality and the integrity of the PSUs personalised security credentials; and
- the requirements for common and secure open standards of communication for the purpose of identification, authentication, notification, and information, as well as for the implementation of security measures, between ASPSP, PISPs, AISPs, payers, payees and other PSPs.

PSD2 provides in Article 98(2) that this draft RTS shall be developed by EBA in accordance with the following objectives:

- ensuring an appropriate level of security for PSUs and PSPs, through the adoption of effective and risk-based requirements;
- ensuring the safety of PSUs' funds and personal data;
- securing and maintaining fair competition among all PSPs;
- ensuring technology and business-model neutrality; and
- allowing for the development of user-friendly, accessible and innovative means of payment.

By reference to Article 115(4) of the PSD2, this RTS shall be applicable 18 months after its entry into force. The intervening period provides the industry with time to develop industry standards and/or technological solutions that are compliant with the EBA's RTS. Importantly, the TPPs shall refrain from commencing any service falling under the provision of the revised Directive No. 1 in the gap period between the implementation of the revised Directive No. 1 and the entry into force of the respective RTS.

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<sup>11</sup> Article 98 of the PSD2

## **Transitional provisions**

The licencing provisions under the PSD2 fall primarily under the remit of the MFSA. Nevertheless, in order to ensure the level playing field and to foster the technical and regulatory developments within the payments landscape in Malta, the Bank reinforces the provision under Paragraph 76<sup>12</sup> allowing the payment institutions that have taken up activities in accordance with Malta Financial Institutions Act (*CAP. 376*) by 13 January 2018 to continue those activities in accordance with the requirements provided for in that Act. Such a provision aims at disallowing unfair treatment of the TPPs prior to the date when the relevant EBA's RTS enter into force. It is crucial however to note that the TPPs are not allowed to commence any of the services introduced by the PSD2 within the gap period, i.e. between 13 January 2018 and the entry into force of the relevant EBA's RTS.

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<sup>12</sup> Article 109 of the PSD2

### 3. Consultative Part

The Bank has adopted several steps aimed at protecting the interests of the PSUs while also safeguarding the PSPs and ensuring fair competition on the national payments market. On many occasions, the provisions originally included into the PSD2 were kept unchanged in the transposed version. In other instances, the Bank has defined requirements which are believed to reflect the specificities of the domestic payments landscape.

This Section provides the opportunity for any interested party to provide feedback with supporting justification and, if applicable, suggest alternative solutions which could be considered for adoption within the limits set out under the PSD2.

#### **Derogation for low-value payment instruments and electronic money, including the derogation for information requirements**

The PSD2 sets caps for low-value payment instruments and electronic money which could be granted derogation in respect to information requirements and in relation to other provisions of the Directive. The provisions relate to payment transactions not exceeding €30 and payment instruments which have a spending limit of €150 or store funds which do not exceed €150 at any time. For the purpose of national payment transactions, the Bank has the option to reduce or double the above-mentioned amounts, whilst for prepaid payment instruments, the amount could be increased up to €500. In the case of both articles, the Bank is of the opinion that there are no sufficient reasons to exercise the derogations and is thus proposing neither reducing nor doubling these amounts. Moreover, maintaining the original caps remains in line with the practice undertaken at the time of the first PSD and also reflects the approach being adopted by European legislators within the scope of the revision of AMLD4.

#### **Termination**

With regard to the provisions on termination of the framework contract, the Bank is proposing to keep the original conditions relating to period of notice and charges for information as included in the PSD2. Furthermore, the Bank has included a provision requesting that on termination PSPs are to provide PSUs, free of charge, with information on the transactions of the payment account being terminated for the last 18 months, on paper or on another durable medium. This will ensure that the PSU will have full traceability of his/her transactions once the relationship with the PSP has ceased.

#### **Information for the payee and the payer on individual payment transactions**

In the case of both Paragraphs 33 & 34<sup>13</sup> the Bank has introduced explicit provisions stating that the framework contract shall include a condition that the payer may require the information to be provided or

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<sup>13</sup> Articles 57 and 58 of the PSD2

made available periodically, at least once a month, free of charge, on paper or on another durable medium which allows the payer to store and reproduce information unchanged. Inclusion of such requirements relating to the frequency and medium of information in these two Paragraphs ensures consistency throughout the whole Directive.

### **Limits of the use of the payment instrument and of the access to payment accounts by payment service providers**

In order to ensure better consumer experience and to foster a level-playing field, the Bank is of the opinion that for the purpose of this Directive, in relation to Paragraphs 7(1)<sup>14</sup> and 44<sup>15</sup> only, the definition of the payment account shall be extended to any other accounts maintained by the ASPSPs which are accessible online at the time of the request. This allows the AISP to acquire a holistic view of the PSU's portfolio and deliver a comprehensive assessment of the latter's financial situation. Any provisions of this Directive applicable to the access to payment accounts (including, but not being limited to SCA, secure communication and liability) shall also apply to any other account being used for AIS.

### **Payer's liability for unauthorised payment transactions**

For the purpose of protecting PSUs and taking into account the national specificities, the Bank is proposing that the amount to be borne by the PSU in the case of losses relating to any unauthorised payment transactions resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument shall be equal to EUR 25.

### **Refunds for payment transactions initiated by or through a payee**

Article 76 of the PSD2 allows Member States to ensure that for direct debits in currencies other than euro, PSPs may offer more favourable refund rights in accordance with non-euro currencies direct debit schemes provided that such refund rights are more advantageous to the payer. Given that such schemes are not present in Malta, the Bank is proposing not to include the said provision into the transposed Directive.

### **Dispute resolution**

In view of the derogation granted to Member States with regard to the timeframes relating to dispute resolution between the PSUs and the PSPs, the Bank is proposing to keep the original timeframes as indicated in PSD2 as it is proportionate to the needs and rights of both parties.

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<sup>14</sup> Article 4(16) of the PSD2

<sup>15</sup> Article 67 of the PSD2



## 4. The Bank's vision on the future of payments in Malta

### Contactless solutions

Contactless payments technology is a solution enabling communication between payment cards, smartphones and wearables on the one hand and compatible Point of Sale (POS) terminals on the other. It allows the payer to make safe and fast payments at a till, ticket vending machines or self-service machines. The embedded chip and antenna enable payers to affect payments simply by waving their contactless device over a reader at the POS terminal, without the need to hand the card over to the payee or even input a PIN number. Contactless solutions are embedded with multiple layers of security to protect the users against fraud.

Whilst the public enjoys contactless payments due to their convenience, speed, and user experience, there are several benefits of accepting contactless payments applicable also to merchants, including: increased throughput at tills resulting in fewer queues, increased average transaction value, reduced cost of cash handling, reduced cost of cash shrinkage risk (theft, counterfeits and fraud) and assured payments.

At present, Malta is still lagging behind the general trend seen in Europe, whereby contactless payments have become the norm. The international card schemes have already mandated that all POS terminals in Malta shall become contactless compliant by the end of 2019. To this end, and based on the mandatory shift towards EMV technology as elaborated under Section 2 above, the Bank's expectation is that card issuing institutions in Malta will expedite the rollout of contactless cards as soon as possible and should not wait till late 2019 to start their migration. The faster this migration is executed - both on the issuing and the acquiring side, the more likely that contactless technology will make inroads in changing payment habits of the Maltese society for low-value payments, thus reducing the current heavy dependency on cash and cheques.

