



Directive 2007/64/EC

General report on the transposition by the Member States

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Tipik Communication Agency S.A.
Avenue de Tervueren 270 • B-1150 Brussels
Tel. +32.2.235.56.70 • Fax +32.2.235.56.99 • info@tipik.eu
TVA BE 435.539.007 • RCB 511.105 • Fortis 210-0635550-58
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The conformity assessment of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC has been performed under the Framework Service Contract No 10015 on the Provision of services in connection with the codification of Community law and with the assessment of the conformity of the laws of Member States with Community law.

The conformity assessment of Directive 2007/64/EC concerns 27 Member States. The national implementing measures notified by the Member States to the European Commission as a result of the Directive transposition process basically represent the scope of and form the background for the assessment.

Reports on each Member State were drafted as a result of the assessment performed and they aim to present the main conclusions and observations on the Directive provisions. The first part of these assessment reports present the notified national implementing measures and additional legislation assessed. Secondly, a general conclusion on the conformity assessment introduces the work performed as well as presenting cases that raise concerns of conformity according to the method used for assessment. The third and final part of the report represents the core of the assessment report. It takes the form of a concordance table, whereby the national provisions implementing the Directive provisions are listed and assessed. In addition, a general report also aims to provide a comprehensive overview of all assessments.

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1 Assessing the implementation of Directive 2007/64/EC in the EU¹

1.1 The Directive

Directive 2007/64/EC² which entered into force on 25 December 2007 aims to foster the internal market on payment services and more especially the Single Euro Payments Area (SEPA), a major payments industry initiative aimed at eliminating any remaining differences between domestic and cross-border payments within the euro area.

The Payment Services Directive establishes a modern and harmonised legal framework necessary for the creation of an integrated payments market, which enables quick and efficient payments to be made throughout the European Union (EU).

Previously, the payment services markets of the Member States were organised separately, along national lines and the legal framework for payment services was fragmented into 27 national legal systems. The Directive strives to achieve harmonised market-access requirements for payment service providers, which will enhance competition and encourage innovation in payment markets. The Directive also provides the necessary legal framework to support the development of the SEPA.

For the purposes of the Directive, payment services are services that allow consumers and businesses access to payment systems, whereby payment transactions are processed, cleared or settled. The Directive covers payment services, which have an electronic component. It also introduces a new category of payment service provider known as a payment institution.

The Directive essentially deals with three issues:

- It establishes a new authorisation regime for payment institutions. The authorisation procedure requires proof of a sound and prudential management, risk and financial structure.
- It establishes transparency requirements to ensure that payment service providers give the requisite information to their customers as related to payments. They intend to provide users with sufficient information to enable them to make well-informed choices so they can shop around within the EU. The extent of transparency differs between single pay-

ment transactions and framework contracts, the latter being more extensive.

- It sets out the rights and obligations of payment service providers and payment service users. It lays down rules on the movement of funds from the placement of a payment order through to execution and deals with disputes between users and providers and the liability of such users and providers should issues arise. One of the key elements of the Directive is the execution times for payment transactions. For payer-initiated payments, the maximum execution time will be D+3 until 2012 and D+1 thereafter (D being the date of instruction by the payer to effect the payment transaction).

By removing legal barriers to the provision of payment services across Europe and fulfilling these objectives, the Directive has paved the way for citizens and businesses to make all kinds of intra-EU/EEA³ payments – at both national and cross-border level – easily, safely, efficiently, cost-effectively, and in a timely manner. The legal framework provided by the Directive supports the SEPA payment instruments, particularly the SEPA Direct Debit Scheme, and removes barriers to entry into new markets within the EU/EEA.

1.2 The assessment

The conformity assessment of Directive 2007/64/EC has been performed for all the Member States with the purpose of examining the implementation of the Directive within the national legal frameworks. The conformity assessment of the legislation in Poland has not been included within the framework of this report, as the legislation transposing the Directive has not been adopted yet and the European Commission (the Commission) referred this failure to the European Court of Justice⁴.

This conformity assessment is based on the national legislation that was notified to the Commission by the Member States as the implementing measures. Member States had to comply with their transposition obligation by 1 November 2009. Some Member States went beyond the deadline and notified in the later months. However, when the conformity assessment begun, the transposition process was considered complete.

The implementing measures are either complete bodies of legislation or amending legislation. In other words, the legislation that has been notified is complete in the sense that it is usually the first specific piece of legislation dealing with the transposition of the Directive itself. Therefore, many Member States adopted acts specifically for the transposition of the Directive. Additional legislation is limited to legislation adapting or amending the legislation in force. The notified measures are comprised of either the primary legislation, which lays

¹ The general report is the result of the collaboration between Matias Ahlgren, Dr. Anne-Marie Cuschieri, Alena El Hahi, Charlie Schoegje, Inês Theias and Séline Yavuz as well as the Tipik Legal Department. The final drafting has been edited by Séline Yavuz.

² Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EEC (PSD), OJ L 319, 05/12/2007, p. 1–36.

³ EEA: European Economic Area

⁴ Case C-542/10 *European Commission v Republic of Poland*, OJ C 30, 29.1.2011, p. 25.

down the rules for payment services or possible secondary legislation that specifies various aspects, or amending acts showing what has been changed. In this latter case, the primary legislation was consulted for the sake of completeness. In general, the conformity assessment ensured that the latest version of national legislation was assessed for reasons of accuracy as far as the legislation in force was at stake.

On the contrary, the assessment should not extend to any other legislation that has not been notified. However, other legislation has been referred to when conclusions would have led to non-conformity and it is known that the requirements are laid down in some other legislation, especially when amending legislation was notified. Therefore, cases that raised conformity issues are in principle mostly those for which the corresponding provisions of specific requirements could not be located.

85 Articles were assessed, namely Articles 1 to 83 and Articles 86 and 88. Articles 84, 85, 87 and Articles 89 to 96 were not assessed.

1.3 The method

The method for assessing conformity is based on an approach, which categorises national legislation into the following headings: conform, partially conform or not conform. This is done with respect to each specific Directive provision. The difference is only theoretical as far as practice does not distinguish between cases of partial conformity and those of non-conformity. In other words, the lack of compliance has the same legal consequence whether national legislation fulfils some requirements of a Directive provision or it does not fulfil them at all. However this assessment favours emphasising entire or partial cases of non-conformity, i.e. nuances.

More specifically, conformity applies to cases whereby the national provisions follow all the requirements of the corresponding Directive provision. However, some requirements of the Directive provision may not be explicitly transposed. In such cases, national provisions conform as far as the silence does not affect the proper implementation of all requirements and that the missing ones can be inferred.

Partial conformity applies to cases whereby the national provisions do not follow all the requirements of the Directive provision, add more or are silent about requirements which are considered minor, but necessary. In such cases, the interpretation of the national provision does not hamper the proper implementation of the Directive provision as a whole, and missing requirements cannot be inferred.

Non-conformity applies to cases whereby the Directive provision is not transposed or the national provisions do not follow all the requirements of the Directive provision or the main ones. In such cases, the interpretation of the national provisions hamper the proper implementation of the Directive provision as a whole, and missing requirements cannot be inferred either. Additional requirements and exemptions, which hamper the proper implementation of the Directive provision, are also taken into account. This approach has been applied for Article 4 providing all definitions necessary to frame the implementation and understanding of the Directive as well as for

a few other cases where a national implementing provision present a serious issue of conformity.

In all other cases where national implementing provisions could not be located, the observations on each of them have been 'left blank', i.e. without any statement as to whether such cases are cases for non-conformity. Such situation also applies where provisions need not be transposed.

The Annex presents the list of these cases raising potential issues of conformity.