### Instant Payments

Currently, the Euro Retail Payments Board (ERPB) and the Eurosystem are laying the ground work for establishing an infrastructure for pan-European Instant Payment solutions. The infrastructure will ensure that national and cross-border payments are done within 10 seconds, achieving payment transactions that are fast, secure and available on a 24/7/365 basis. Instant Payments schemes offer a solution whereby funds can be transferred from person to person within few seconds with the sender only using the beneficiary's mobile number, i.e. the payer does not need to know the receiver's IBAN. Such solutions, already available in several European countries and being supported by the European Institutions, could dramatically reduce the dependency of cash and cheques in Malta. Instant Payments are seen as a great alternative to cheques, since these are more secure and much faster, as the payee receives the funds within seconds without the trouble of having to visit a branch to encash cheques or waiting for the cheque to clear before funds becoming available. Moreover, from the point of view of the

banks and overall economy, the costs of production, processing, clearing and settlement of cheques would be avoided in favour of cost-effective and fast electronic payments. The Bank has the expectation that, in the near future, credit and financial institutions in Malta will take on the opportunities and advantages being offered by such pan-European infrastructure and provide their customers with all the benefits that such instant payments can offer.

## 5. Revised CBM Directive No. 1



**BANK ĊENTRALI TA' MALTA**  
**EUROSISTEMA**  
**CENTRAL BANK OF MALTA**

**CENTRAL BANK OF MALTA**

**DIRECTIVE NO 1**  
**(Revised)**

*in terms of the*

**CENTRAL BANK OF MALTA ACT**  
**(CAP. 204)**

**THE PROVISION AND USE OF PAYMENT SERVICES**

## **TITLE I**

### **SUBJECT MATTER, SCOPE AND DEFINITIONS**

#### **Subject matter**

1. In terms of article 34A(1) of the Central Bank of Malta Act (*Cap.204*) (hereinafter referred to as “the Act”), the Central Bank of Malta (hereinafter referred to as “the Bank”) has been empowered to make directives in respect of, inter alia, the provision and use of payments services. For the purposes of this Directive, terms used in this Directive shall have the same meaning as is assigned to them under the Act.
2. (1) This Directive lays down rules concerning transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.  
  
(2) The rules for the provision of payment services apply to the following service providers:
  - (a) credit institutions licensed under the Banking Act (*Cap. 371*), or their equivalent under the laws of a Member State, and includes branches of credit institutions which have their head offices outside Malta;
  - (b) electronic money institutions as defined in the Banking Act (*Cap. 371*), or their equivalent under the laws of a Member State;
  - (c) institutions that provide postal payment services in accordance with the Postal Services Act (*Cap. 254*);
  - (d) payment institutions as defined in the Second Schedule of the Financial Institutions Act (*Cap.376*), or their equivalent under the laws of a Member State;
  - (e) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
  - (f) Member States or their regional or local authorities when not acting in their capacity as public authorities.
3. The Directive is modelled on the requisites of the Directive (EU) 2015/2366 on payment services in the internal market.

#### **Scope**

4. (1) This Directive applies to payment services provided within the Union.  
  
(2) Titles III and IV apply to payment transactions in the currency of a Member State where both the payer’s payment service provider and the payee’s payment service provider are, or the sole payment service provider in the payment transaction is, located within the Union.  
  
(3) Title III, except for Paragraphs 21(1)(b), 28(2)(e) and 32(1)(a) and Title IV, except for Paragraphs 57 to 61, applies to payment transactions in a currency that is not the currency of a

Member State where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located within the Union, in respect to those parts of the payments transaction which are carried out in the Union.

(4) Title III, except for Paragraphs 21(1)(b), 28(2)(e), 28(5)(g) and 32(1)(a), and Title IV, except for Paragraphs 38(2) and (4), 52, 53, 57, 59(1), 64 and 67, applies to payment transactions in all currencies where only one of the payment service providers is located within the Union, in respect to those parts of the payments transaction which are carried out in the Union.

(5) This Directive shall apply to microenterprises in the same way as to consumers, provided that for the purpose of Paragraphs 52 and 53, microenterprises shall not be considered as consumers.

5. This Directive shall be without prejudice to the Consumer Credit Regulations (*LN 84 of 2005 as subsequently amended*). 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.

## Exclusions

6. This Directive does not apply to the following:
- (a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
  - (b) payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of only the payer or only the payee;
  - (c) professional physical transport of banknotes and coins, including their collection, processing and delivery;
  - (d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
  - (e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
  - (f) cash-to-cash currency exchange operations where the funds are not held on a payment account;
  - (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
    - (i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
    - (ii) paper cheques similar to those referred to in Paragraph 6(g)(i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
    - (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

- (iv) paper-based drafts similar to those referred to in Paragraph 6(g)(iii) and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
  - (v) paper-based vouchers;
  - (vi) paper-based traveller's cheques;
  - (vii) paper-based postal money orders as defined by the Universal Postal Union;
  - (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Paragraph 12;
  - (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in Paragraph 6(h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
  - (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;
  - (k) services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:
    - (i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
    - (ii) instruments which can be used only to acquire a very limited range of goods or services;
    - (iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer;
  - (l) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:
    - (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
    - (ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;
- provided that the value of any single payment transaction referred to in Paragraph 6(l)(i) and (ii) does not exceed EUR 50 and:
- the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month, or

— where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month;

- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;
- (n) payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;
- (o) cash withdrawal services offered by means of ATM by providers, acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that those providers do not conduct other payment services as referred to in Annex I of Directive (EU) 2015/2366. Nevertheless the customer shall be provided with the information on any withdrawal charges referred to in Paragraphs 21, 24, 25 and 35 before carrying out the withdrawal as well as on receipt of the cash at the end of the transaction after withdrawal.

## Definitions

7. For the purposes of this Directive, the following definitions apply:

- (1) ‘account information service’ means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider. For the purposes of Paragraphs 43, 44 and 71 account information services may be extended to include access to accounts other than payment account.
- (2) ‘account information service provider’ means a payment service provider pursuing business activities as referred to in point (8) of Annex I of Directive (EU) 2015/2366;
- (3) ‘account servicing payment service provider’ means a payment service provider providing and maintaining a payment account for a payer;
- (4) ‘acquiring of payment transactions’ means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee;
- (5) ‘agent’ means a natural or legal person who acts on behalf of a payment institution in providing payment services;
- (6) ‘authentication’ means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user’s personalised security credentials;
- (7) ‘business day’ means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;
- (8) ‘branch’ means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all of the places of business set up in the same Member State by a payment institution with a head office in another Member State shall be regarded as a single branch;



- (9) 'card-based payment instrument' means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012;
- (10) 'card-based payment transaction' means a service based on a payment card scheme's infrastructure and business rules to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction. Card-based payment transactions exclude transactions based on other kinds of payment services;
- (11) 'co-badging' means the inclusion of two or more payment brands or payment applications of the same payment brand on the same payment instrument.
- (12) 'consumer' means a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his or her trade, business or profession;
- (13) 'credit transfer' means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;
- (14) 'digital content' means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;
- (15) 'direct debit' means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;
- (16) 'durable medium' means any instrument which enables the payment service user to store information addressed personally to that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;
- (17) 'electronic communications network' means a network in Article 2 of the Electronic Communications (Regulation) Act (*Cap. 399*);
- (18) 'electronic communications service' means a service in Article 2 of the Electronic Communications (Regulation) Act (*Cap. 399*);
- (19) 'framework contract' means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
- (20) 'funds' means banknotes and coins, scriptural money or electronic money as defined in the Banking Act (*Cap. 371*);
- (21) 'group' means a group of undertakings which are linked to each other by a relationship referred in the Companies Act (*Cap. 386*) or undertakings as defined in Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014 (1), which are linked to each other by a relationship referred to in Article 10(1) or in Article 113(6) or (7) of Regulation (EU) No 575/2013;
- (22) 'home Member State' means either of the following:
- (a) the Member State in which the registered office of the payment service provider is situated; or