1.4 The conclusions

The Directive is a full harmonisation Directive and 'Member States shall not maintain or introduce provisions other than those laid down in this Directive' according to Article 86(1). Any provisions that go over and above the Directive will be seen as not compliant with the Directive.

This report is based on the assessment reports performed on all twenty-six Member States. Based on the facts and accuracy, conclusions also reflect the views of the assessors.

In preliminary remarks, the conformity assessment has revealed various practices. A few Member States literally draft the Directive and others implement it to correlate with their own legal system and culture. Most Member States introduced a new legal act in their legal corpus. Some Member States inserted the requirements of the Directive into existing corpus and thus consolidated the said corpus. France for example transposed the Directive into a code. Germany also followed such a practice in relation to specific provisions, while the main rules are laid down in a single act on payment services.

Transposition into a legal system and culture also requires adherence to the Directive. The transposition highlights the necessary adaptations in order to make the legal text fit into the whole corpus of legislation in a Member State. Terminology is the first aspect of such adaptations. The main objective of the conformity assessment in this scenario is to ensure that differences in terminology do not affect the scope and spirit of the Directive.

The second aspect of such adaptations is the structure of these acts. The majority of Member States have more or less changed the structure of their acts compared to that of the Directive. Each approach follows its own logic and has its own value sometimes leading to a complete reorganisation of the requirements such as in Austria, or slight adaptations to the structure, as in Belgium. The main objective here is to ensure that the scope of each Title of the Directive is properly reflected.

The third aspect concerned with such adaptations is the conciseness or length of national legislation. Some Member States tend to follow a concise approach according to which not all elements of the Directive are reflected in the act, such as Estonia, Denmark, Finland and Sweden. Others tend to follow a lengthier approach by way of a more developed structure or elaborated wording, such as Cyprus and the Czech Republic. The main objective here is to ensure that concise transposition reflects all the requirements of the Directive in practice and are not due to omissions. In addition, it ensures that

the lengthy transposition does not add further requirements that would go beyond the Directive.

In general, the implementation of the Directive did not cause any major issues although the Annex presents a long list of issues. There are nevertheless certain provisions that could not be located and other cases wherein the wording, if not the additional requirements, were considered as possible breaches. However, one should note that the implementation of Article 2 is certainly the main issue at stake, where Member States which follow the one-leg approach go beyond the Directive in principle. In addition, the definitions set out in Article 4 which provide the framework towards proper implementation have not been transposed in a number of cases. Article 5 on the application for authorisation, Article 8 on own funds calculation and Article 17 on the use of branches, agents and outsourcing also raised a number of issues.

In this respect, the Directive contains both specific and abstract provisions. In order to ensure full effectiveness of the Directive, Member States also laid down procedural aspects. For instance, time limits were determined in relation to Article 11 on the communication of the decision to grant authorisation or not. Such procedural aspects were sometimes regarded as impairing the scope and spirit of the Directive. Other potential issues are related to a common approach for some provisions, such as Article 61 with reference to the amounts laid down in paragraphs (1) and (3).

Abstract provisions, such as those on the national authorities and their controlling power or those on penalties reveal a variety of practices. Requirements regarding appropriateness, adequacy, proportionality, etc. are not often explicit and the Member States may set detailed measures setting out the controls or the penalties. In this regard, as part of a corpus of legislation, national legislation on payment services is not exclusive to the application of other relevant rules such as contract law or compensation. The Directive is more explicit in this respect, whereas it is more likely to be inferred where national legislation does not repeat such requirements. Options also give leeway to the Member States, which opt to do so, sometimes showing diverging implementations, such as for the determination of payment accounts or instruments of a certain value benefiting from the waiver laid down in Article 53(3).

The transposition of Article 88 has also shown that the dates mentioned in the Directive, have been literally implemented in some cases.

Overall, the Member States properly implement the Directive. Nevertheless, national legislation includes additional requirements with a view to providing a comprehensive framework for payment services. Not all of them are viewed as compromising full harmonisation.

2 Directive 2007/64/EC in the Member States

Directive 2007/64/EC is composed of six Titles from Title I to Title VI. For this assessment, all Titles are concerned except Title V and only two Articles in Title VI are examined. Each Title is split into chapters and in some cases these chapters are divided into sections.

The Directive defines seven categories of payment services. They are listed in the Annex to the Directive. Therefore, where there are references to the points in the Annex in the report it is valuable to know what payment services the concerned aspect is relating to.

Point 1 refers to cash placed on a payment account and all operations required for operating such accounts.

Point 2 accepts cash withdrawals on a payment account and all operations for such withdrawals.

Point 3 allows for the execution of payment transactions with the user's payment service provider including the following transfers of funds:

- Direct debits
- Payment cards or similar devices
- Credit transfers including standing orders.

In addition, point 4 allows for the execution of payment transactions where the funds are on a credit line for the user:

- Direct debits
- Payment cards or similar devices
- Credit transfers including standing orders.

Point 5 concerns the issuing of or acquirement of payment instruments.

Point 6 accepts money remittances.

Finally, point 7 accepts the execution of payment transactions electronically with the consent of the payer to the electronic device, which acts as an intermediary and then transfers it to the supplier of the good or service.

2.1 Subject matter, scope and definitions

Title I provides an overview on the subject matter, the scope and the definitions. There are in total four Articles in Title I.

2.1.1 Subject matter (Article 1)

The subject matter of Directive 2007/64/EC under Article 1 concerns the objective of the Directive, which lays down rules on payment services and their recipients, namely about the legal significance of the Directive. Payment service providers are subject to rules when providing payment services as a regular occupation or as a business activity.

Payment service providers

Payment services can be provided by six categories of providers which are set out in Article 1(1) of the Directive, specifically: credit institutions, electronic money institutions, post office giro institutions, payment institutions, the European and national central banks and Member States or their regional or local authorities.

Generally, Member States comply with Article 1(1) of the Directive, even though some aspects should be noted and others may raise issues. One should first note that while the majority of the Member States properly implement and follow the Directive provision, others follow a streamlined approach. Hungary, Luxembourg and the United Kingdom⁵ implement Article 1(1) and Article 4, point (9) on the definition of payment service provider, in a single provision. Finland and France gather some categories of providers: Finland puts credit institutions and payment institutions together and France follows a somewhat general wording to encompass credit institutions, electronic money institutions and payment institutions. Moreover, Member States follow various approaches regarding the providers and favour a national or cross-border approach as explained below.

In terms of Article 1(1)(a) of the Directive, credit institutions are those that fall within the meaning of Article 4(1)(a) of Directive 2006/48/EC⁶. The Latvian and Lithuanian legislation do not refer to Article 4(1)(a) of Directive 2006/48/EC or its equivalent in national legislation, although the meaning of credit institutions has the same legal significance as the one provided for in the Directive provision. Institutions considered as credit institutions are specified under national legislation. In this regard, banks are credit institutions in Bulgaria, Cyprus, the Czech Republic, Denmark, Slovakia and Slovenia. Banks

together with credit institutions form such a category in Italy. Cooperatives are also considered credit institutions in Cyprus and the Czech Republic.

Electronic money institutions are those defined under Article 1(3)(a) of Directive 2000/46/EC⁷ as referred to in Article 1(1)(b) of the Directive. They are credit institutions in Lithuania and Portugal. Czech legislation also specifies various categories of electronic money institutions, specifically, 'regular' and small ones. Moreover, the Finnish legislation does not comply with Article 1(1)(b) of the Directive and refers to the general category of electronic instruments which permit the execution of payments. Due to vagueness regarding electronic money institutions, Finnish legislation does not conform with the requirements set out in the Directive provision.