- (b) if the payment service provider has, under its national law, no registered office, the Member State in which its head office is situated;
- (23) 'host Member State' means the Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services;
- (24) 'issuer' means a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's card-based payment transactions;
- (25) 'issuing of payment instruments' means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions;
- (26) 'means of distance communication' means a method which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;
- (27) 'money remittance' means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;
- (28) 'microenterprise' means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined in Paragraph 3 of the Business Promotion Regulation (*LN 135 of 2001 as subsequently amended*);
- (29) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (30) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
- (31) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
- (32) 'payment brand' means any material or digital name, term, sign, symbol or combination of them, capable of denoting under which payment card scheme card-based payment transactions are carried out;
- (33) 'payment initiation service' means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;
- (34) 'payment initiation service provider' means a payment service provider pursuing business activities as referred to in point (7) of Annex I of Directive (EU) 2015/2366;
- (35) 'payment institution' means a legal person that has been granted authorisation in accordance with Article 11 of Directive (EU) 2015/2366 to provide and execute payment services throughout the Union;
- (36) 'payment instrument' means a personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;
- (37) 'payment order' means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;

- (38) 'payment service' means any business activity set out in Annex I of Directive (EU) 2015/2366;
- (39) 'payment service user' means a natural or legal person making use of a payment service in the capacity of payer, payee, or both;
- (40) 'payment service provider' means a body referred to in Paragraph 2(2) or a natural or legal person benefiting from an exemption pursuant to Article 32 or 33 of Directive (EU) 2015/2366;
- (41) 'payment system' means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;
- (42) 'personalised security credentials' means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;
- (43) 'payment transaction' means an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
- (44) 'reference exchange rate' means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;
- (45) 'reference interest rate' means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;
- (46) 'remote payment transaction' means a payment transaction initiated via internet or through a device that can be used for distance communication;
- (47) 'sensitive payment data' means data, including personalised security credentials which can be used to carry out fraud. For the activities of payment initiation service providers and account information service providers, the name of the account owner and the account number do not constitute sensitive payment data;
- (48) 'strong customer authentication' means an authentication based on the use of two or more elements categorised as knowledge (something only the user knows), possession (something only the user possesses) and inherence (something the user is) that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data;
- (49) 'unique identifier' means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously another payment service user and/or the payment account of that other payment service user for a payment transaction;
- (50) 'value date' means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account;

**TITLE II**  
**PAYMENT SERVICE PROVIDERS**

**CHAPTER 1**  
**Competent authorities and supervision of payment institutions**

**Competent authorities**

8. (1) Member States shall cooperate effectively for the resolution of cross-border disputes in connection with the rights and obligations arising under Titles III and IV.
- (2) In the event of infringement or suspected infringement of the provisions of national law transposing Titles III and IV, the competent authorities 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.

**Right to apply to Courts**

9. (1) Any decisions taken by the competent authority 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 9(1) shall apply also in respect of failure to act.

**Exchange of Information**

10. (1) Exchange of information may be carried out as follows:
- (a) the competent authorities within Malta and with competent authorities of other Member States responsible for the authorisation and supervision of payment institutions;
  - (b) the ECB 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 (EU) 2015/849 and other Union law applicable to payment service providers, such as laws applicable to money laundering and terrorist financing;
  - (d) EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in Article 1(5)(a) of Regulation (EU) No 1093/2010.

**Settlement of disagreements between competent authorities of different Member States**

11. Where the Bank considers that, in a particular matter, cross-border cooperation with competent authorities of another Member State referred to in Paragraph 10 of this Directive and Articles 28, 29, 30 or 31 of Directive (EU) 2015/2366 does not comply with the relevant conditions set out in those provisions, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

## **CHAPTER 2**

### **Common provisions**

#### **Access to payment system**

12.(1) The rules on access of authorised or registered payment service providers that are legal persons to payment systems shall be objective, non-discriminatory and proportionate and do not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

Payment systems shall not impose on payment service providers, on payment service users or on other payment systems any of the following requirements:

- (a) restrictive rule on effective participation in other payment systems;
- (b) rule which discriminates between authorised payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants;
- (c) restriction on the basis of institutional status.

(2) In order to promote effective competition in payments markets, Paragraph 12(1) shall also apply to three-party schemes, such as three-party card schemes, which do not fall within the scope of Paragraph 6.

(3) Paragraph 12(1) shall not apply to:

- (a) payment systems designated under CBM Directive No. 2;
- (b) payment systems composed exclusively of payment service providers belonging to a group.

For the purposes of Paragraph 12(1)(a), where a participant in a designated system allows an authorised or registered payment service provider that is not a participant in the system to pass transfer orders through the system that participant shall, when requested, give the same opportunity in an objective, proportionate and non-discriminatory manner to other authorised or registered payment service providers in line with Paragraph 12(1).

The participant shall provide the requesting payment service provider with full reasons for any rejection.

#### **Access to accounts maintained with a credit institution**

13. Payment institutions shall have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis. Such access shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner.

The credit institution shall provide the competent authority with duly motivated reasons for any rejection.

**TITLE III**  
**TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS FOR PAYMENT SERVICES**

**CHAPTER 1**  
**General Rules**

**Application**

14.(1) This Title shall apply to single payment transactions, framework contracts and payment transactions covered by them. The parties thereto may agree that it shall not apply in whole or in part when the payment service user is not a consumer.

(2) This Directive shall be without prejudice to Consumer Credits Regulations (*LN 330 of 2010 as subsequently amended*), other relevant Union law or national measures regarding conditions for granting credit to consumers not harmonised by this Directive that comply with Union law.

**Other provisions in Union Law**

15. The provisions of this Title are without prejudice to any Union law containing additional requirements on prior information.

However, where Distance Selling (Retail Financial Services) Regulation (*LN 36 of 2005 as subsequently amended*) is also applicable, the information requirements set out in Article 5(1)(a) of that Regulation, with the exception of sub-articles 1(b)(iii) to (viii), (c)(i), (iv), (v) and (d)(iv) shall be replaced by Paragraphs 20, 21, 27 and 28 of this Directive.

**Charges for information**

16.(1) The payment service provider shall not charge the payment service user for providing information under this Directive.

(2) The payment service provider and the payment service user may agree on charges for additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.

(3) Where the payment service provider may impose charges for information in accordance with Paragraph 16(2), they shall be reasonable and in line with the payment service provider's actual costs.

**Burden of proof on information requirements**

17. The burden of proof shall lie with the payment service provider to prove that it has complied with the information requirements set out in this Directive.

**Derogation from information requirements for low-value payment instruments and electronic money**

18.(1) In cases of payment instruments which, according to the relevant framework contract, concern only individual payment transactions that do not exceed EUR 30 or that either have a spending limit of EUR 150 or store funds that do not exceed EUR 150 at any time:

- (a) by way of derogation Paragraphs 27, 28 and 32, the payment service provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an indication of where any other information and conditions specified in Paragraph 28 are made available in an easily accessible manner;
- (b) it may be agreed that, by way of derogation Paragraph 30, the payment service provider is not required to propose changes to the conditions of the framework contract in the same way as provided for in Paragraph 27(1);
- (c) it may be agreed that, by way of derogation from Paragraphs 33 and 34, after the execution of a payment transaction:
  - (i) the payment service provider provides or makes available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction, any charges and/or, in the case of several payment transactions of the same kind made to the same payee, information on the total amount and charges for those payment transactions;
  - (ii) the payment service provider is not required to provide or make available information referred to in Paragraph 18(1)(c)(i) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.

## **CHAPTER 2**

### **Single payment transactions**

#### **Application**

19. (1) This Chapter applies to single payment transactions not covered by a framework contract.

(2) When a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider shall not be obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider or which will be given according to that framework contract.

#### **Prior general information**

20. (1) Before the payment service user is bound by a single payment service contract or offer, the payment service provider makes available to the payment service user, in an easily accessible manner, the information and conditions specified in Paragraph 21 with regard to its own services. At the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium. The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, in English and/or Maltese or in any other language agreed between the parties.

(2) If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with Paragraph 20(1), the payment service provider shall fulfil its obligations as specified in Paragraph 20(1) immediately after the execution of the payment transaction.

(3) The obligations as specified in Paragraph 20(1) may also be discharged by supplying a copy of the draft single payment service contract or the draft payment order including the information and conditions specified in Paragraph 21.

### **Information and conditions**

21.(1) The following information and conditions shall be provided or made available to the payment service user by the payment service provider:

- (a) a specification of the information or unique identifier to be provided by the payment service user in order for a payment order to be properly executed;
- (b) the maximum execution time for the payment service to be provided;
- (c) all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of those charges;
- (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction.

(2) In addition, the payment initiation service providers shall, prior to initiation, provide the payer with, or make available to the payer, the following clear and comprehensive information:

- (a) the name of the payment initiation service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the Member State where the payment service is offered, and any other contact details, including electronic mail address, relevant for communication with the payment initiation service provider; and
- (b) the contact details of the competent authority.

(3) Where applicable, any other relevant information and conditions specified in Paragraph 28 shall be made available to the payment service user in an easily accessible manner.

### **Information for the payer and payee after the initiation of a payment order**

22.(1) In addition to the information and conditions specified in Paragraph 21, where a payment order is initiated through a payment initiation service provider, the payment initiation service provider shall, immediately after initiation, provide or make available all of the following data to the payer and, where applicable, the payee:

- (a) confirmation of the successful initiation of the payment order with the payer's account servicing payment service provider;
- (b) a reference enabling the payer and the payee to identify the payment transaction and, where appropriate, the payee to identify the payer, and any information transferred with the payment transaction;
- (c) the amount of the payment transaction;
- (d) where applicable, the amount of any charges payable to the payment initiation service provider for the transaction, and where applicable a breakdown of the amounts of such charges.



### **Information for payer's account servicing payment service provider in the event of a payment initiation service**

23. Where a payment order is initiated through a payment initiation service provider, it shall make available to the payer's account servicing payment service provider the reference of the payment transaction.

### **Information for the payer after receipt of the payment order**

24. (1) Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided in Paragraph 20(1) all of the following data with regard to its own services:
- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
  - (b) the amount of the payment transaction in the currency used in the payment order;
  - (c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of such charges;
  - (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with Paragraph 21(1)(d) and the amount of the payment transaction after that currency conversion;
  - (e) the date of receipt of the payment order.

### **Information for the payee after execution**

25. (1) Immediately after the execution of the payment transaction, the payee's payment service provider shall provide or make available to the payee, in the same way as provided for in Paragraph 20 (1) all of the following data with regard to its own services:
- (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer and any information transferred with the payment transaction;
  - (b) the amount of the payment transaction in the currency in which the funds are at the payee's disposal;
  - (c) the amount of any charges for the payment transaction payable by the payee and, where applicable, a breakdown of the amounts of such charges;
  - (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;
  - (e) the credit value date.

## **CHAPTER 3 Framework contracts**

### **Application**

26. This Chapter applies to payment transactions covered by a framework contract.

## Prior general information

27. (1) The payment service provider shall, in good time before the payment service user is bound by any framework contract or offer, provide the payment service user, on paper or on another durable medium with the information and conditions specified in Paragraph 28. The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, in English and/or Maltese or in any other language agreed between the parties.

(2) If the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with Paragraph 27(1), the payment service provider shall fulfil its obligations specified in Paragraph 27(1) immediately after conclusion of the framework contract.

(3) The obligations under Paragraph 27(1) may also be discharged by providing a copy of the draft framework contract including the information and conditions specified in Paragraph 28.

## Information and conditions

28. The following information and conditions shall be provided to the payment service user:

(1) On the payment service provider:

- (a) the name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the Member State where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider;
- (b) the particulars of the relevant supervisory authorities and of any relevant public register of authorisation of the payment service provider and the registration number or equivalent means of identification in that register;

(2) On use of the payment service:

- (a) a description of the main characteristics of the payment service to be provided;
- (b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly initiated or executed;
- (c) the form of and procedure for giving consent to initiate a payment order or execute a payment transaction and withdrawal of such consent in accordance with Paragraphs 40 and 56;
- (d) a reference to the time of receipt of a payment order in accordance with Paragraph 54 and the cut-off time, if any, established by the payment service provider;
- (e) the maximum execution time for the payment services to be provided;
- (f) whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with Paragraph 44(1);
- (g) in the case of co-badged, card-based payment instruments, the payment service user's rights as specified in Article 8 of Regulation (EU) 2015/751;

(3) On charges, interest and exchange rates:

- (a) all charges payable by the payment service user to the payment service provider including those connected to the manner in and frequency with which information under this Directive is provided or made available and, where applicable, the breakdown of the amounts of such charges;
  - (b) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate;
  - (c) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with Paragraph 30(2);
- (4) On communication:
- (a) where applicable, the means of communication, including the technical requirements for the payment service user's equipment and software, agreed between the parties for the transmission of information or notifications under this Directive;
  - (b) the manner in and frequency with which information under this Directive is to be provided or made available;
  - (c) the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken;
  - (d) the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with Paragraph 29;
- (5) On safeguards and corrective measures:
- (a) where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of Paragraph 45(1)(b);
  - (b) the secure procedure for notification of the payment service user by the payment service provider in the event of suspected or actual fraud or security threats;
  - (c) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Paragraph 44;
  - (d) the liability of the payer in accordance with Paragraph 50, including information on the relevant amount;
  - (e) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly initiated or executed payment transaction in accordance with Paragraph 47 as well as the payment service provider's liability for unauthorised payment transactions in accordance with Paragraph 49;
  - (f) the liability of the payment service provider for the initiation or execution of payment transactions in accordance with Paragraph 64;
  - (g) the conditions for refund in accordance with Paragraphs 52 and 53;
- (6) On changes to, and termination of, the framework contract:
- (a) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with Paragraph 30, unless the payment service

user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted;

- (b) the duration of the contract;
  - (c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Paragraphs 30(1) and 31;
- (7) On redress:
- (a) any contractual clause on the law applicable to the framework contract and/or the competent courts;
  - (b) the complaint procedure available to the payment service user in accordance with Paragraph 72.

### **Accessibility of information and conditions of the framework contract**

29. At any time during the contractual relationship the payment service user shall have a right to receive, on request, the contractual terms of the framework contract as well as the information and conditions specified in Paragraph 28 on paper or on another durable medium.

### **Changes in conditions of the framework contract**

30. (1) Any changes in the framework contract or in the information and conditions specified in Paragraph 28, shall be proposed by the payment service provider in the same way as provided for in Paragraph 27(1) and no later than two months before their proposed date of application. The payment service user can either accept or reject the changes before the date of their proposed date of entry into force.

Where applicable and in accordance with Paragraph 28(6)(a), the payment service provider shall inform the payment service user that, in the absence of an objection to the proposed changes to the conditions laid down in the framework contract, the payment service user shall be deemed to have accepted these proposed changes.

The payment service provider shall also inform the payment service user that, in the event that the payment service user rejects those changes, the payment service user has the right to terminate the framework contract free of charge and with effect at any time until the date when the changes would have applied.

(2) Changes in the interest or exchange rates may be applied immediately and without notice, provided that such a right is agreed upon in the framework contract and that the changes in the interest or exchange rates are based on the reference interest or exchange rates agreed on in accordance with Paragraph 28(3)(b) and (c). The payment service user shall be informed of any change in the interest rate at the earliest opportunity in the same way as provided for in Paragraph 27(1) unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available. However, changes in interest or exchange rates which are more favourable to the payment service users, may be applied without notice.

(3) Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

## Termination

31. (1) The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period shall not exceed 1 month.
- (2) Termination of the framework contract shall be free of charge for the payment service user except where the contract has been in force for less than 6 months. Charges, if any, for termination of the framework contract shall be appropriate and in line with costs.
- (3) On termination of the framework contract the PSP shall provide free of charge to the PSU information on the transactions of the payment account for the last 18 months on paper or on another durable medium.
- (4) If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least 2 months' notice in the same way as provided for in Paragraph 27(1).
- (5) Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.
- (6) The provisions of Paragraph 31 are without prejudice to the relevant local legislation, including Subsidiary Legislation 371.18 – *Credit Institutions and Financial Institutions (Payment Accounts) Regulation*, governing the rights of the parties to declare the framework contract unenforceable or void.