Post office giro institutions, provided for in Article 1(1)(c) of the Directive, can provide payment services when they are entitled to under national legislation. The provision is not implemented by Denmark, Finland, France, Germany, the Netherlands and Slovenia where they do not exist or are excluded from the scope of the legislation on payment services, in accordance with the Directive provision.

According to Article 1(1)(e) of the Directive, the European Central Bank (ECB) and national central banks can also provide payment services when they do not act in their capacity as monetary or public authorities. Legislative practices in relation to the central banks of the Member States differ from one Member State to another. The legislation of Bulgaria, Cyprus, Greece, Luxembourg, the Netherlands, Portugal and Romania literally implements the Directive provision. In the other cases, the ECB is not referred to and national central banks are mentioned following various approaches. The Directive sets the capacity of the ECB to provide payment services, which in principle rests with the institution. Reference to the ECB into national legislation is thus not an obligation. Notwithstanding the Member States which literally implement the Directive provision, references to national central banks are either limited to the central bank of the Member State concerned, such as, the Czech Republic, France, Hungary, Portugal, Slovakia, Slovenia and Spain and thus follow a restrictive approach, or the references also include foreign central banks, such as, Austria, Estonia, Germany, Italy, Malta, Sweden and the United Kingdom.

According to Article 1(1)(f) of the Directive, Member States and their regional or local authorities can also provide payment services, when not acting in their capacity as public authorities. Cyprus, Estonia, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Romania and the United Kingdom (Gibraltar) adopt the wording, which is present in the Directive

⁵ The legislation of England, Scotland, Wales and Northern Ireland and that of Gibraltar have been assessed within the ambit of this conformity assessment. Where conclusions differ for each legislation, the differences are highlighted through the use of 'United Kingdom (England, Scotland, Wales and Northern Ireland)' and 'United Kingdom (Gibraltar)'. Alternatively, 'United Kingdom' is referred to in a generic way where there are no differences.

⁶ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance), OJ L 177, 30.6.2006, p. 13. A credit institution within the meaning of Article 4(1)(a) of Directive 2006/48/EC is 'an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account'.

⁷ Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, OJ L 275, 27.10.2000, p. 40. An electronic money institution within the meaning of Article 1(3)(a) of Directive 2000/46/EC is 'an undertaking or any other legal person, other than a credit institution as defined in Article 1, point 1, first subparagraph (a) of Directive 2000/12/EC which issues means of payment in the form of electronic money'. The definition of credit institution referred to in Article 1(1)(a) of Directive 2000/12/EC is also the one referred to above, as laid down in Article 4(1)(a) of Directive 2006/48/EC.

provision. Greece and Italy also follow the Directive's approach while also mentioning the Greek and Italian States. In this regard, other Member States follow a more specific approach and refer to their own national structure, such as, Austria, Belgium, Germany, Portugal, Spain and Sweden. Finland also follows such an approach while also including foreign governments. Other Member States are even more specific and refer to public authorities or bodies (although reference is general), such as, Denmark, Latvia, Slovakia and Slovenia and/or designate the bodies concerned, such as, France, Hungary, Slovakia and Slovenia. However, no such corresponding provision exists in the Bulgarian and Czech legislation.

In connection with the above mentioned national approach for certain providers, namely national central banks and Member States and their regional or local authorities, some national legislation specifies the extent covered by certain categories of payment service providers and the approach varies according to legislative practices. With the exception of the Member States which follow the wording of the Directive provision or the perspective set out therein, national legislation is explicit on the perspective adopted, either national as stated above or beyond. Emphasis is here put on those Member States which also incorporate providers from the EU or from the EEA and those which go beyond and extend to foreign providers in general. Foreign providers are thus explicitly included within the ambit of the provision of payment services in their territory such as in Germany and Greece in relation to credit institutions. The Member States which favour an EU approach are Cyprus, Ireland, Slovakia and Slovenia for credit institutions, Cyprus and Slovenia for electronic money institutions and Italy for national banks. On the other hand, the Member States which favour an EEA approach are, Malta, for credit institutions and electronic money institutions and Austria, Estonia, Germany, Sweden and the United Kingdom for central banks. The Czech Republic and Greece favour a more general approach and foreign credit institutions can provide payment services in their territory. Both Member States and Slovakia include foreign service providers for electronic money institutions and Malta also makes use of this in relation to central banks. All these Member States are more specific on the 'origin' of some providers who can provide payment services in their territory, even though the approach is not uniform and shows a lack of consistence.