## Information before execution of individual payment transactions

32. (1) In the case of an individual payment transaction under a framework contract initiated by the payer, a payment service provider shall, at the payer's request for this specific payment transaction, provide explicit information on all of the following:
- (a) the maximum execution time;
  - (b) the charges payable by the payer;
  - (c) where applicable, a breakdown of the amounts of any charge.

## Information for the payer on individual payment transactions

33. (1) After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account, after receipt of the payment order, the payer's payment service provider shall provide the payer, without undue delay and in the same way as laid down in Paragraph 27(1) with all of the following information:
- (a) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;
  - (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
  - (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the payer;

- (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion;
- (e) the debit value date or the date of receipt of the payment order.

(2) A framework contract shall include a condition that the payer may require the information referred to in Paragraph 33(1) to be provided or made available periodically, at least once a month, free of charge, on paper or on another durable medium which allows the payer to store and reproduce information unchanged.

### **Information for the payee on individual payment transactions**

34. (1) After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee, without undue delay in the same way as laid down in Paragraph 27(1) with all of the following information:

- (a) a reference enabling the payee to identify the payment transaction and the payer, and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the payee;
- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;
- (e) the credit value date.

(2) A framework contract may include a condition that the information referred to in Paragraph 34(1) is to be provided or made available periodically, at least once a month, free of charge, on paper or on another durable medium which allows the payee to store and reproduce information unchanged.

## **CHAPTER 4 Common provisions**

### **Currency and currency conversion**

35. (1) Payments shall be made in the currency agreed between the parties.

(2) Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at an ATM, at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

The payer shall agree to the currency conversion service on that basis.

## Information on additional charges or reductions

36. (1) Where, for the use of a given payment instrument, the payee requests a charge or offers a reduction, the payee shall inform the payer thereof prior to the initiation of the payment transaction.
- (2) Where, for the use of a given payment instrument, the payment service provider or another party involved in the transaction requests a charge, the payment service user shall be informed prior to the initiation of the payment transaction.
- (3) The payer shall only be obliged to pay for the charges referred to in Paragraph 36(1) and (2), if made aware of the full amount of these charges prior to the initiation of the payment transaction.

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

### CHAPTER 1 Common provisions

#### Application

37. (1) Where the payment service user is not a consumer, the payment service user and the payment service provider may agree that Paragraphs 38(1), 40(3), 48, 50, 52, 53, 56 and 64 do not apply in whole or in part. The payment service user and the payment service provider may also agree on different time limits than those laid down in Paragraph 47.
- (2) This Directive shall be without prejudice to Consumer Credit Regulations (*LN 330 of 2010 as subsequently amended*), other relevant Union law or national measures regarding conditions for granting credit to consumers not regulated by this Directive provided that they comply with Union law.

#### Charges applicable

38. (1) The payment service provider shall not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Title, unless otherwise specified in Paragraphs 55(1), 56(5) and 63(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) Payment transactions provided within the Union, where both the payer's and the payee's payment service providers are, or the sole payment service provider in the payment transaction is located therein, 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 steering the payer towards the use of any particular payment instrument. Furthermore the payee shall not be prevented from offering the payer a reduction for using electronic payments.
- (4) The payee shall not request charges for the use of payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 applies.

## **Derogation for low value payment instruments and electronic money**

39.(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) Paragraphs 45(1)(b), 46(1)(c) and (d) and 50(3) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
- (b) Paragraphs 48, 49, 50(1) and (3) 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 Paragraph 55(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 Paragraph 56, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee;
- (e) by way of derogation from Paragraphs 59 and 60, other execution periods apply.

(2) Paragraphs 49 and 50 shall apply also to electronic money as defined in the Third Schedule of the Financial Institutions Act (*Cap. 376*) except where the payer's payment service provider does not have the ability to freeze the payment account on which the electronic money is stored or block the payment instrument.

## **CHAPTER 2**

### **Authorisation of payment transactions**

#### **Consent and withdrawal of consent**

40.(1) 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 the 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 the payment service provider. Consent to execute a payment transaction may also be given via the payee or the payment initiation service provider.

In the absence of 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 at the moment of irrevocability in accordance with Paragraph 56. Consent to execute a series of payment transactions may also be withdrawn, in which case any future payment transaction shall be considered to be unauthorised.

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



## Confirmation on the availability of funds

41. (1) An account servicing payment service provider shall, upon the request of a payment service provider issuing card-based payment instruments, immediately confirm whether an amount necessary for the execution of a card-based payment transaction is available on the payment account of the payer, provided that all of the following conditions are met:

- (a) the payment account of the payer is accessible online at the time of the request;
- (b) the payer has given explicit consent to the account servicing payment service provider to respond to requests from a specific payment service provider issuing card-based payment instruments to confirm that the amount corresponding to a certain card-based payment transaction is available on the payer's payment account;
- (c) the consent referred to in Paragraph 41(1)(b) has been given before the first request for confirmation is made.

(2) The payment service provider issuing card-based payment instruments may request the confirmation referred to in Paragraph 41(1) where all of the following conditions are met:

- (a) the payer has given explicit consent to the payment service provider issuing card-based payment instruments to request the confirmation referred to in Paragraph 41(1);
- (b) the payer has initiated the card-based payment transaction for the amount in question using a card-based payment instrument issued by the payment service provider;
- (c) the payment service provider issuing card-based payment instruments authenticates itself towards the account servicing payment service provider before each confirmation request, and securely communicates with the account servicing payment service provider in accordance with procedures for authentication and secure communication as issued by the EBA.

(3) In accordance with the Data Protection Act (*Cap. 440*), the confirmation referred to in Paragraph 41(1) shall consist only in a simple 'yes' or 'no' answer and not in a statement of the account balance. That answer shall not be stored or used for purposes other than for the execution of the card-based payment transaction.

(4) The confirmation referred to in Paragraph 41(1) shall not allow for the account servicing payment service provider to block funds on the payer's payment account.

(5) The payer may request the account servicing payment service provider to communicate to the payer the identification of the payment service provider issuing card-based payment instruments and the answer provided.

(6) Paragraph 41 does not apply to payment transactions initiated through card-based payment instruments on which electronic money, as defined in the Third Schedule of the Financial Institutions Act (*Cap. 376*), is stored.

## Rules on access to payment account in the case of payment initiation services

42. (1) A payer has the right to make use of a payment initiation service provider to obtain payment services as referred to in point (7) of Annex I of Directive (EU) 2015/2366. The right to make use of a payment initiation service provider shall not apply where the payment account is not accessible online.

(2) When the payer gives its explicit consent for a payment to be executed in accordance with Paragraph 40 the account servicing payment service provider shall perform the actions as specified in Paragraph 42(4) in order to ensure the payer's right to use the payment initiation service.

(3) The payment initiation service provider shall:

- (a) not hold at any time the payer's funds in connection with the provision of the payment initiation service;
- (b) ensure that the personalised security credentials of the payment service user are not, with the exception of the user and the issuer of the personalised security credentials, accessible to other parties and that they are transmitted by the payment initiation service provider through safe and efficient channels;
- (c) ensure that any other information about the payment service user, obtained when providing payment initiation services, is only provided to the payee and only with the payment service user's explicit consent;
- (d) every time a payment is initiated, identify itself towards the account servicing payment service provider of the payer and communicate with the account servicing payment service provider, the payer and the payee in a secure way, in accordance with procedures for authentication and secure communication as issued by the EBA;
- (e) not store sensitive payment data of the payment service user;
- (f) not request from the payment service user any data other than those necessary to provide the payment initiation service;
- (g) not use, access or store any data for purposes other than for the provision of the payment initiation service as explicitly requested by the payer;
- (h) not modify the amount, the payee or any other feature of the transaction.

(4) The account servicing payment service provider shall:

- (a) communicate securely with payment initiation service providers in accordance with procedures for authentication and secure communication as issued by the EBA;
- (b) immediately after receipt of the payment order from a payment initiation service provider, provide or make available all information on the initiation of the payment transaction and all information accessible to the account servicing payment service provider regarding the execution of the payment transaction to the payment initiation service provider;
- (c) treat payment orders transmitted through the services of a payment initiation service provider without any discrimination other than for objective reasons, in particular in terms of timing, priority or charges vis-à-vis payment orders transmitted directly by the payer.

(5) The provision of payment initiation services shall not be dependent on the existence of a contractual relationship between the payment initiation service providers and the account servicing payment service providers for that purpose.

## **Rules on access to and use of payment account information in the case of account information services**

43. (1) A payment service user has the right to make use of services enabling access to account information as defined in Paragraph 7(1) and referred to in point (8) of Annex I of Directive (EU) 2015/2366. This right shall apply where the account(s) is accessible online.
- (2) The account information service provider shall:
- (a) provide services only where based on the payment service user's explicit consent;
  - (b) ensure that the personalised security credentials of the payment service user are not, with the exception of the user and the issuer of the personalised security credentials, accessible to other parties and that when they are transmitted by the account information service provider, this is done through safe and efficient channels;
  - (c) for each communication session, identify itself towards the account servicing payment service provider(s) of the payment service user and securely communicate with the account servicing payment service provider(s) and the payment service user, in accordance with procedures for authentication and secure communication as issued by the EBA;
  - (d) access only the information from designated payment accounts and associated payment transactions;
  - (e) not request sensitive payment data linked to the payment accounts;
  - (f) not use, access or store any data for purposes other than for performing the account information service explicitly requested by the payment service user, in accordance with data protection rules.
- (3) In relation to accounts, the account servicing payment service provider shall:
- (a) communicate securely with the account information service providers in accordance with procedures for authentication and secure communication as issued by the EBA; and
  - (b) treat data requests transmitted through the services of an account information service provider without any discrimination for other than objective reasons.
- (4) The provision of account information services shall not be dependent on the existence of a contractual relationship between the account information service providers and the account servicing payment service providers for that purpose.

## **Limits of the use of the payment instrument and of the access to payment accounts by payment service providers**

44. (1) Where a specific payment instrument is used for the purposes of giving consent, the payer and the payer's 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 relating 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 its 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 providing such information would compromise objectively justified security reasons or is prohibited by other relevant Union or national law.

(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.

(5) An account servicing payment service provider may deny an account information service provider or a payment initiation service provider access to a payment account for objectively justified and duly evidenced reasons relating to unauthorised or fraudulent access to the payment account by that account information service provider or that payment initiation service provider, including the unauthorised or fraudulent initiation of a payment transaction. In such cases the account servicing payment service provider shall inform the payer that access to the payment account is denied and the reasons thereof in the form agreed. That information shall, where possible, be given to the payer before access is denied and at the latest immediately thereafter, unless providing such information would compromise objectively justified security reasons or is prohibited by other relevant Union or national law.

The account servicing payment service provider shall allow access to the payment account once the reasons for denying access no longer exist.

For the purpose of account information service the provisions of Paragraph 44(5) shall also apply to accounts other than payment accounts.

(6) In the cases referred to in Paragraph 44(5), the account servicing payment service provider shall immediately report the incident relating to the account information service provider or the payment initiation service provider to the competent authority. The information shall include the relevant details of the case and the reasons for taking action. The competent authority shall assess the case and shall, if necessary, take appropriate measures.

### **Obligations of the payment service user in relation to payment instruments and personalised security credentials**

45. (1) The payment service user entitled to use a payment instrument shall:

- (a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, which must be objective, non-discriminatory and proportionate;
- (b) notify the payment service provider(s), or the entity specified by the latter, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

(2) For the purposes of Paragraph 45(1)(a), the payment service user shall, in particular, upon receipt of a payment instrument, take all reasonable steps to keep its personalised security credentials safe.

### **Obligations of the payment service provider in relation to payment instruments**

46. (1) The payment service provider issuing a payment instrument shall:

- (a) make sure that the personalised security credentials are not accessible to parties other than the payment service user that is entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Paragraph 45;
- (b) refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- (c) ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Paragraph 45(1)(b) or to request unblocking of the payment instrument pursuant to Paragraph 44(4);
- (d) on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that the payment service user made such a notification;
- (e) provide the payment service user with an option to make a notification pursuant to Paragraph 45(1)(b) free of charge and to charge, if at all, only replacement costs directly attributed to the payment instrument;
- (f) prevent all use of the payment instrument once notification pursuant) Paragraph 45(1)(b) has been made.

(2) The payment service provider shall bear the risk of sending a payment instrument or any personalised security credentials relating to it to the payment service user.

### **Notification and rectification of unauthorised or incorrectly executed payment transactions**

47. (1) The payment service user shall obtain rectification of an unauthorised or incorrectly executed payment transaction from the payment service provider only if the payment service user notifies the payment service provider without undue delay on becoming aware of any such transaction giving rise to a claim, including that under Paragraph 64, and no later than 13 months after the debit date.

The time limits for notification as specified in Paragraph 47(1) do not apply where the payment service provider has failed to provide or make available the information on the payment transaction in accordance with Title III.

(2) Where a payment initiation service provider is involved, the payment service user shall obtain rectification from the account servicing payment service provider pursuant to Paragraph 47(1), without prejudice to Paragraphs 49(2) and 64(1).

### **Evidence on authentication and execution of payment transactions**

48. (1) 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 the 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 of the service provided by the payment service provider.

If the payment transaction is initiated through a payment initiation service provider, the burden shall be on the payment initiation service provider to prove that within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the payment service of which it is in charge.

(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, including the payment initiation service provider as appropriate, 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 the obligations as specified in Paragraph 45. The payment service provider, including, where appropriate, the payment initiation service provider, shall provide supporting evidence to prove fraud or gross negligence on part of the payment service user.

### **Payment service provider's liability for unauthorised payment transactions**

49. (1) Without prejudice to Paragraph 47, in the case of an unauthorised payment transaction, the payer's payment service provider refunds the payer the amount of the unauthorised payment transaction immediately, and in any event no later than by the end of the following business day, after noting or being notified of the transaction, except where the payer's payment service provider has reasonable grounds for suspecting fraud and communicates those grounds to the relevant national authority in writing. Where applicable, the payer's payment service provider shall restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place. This shall also ensure that the credit value date for the payer's payment account shall be no later than the date the amount had been debited.

(2) Where the payment transaction is initiated through a payment initiation service provider, the account servicing payment service provider shall refund immediately, and in any event no later than by the end of the following business day the amount of the unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

If the payment initiation service provider is liable for the unauthorised payment transaction, it shall immediately compensate the account servicing payment service provider at its request for the losses incurred or sums paid as a result of the refund to the payer, including the amount of the unauthorised payment transaction. In accordance with Paragraph 48(1) the burden shall be on the payment initiation service provider to prove that, within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the payment service of which it is in charge.

(3) Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and the payment service provider or the contract concluded between the payer and the payment initiation service provider if applicable.

### **Payer's liability for unauthorised payment transactions**

50. (1) By way of derogation from Paragraph 49, the payer may be obliged to bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 25, resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument.

Paragraph 50(1) shall not apply if:

- (a) the loss, theft or misappropriation of a payment instrument was not detectable to the payer prior to a payment, except where the payer has acted fraudulently; or
- (b) the loss was caused by acts or lack of action of an employee, agent or branch of a payment service provider or of an entity to which its activities were outsourced.

The payer shall bear all of the losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or failing to fulfil one or more of the obligations set out in Paragraph 45 with intent or gross negligence. In such cases, the maximum amount of EUR 25 shall not apply.

(2) Where the payer's payment service provider does not require strong customer authentication, the payer shall not bear any financial losses unless the payer has acted fraudulently. Where the payee or the payment service provider of the payee fails to accept strong customer authentication, it shall refund the financial damage caused to the payer's payment service provider.