Rules

Article 1(2) of the Directive specifies the rules in relation to the provision of payment services as a regular occupation or as a business activity within the scope of this Directive. These rules concern the transparency of conditions and information requirements for payment services and the respective rights and obligations of payment service users and payment service providers respectively and correspond to Titles III and IV of the Directive.

This provision is not transposable in essence and the existence of similar provisions in national legislation rather reveals various legislative practices. Most national legislation contains a similar provision, a more general one or a more detailed one and thus announces the rules underlying their legislation on payment services. On the other hand, other legislation such as that of Belgium, Cyprus, Denmark, Germany, Hungary, Ireland, Luxembourg, the Netherlands and Sweden has no such

similar provision, and direct reference to the rules set out therein can alternatively be made.

2.1.2 Scope (Article 2)

Article 2 of Directive 2007/64/EC defines the scope for the payment services provided in the EU. Titles III and IV apply only where the euro or a currency of another Member State is used. Moreover, Member States may choose to waive the application of specific provisions of the Directive to the institutions referred to in Article 2(3).

Territorial scope

Article 2(1) provides that the Directive is applicable to payment services provided within the EU. However, with the exception of Article 73, Titles III and IV apply only where both the payer's payment service provider and the payee's payment service provider are located in the EU or where the sole payment service provider, in the payment transaction, is located in the EU.

Whereas the first sentence of the Directive provision does not raise any particular issues as to the scope of national legislation on payment services, the second sentence shows various approaches.

The Directive provision lays down the two-leg transaction principle. The Directive is of EEA relevance and also regards EEA Member States. Therefore, some Member States have strictly followed the spirit of the Directive, by referring to the EU – or to the Member States – in their legislation, such as, Bulgaria, Greece, Ireland, Italy, Latvia, Portugal, Romania, Slovenia and Spain. Other Member States have chosen to apply a broader approach, although limited to the territory of the recipients of the Directive as such and refer to the EEA – or their Member States – in their legislation, such as Belgium, France, Hungary, Luxembourg, the Netherlands, Slovakia, Sweden and the United Kingdom. According to this rule, the payment service providers of the payer, and/or of the payee, is/are located within the territory of the Member State concerned and possibly in the territory of an EEA Member State. This rule is however derogated from by the following Member States: Belgium, Cyprus, Finland and Hungary. It can be assumed that they follow a mixed approach, whereby the exceptions to the rules limited to some provisions of their national legislation favour a one-leg transaction approach.

The other Member States have introduced the one-leg transaction principle within their legislation as the principle governing the location of the payment service provider, if not explicitly, then by default. These Member States are Austria, the Czech Republic, Denmark, Estonia, Germany, Lithuania, and Malta.

In this regard, the Austrian and Estonian legislation envisages the scope from their national perspective, as their legislation provides, in a similar manner, that 'the act applies to payment services provided by payment service providers established in [their respective country]'. Therefore, should the principle of reciprocity apply, the rules they set shall apply to payment service providers located outside the EEA. The Cypriot legislation is considered as having a one-leg approach, as it applies to 'non-Member States' in relation to specific provisions. The

German legislation provides that the act may apply, upon decision, to 'foreign companies based in a third country', which implies companies outside the EEA. The Maltese legislation provides also that the act shall apply to payment service providers 'outside the EEA'. In the Lithuanian case, it refers to 'foreign states'.