(3) The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification in accordance with Paragraph 45(1)(b) except where the payer has acted fraudulently.

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 specified in Paragraph 46(1)(c) the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where the payer has acted fraudulently.

### **Payment transactions where the transaction amount is not known in advance**

51.(1) Where a payment transaction is initiated by or through the payee in the context of a card-based payment transaction and the exact amount is not known at the moment when the payer gives consent to execute the payment transaction, the payer's payment service provider may block funds on the payer's payment account only if the payer has given consent to the exact amount of the funds to be blocked.

(2) The payer's payment service provider shall release the funds blocked on the payer's payment account in Paragraph 51(1) without undue delay after receipt of the information about the exact amount of the payment transaction and at the latest immediately after receipt of the payment order.

### **Refunds for payment transactions initiated by or through a payee**

52.(1) A payer is entitled to a refund from the payment service provider of an authorised payment transaction which was initiated by or through a payee and which has already been executed, if both of the following conditions are met:

- (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made;
- (b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account the previous spending pattern, the conditions in the framework contract and relevant circumstances of the case.

At the payment service provider's request, the payer shall bear the burden of proving such conditions are met.

The refund shall consist of the full amount of the executed payment transaction. The credit value date for the payer's payment account shall be no later than the date the amount was debited.

(2) Without prejudice to Paragraph 52(4), for direct debits as referred to in Article 1 of Regulation (EU) No 260/2012, the payer also has an unconditional right to a refund within the time limits laid down in Paragraph 53.

(3) However, for the purposes of Paragraph 52(1)(b), the payer shall not rely on currency exchange reasons if the reference exchange rate agreed with its payment service provider in accordance with Paragraphs 21(1)(d) and 28(3)(b) was applied.

(4) It may be agreed in a framework contract between the payer and the payment service provider that the payer has no right to a refund where:

- (a) the payer has given consent to execute the payment transaction directly to the payment service provider; and
- (b) where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer for at least 4 weeks before the due date by the payment service provider or by the payee.

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

53. (1) A payer can request the refund referred to in Paragraph 52 of an authorised payment transaction initiated by or through a payee for a period of 8 weeks from the date on which the funds were debited.

(2) Within 10 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 a justification for refusing the refund and indicate where the payer may refer the matter to in accordance with Paragraph 72, if the payer does not accept the reasons provided.

(3) The payment service provider's right under Paragraph 53(2) to refuse the refund shall not apply in the case set out in Paragraph 52(2).

## **CHAPTER 3**

### **Execution of payment transactions**

#### **Section 1**

#### **Payment orders and amounts transferred**

#### **Receipt of payment orders**

54. (1) The time of receipt is when the payment order is received by the payer's payment service provider.

The payer's account shall not be debited before receipt of the payment order. If the 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 the 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 put funds at the payment service provider's disposal, the time of receipt for the purposes of Paragraph 59 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.

### **Refusal of payment orders**

55.(1) Where the payment service provider refuses to execute a payment order or to initiate a payment transaction, 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 Union or national law.

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 Paragraph 59.

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

(2) Where all of the conditions set out in the payer's framework contract are met, the payer's account servicing payment service provider shall not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by a payer, including through a payment initiation service provider, or by or through a payee, unless prohibited by other relevant Union or national law.

(3) For the purposes of Paragraph 59 and 65 a payment order for which execution has been refused shall be deemed not to have been received.

### **Irrevocability of a payment order**

56.(1) The payment service user shall not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise specified in Paragraph 56.

(2) Where the payment transaction is initiated by a payment initiation service provider or by or through the payee, the payer shall not revoke the payment order after giving consent to the payment initiation service provider to initiate the payment transaction or after giving 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.

(4) In the case referred to in Paragraph 54(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 laid down in Paragraph 56(1) to (4), the payment order may be revoked only if agreed between the payment service user and the relevant payment service providers. In the case referred to in Paragraph 56(2) and (3), the payee's agreement shall also be required. If agreed in the framework contract, the relevant payment service provider may charge for revocation.

## **Amounts transferred and amounts received**

57. (1) The payment service provider(s) of the payer, the payment service provider(s) of the payee and any intermediaries of the payment service providers shall transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

(2) However, the payee and the payment service provider may agree that the relevant 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 57(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. Where the payment transaction is initiated by or through the payee, the payment service provider of the payee shall ensure that the full amount of the payment transaction is received by the payee.

## **Section 2 Execution time and value date**

### **Application**

58. (1) This Section applies to:

- (a) payment transactions in euro;
- (b) national payment transactions in the currency of the Member State outside the euro area;
- (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 applies to payment transactions not referred to in the Paragraph 58(1), unless otherwise agreed between the payment service user and the payment service provider, with the exception of Paragraph 62, which is not at the disposal of the parties. However, if the payment service user and the payment service provider agree on a longer period than that set in Paragraph 59, for intra-Union payment transactions, that longer period shall not exceed 4 business days following the time of receipt as referred to in Paragraph 54.

### **Payment transactions to a payment account**

59. (1) The payer's payment service provider shall ensure that after the time of receipt as referred to in Paragraph 54, the amount of the payment transaction will be credited to the payee's payment service provider's account by the end of the following business day. That time limit may be extended by a further business day for paper-initiated payment transactions.

(2) The payment service provider of the payee shall 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 Paragraph 62.

(3) The payee's payment service provider shall 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 the payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed due date.

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

60. 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 time limit laid down in Paragraph 59.

### **Cash placed on a payment account**

61. 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 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 following business day after receipt of the funds.

### **Value date and availability of funds**

62. (1) The credit value date for the payee's payment account shall not be later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

(2) 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 where, on the part of the payee's payment service provider, there is:

(a) no currency conversion; or

(b) a currency conversion between the euro and a Member State currency or between two Member State currencies.

The obligation laid down in Paragraph 62(2) shall also apply to payment transactions involving a sole payment service provider.

(3) The debit value date for the payer's payment account shall not be earlier than the time at which the amount of the payment transaction is debited to that payment account.

## **Section 3 Liability**

### **Incorrect unique identifiers**

63. (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 as specified in Paragraph 64 for non-execution or defective execution of the payment transaction.

(3) However, the payer's payment service provider shall make reasonable efforts to recover the funds involved in the erroneous payment transaction. The payee's payment service provider shall cooperate in those efforts also by communicating to the payer's payment service provider all relevant information for the collection of funds.

In the event that such recovery of funds is not possible, the payer's payment service provider shall provide to the payer, upon written request, all information available to the payer's payment service provider and relevant to the payer in order for the payer to file a legal claim to recover the funds.

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

(5) If the payment service user provides information in addition to that specified in Paragraphs 21(1) or 28(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.

### **Payment service providers' liability for non-execution, defective or late execution of payment transactions**

64. (1) Where a payment order is initiated directly by the payer, the payer's payment service provider shall, without prejudice to Paragraphs 47, 63(2) and (3) and 68, be liable to the payer for correct execution of the payment transaction, unless it can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Paragraph 59(1). In that case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

(2) Where the payer's payment service provider is liable under Paragraph 64(1) it 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.

The credit value date for the payer's payment account shall be no later than the date on which the amount was debited.

(3) Where the payee's payment service provider is liable under the Paragraph 64(1) it 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.

The credit value date for the payee's payment account shall be no later than the date on which the amount would have been value dated, had the transaction been correctly executed in accordance with Paragraph 62.

(4) Where a payment transaction is executed late, the payee's payment service provider shall ensure, upon the request of the payer's payment service provider acting on behalf of the payer, that the credit value date for the payee's payment account is no later than the date the amount would have been value dated had the transaction been correctly executed.

(5) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, the payer's payment service provider shall, regardless of liability under Paragraph 64(1) to (5), on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome. This shall be free of charge for the payer.

(6) Where a payment order is initiated by or through the payee, the payee's payment service provider shall, without prejudice to Paragraphs 47, 63(2) and (3) and 68 be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Paragraph 59(3). Where the payee's payment service provider is liable under Paragraph 64(6), it shall immediately re-transmit the payment order in question to the payment service provider of the payer.