The Finnish and Hungarian legislation excludes the application of specific provisions for transactions where the payment service providers are located outside the EEA. In this regard, not all national legislation refers to Titles III and IV strictly speaking, or to the exception to Article 73 of the Directive or their equivalent. This lack of reference led to the conclusion of partial conformity in relation to Malta.

Currency

Pursuant to Article 2(2) of the Directive, Titles III and IV shall apply to payment services made in euro or the currency of a Member State outside the euro area. This provision also applies to the currencies of the EEA Member States.

The Member States adopted two different approaches. Some of them have strictly followed the spirit of the Directive provision, by limiting the scope of Titles III and IV only to the currencies within the EU/EEA area. This is the case of Bulgaria, France, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, and the United Kingdom.

Some of these closely follow the wording of the Directive provision, that is, France, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Sweden, and the United Kingdom. In the other Member States, the Directive provision is implemented in a broader manner, that is, in Bulgaria and in Spain national legislation does not directly mention the application to certain currencies; however, the application to the currencies within the EU/EEA can be inferred. On the other hand, in Latvia legislation lists the provisions which apply to payment services provided in an EU currency, which correspond to Titles III and IV of the Directive.

France, the Netherlands, Sweden and the United Kingdom also introduced a direct reference to EEA countries within their legislation.

Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Lithuania and Slovakia, have followed another approach and allow for the application to payment services made in other currencies other than those of the EU/EEA Member States. In this regard Austrian, Belgian, Cypriot, Czech, Danish, Finnish, Hungarian and Slovak legislation limits the scope of application to certain provisions, either by specifying which provisions apply to payment services in the currencies of Member States only, or in the contrary manner. Estonian and Lithuanian legislation does not directly deal with the application of payment services to certain currencies, but this may be inferred from the provision establishing the territorial scope.

The legislation of Austria, Denmark, Finland, Germany, Hungary and Slovakia also contains a direct reference to EEA countries.

Waiver

According to Article 2(3) of the Directive, Member States may waive the application of all or part of the provisions of the Directive to institutions referred to in Article 2 of Directive 2006/48/EC, namely public financial institutions, with the exception of the institutions mentioned in the first two indents of the said provision.

Austria, Finland, France, Germany, Ireland, Italy, the Netherlands and the United Kingdom notified their application of the option. Ireland and the United Kingdom (Gibraltar) partially conform.

The above mentioned Member States have opted to waive the application of the Directive to all or part of the institutions referred to in Article 2 of Directive 2006/48/EC. The Member States which apply the waiver to some of these institutions are Austria⁸, Germany⁹ and the United Kingdom (England, Scotland, Wales and Northern Ireland)¹⁰. The Member States which apply the waiver to all the institutions referred to are Finland¹¹, France¹², Italy¹³ and the Netherlands¹⁴. However, UK (Gibraltar) legislation, which provides for the possible exclusion of the Gibraltar Savings Bank from all or part of the Directive, also provides that the provisions may be waived for post offices. Therefore, partial conformity is observed.

Member States chose to waive the application of the Directive to all or to part of the institutions concerned. Austria, Germany, Italy, the Netherlands and the United Kingdom (England, Scotland, Wales and Northern Ireland) chose to exclude the application of the whole Directive. Finland and France chose to waive part of the Directive and exclude the application of rules to payment institutions.

However, Ireland notified the application of the waiver in relation to credit unions only. Nevertheless, the extent of and legal basis for the waiver is unclear and partial conformity is observed.

2.1.3 Negative scope (Article 3)

Article 3 of Directive 2007/64/EC deals with the negative scope of the application of the Directive and provides a list of transactions to which the Directive does not apply.

From a general overview, the majority of the Member States implemented Article 3 of the Directive in a correct manner, although some cases for partial conformity were identified. In addition, no corresponding provision was located in the French legislation for most of the exclusions.