(7) In the case of a late transmission of the payment order, the amount shall be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

(8) In addition, the payment service provider of the payee shall, without prejudice to Paragraphs 47, 63(2) and (3) and 68, be liable to the payee for handling the payment transaction in accordance with its obligations as specified in Paragraph 62. Where the payee's payment service provider is liable under Paragraph 64(8), it 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. The amount shall be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

(9) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under Paragraph 64(6) and (7), 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. The credit value date for the payer's payment account shall be no later than the date the amount was debited.

(10) The obligation as specified in Paragraph 64(9) shall not apply to the payer's payment service provider where the payer's payment service provider proves that the payee's payment service provider has received the amount of the payment transaction, even if execution of payment transaction is merely delayed. If so, the payee's payment service provider shall value date the amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly.

(11) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, the payee's payment service provider shall, regardless of liability under Paragraph 64(6) to (11), on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome. This shall be free of charge for the payee.

(12) 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, including late, execution of the payment transaction.

### **Liability in the case of payment initiation services for non-execution, defective or late execution of payment transactions**

65. (1) Where a payment order is initiated by the payer through a payment initiation service provider, the account servicing payment service provider shall, without prejudice to Paragraphs 47 and

63(2) and (3), 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.

The burden shall be on the payment initiation service provider to prove that the payment order was received by the payer's account servicing payment service provider in accordance with Paragraph 54 and that within its sphere of competence the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the non-execution, defective or late execution of the transaction.

(2) If the payment initiation service provider is liable for the non-execution, defective or late execution of the payment transaction, it shall immediately compensate the account servicing payment service provider at its request for the losses incurred or sums paid as a result of the refund to the payer.

### **Additional financial compensation**

66. 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 the payment service provider.

### **Right of recourse**

67. (1) Where the liability of a payment service provider as specified in Paragraphs 49 and 64 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 Paragraphs 49 and 64. That shall include compensation where any of the payment service providers fail to use strong customer authentication.

(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.

### **Abnormal and unforeseeable circumstances**

68. No liability shall arise under Chapter 2 or 3 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 Union or national law.

## **CHAPTER 4 Data protection**

### **Data protection**

69. (1) The processing of personal data by payment systems and payment service providers shall be permitted when necessary to safeguard the prevention, investigation and detection of payment fraud. The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of personal data for the purposes of this Directive shall be carried out in accordance with the Data Protection Act (*Cap. 440*) and with Regulation (EC) No 45/2001.

(2) Payment service providers shall only access, process and retain personal data necessary for the provision of their payment services, with the explicit consent of the payment service user.

## **CHAPTER 5**

### **Incident reporting and authentication**

#### **Incident reporting**

70. (1) In the case of a major operational or security incident, payment service providers shall, without undue delay, notify the competent authority in the home Member State of the payment service provider. Payment service providers shall use the procedures for notifying such incidents as issued by the EBA.

Where the incident has or may have an impact on the financial interests of its payment service users, the payment service provider shall, without undue delay, inform its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

(2) Upon receipt of the notification referred to in Paragraph 70(1), the competent authority of the home Member State shall, without undue delay, provide the relevant details of the incident to EBA and to the ECB. That competent authority shall, after assessing the relevance of the incident to relevant authorities of other Member State, notify them accordingly.

EBA and the ECB shall, in cooperation with the competent authority of the home Member State, assess the relevance of the incident to other relevant Union and national authorities and shall notify them accordingly. The ECB shall notify the members of the European System of Central Banks on issues relevant to the payment system.

On the basis of that notification, the competent authorities shall, where appropriate, take all of the necessary measures to protect the immediate safety of the financial system.

(3) Payment service providers shall provide, on an annual basis, statistical data on fraud relating to different means of payment to the competent authorities in the home Member State.

#### **Authentication**

71. (1) Payment service providers shall apply strong customer authentication where the payer:

- (a) accesses its payment account, and in the case of account information service also other accounts, online;
- (b) initiates an electronic payment transaction;
- (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

(2) Further to Paragraph 71(1)(b), for the initiation of electronic remote payment transactions, payment service providers shall apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.

(3) With regard to Paragraph 71(1), payment service providers shall have in place adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials.

(4) Paragraph 71(2) and (3) shall also apply where payments are initiated through a payment initiation service provider. Paragraph 71(1) and (3) shall also apply when the information is requested through an account information service provider.

(5) Account servicing payment service providers shall allow the payment initiation service provider and the account information service provider to rely on the authentication procedures provided by the account servicing payment service provider to the payment service user in accordance with Paragraph 71(1) and (3) and, where the payment initiation service provider is involved, in accordance with Paragraph 71(1) to (3).

## CHAPTER 6

### Complaints procedure, dispute resolution and penalties

#### Complaints

72.(1) Any complaint relating to an alleged infringement of this Directive by a payment service provider shall be submitted by a payment service user directly to the Office of the Arbiter for Financial Services, in terms of the Arbiter for Financial Service Act (Cap.555).

#### Dispute resolution

73.(1) Payment service providers shall put in place and apply adequate and effective complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations arising under Titles III and IV of this Directive.

Such procedures shall be applied in every Member State where the payment service provider offers the payment services and shall be available in an official language of the relevant Member State or in another language if agreed between the payment service provider and the payment service user.

(2) Payment service providers shall make every possible effort to reply, on paper or on another durable medium, to the payment service users' complaints. Such a reply shall address all points raised, within an adequate timeframe and at the latest within 15 business days of receipt of the complaint. In exceptional situations, if the answer cannot be given within 15 business days for reasons beyond the control of the payment service provider, it shall be required to send a holding reply, clearly indicating the reasons for a delay in answering to the complaint and specifying the deadline by which the payment service user will receive the final reply. In any event, the deadline for receiving the final reply shall not exceed 35 business days.

(3) The payment service provider shall inform the payment service user about the Office of the Arbiter for Financial Services, in terms of the Arbiter for Financial Service Act (*Cap. 555*), with respect to disputes concerning the rights and obligations arising under Titles III and IV.

(4) The information referred to in Paragraph 73(3) shall be mentioned in a clear, comprehensive and easily accessible way on the website of the payment service provider, where one exists, at the branch, and in the general terms and conditions of the contract between the payment service provider and the payment service user.

#### Penalties

74. Where any service provider contravenes or fails to comply with a provision contained in this directive, the Bank may impose an administrative penalty in accordance with Article 56 of the Central Bank of Malta Act (*Cap. 204*).



## **TITLE V FINAL PROVISIONS**

### **Obligation to inform consumers of their rights**

75.(1) Payment service providers shall ensure that the user-friendly electronic leaflet, listing in a clear and easily comprehensible manner the rights of consumers under this Directive and related Union law, as issued by the Commission, is made available in an accessible manner on their websites, if existing, and on paper at their branches, their agents and the entities to which their activities are outsourced.

(2) Payment service providers shall not charge their clients for making information available under Paragraph 74.

(3) In respect of persons with disabilities, the provisions of Paragraph 75 shall be applied using appropriate alternative means, allowing the information to be made available in an accessible format.

### **Transitional provision**

76.(1) Payment institutions that have taken up activities in accordance with Malta Financial Institutions Act (Cap. 376) by 13 January 2018 shall continue those activities in accordance with the requirements provided for in that Act. Such payment institutions are not required to seek authorisation in accordance with Article 5 of Directive (EU) 2015/2366 or to comply with the other provisions laid down or referred to in Title II of that Directive until 13 July 2018.

(2) Payment institutions which have not been authorised or exempted by 13 January 2018 under Malta Financial Institutions Act (Cap. 376) or do not comply by 13 July 2018 with the requirements laid down in Title II of Directive (EU) 2015/2366 shall be prohibited from providing payment services in accordance with Article 37 of that Directive.

### **Entry into force**

77. This Directive shall enter into force on the 13<sup>th</sup> of January 2018.