⁸ The 'Österreichische Kontrollbank AG'.

⁹ The 'Kreditanstalt für Wiederaufbau' (Credit Bank for Reconstruction).

¹⁰ The National Savings Bank, credit unions and municipal banks.

¹¹ The 'Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB' (Finnish Fund for Industrial Cooperation) and the 'Finnvera Oyj/Finnvera Abp'.

¹² The 'Caisse des dépôts et consignations'.

¹³ The 'Cassa depositi e prestiti'.

¹⁴ The 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'NV Noordelijke Ontwikkelingsmaatschappij', the 'NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering' and the 'Overijsselse Ontwikkelingsmaatschappij NV'.

Some of the Member States transposed the Directive provision by means of identical or similar wording, whilst other Member States implemented the Directive provision using a somewhat different wording, or applying more general rules, though still satisfying the requirements of the Directive provision.

Some cases of partial conformity have been identified. Finland has transposed Article 3(a) only partially, as the legislation refers to the payee who is giving cash to the payer as part of the payment operation. However, the Finnish legislation does not apply, if part of the payment is made in cash. Hungary partially conforms with Article 3(b) as the legislation does not exclude the commercial agents working under employment agreements. Germany partially transposed Article 3(f), which only refers to monetary exchange businesses, which are settled in cash. Likewise, Hungary partially conforms due to the absence of reference to the collection, processing and delivery of banknotes and coins under Article 3(c). Denmark and Latvia partially conform with Article 3(j), since the whole content is not transposed. Denmark and Spain partially conform with Article 3(n); the Spanish legislation contains a contradiction while stating that intermediaries can and cannot carry out transactions at the same time. Denmark transposes the first part of Article 3(n) of the Directive only.

In addition, there are some cases where the relevant provision(s) were not located, such as Article 3(d), (f), (l) and (m) in the case of Finland, Article 3(k) in the case of Denmark and Article 3(l) for Sweden. As mentioned above, France did not transpose most of the Directive provision. Alternatively, the correct implementation may be assumed even in the lack of a transposition if the law and practice do not contradict the exclusions laid down in Article 3 of the Directive.

2.1.4 Definitions (Article 4)

Article 4 of the Directive 2007/64/EC sets out thirty definitions, which form the framework for the implementation of the Directive.

Most of the Member States properly transposed the definitions provided for in the Directive provision. The terminology has sometimes been adapted in respect of the various legal traditions. Some also present more details with the view to gaining clarity. Others follow a more concise, and thus streamlined, approach whilst still conforming with the Directive.

Cases raising issues of conformity were also detected. Such cases result from the lack of meeting all the requirements set out in the Directive provision, which may thus have an impact on the correct implementation. Some corresponding provisions were not identified, which led to a conclusion of non-conformity. Nevertheless, even if non-implementation were identified in some cases, arguments as to their use in the implementing legislation, as well as, their use in practice, are both elements in favour of proper implementation.

Cases raising issues of partial conformity are as follows: the Netherlands and the United Kingdom in relation to point (1) on the definition of 'home Member State'; the United Kingdom in relation to point (2) on the definition of 'host Member State'; the Czech legislation in relation to point (3) on the definition of 'payment service'; Latvia in relation to point (4) on the defini-

tion of 'payment institution'; Bulgaria and Hungary in relation to point (5); Hungary and Romania in relation to points (7) and (8) on the definition of 'payer' and 'payee', respectively; the Czech Republic in relation to point (9) on the definition of 'payment service provider'; Romania in relation to point (10) on the definition of 'payment service user'; Germany in relation to point (11) on the definition of 'consumer'; Hungary in relation to point (16) on the definition of 'payment order'; the Czech Republic and Hungary in relation to point (19) on the definition of 'authentication'; the Czech Republic and Hungary in relation to point (22) on the definition of 'agent'; Latvia in relation to point (25) on the definition of 'durable medium'; Latvia and Romania in relation to point (29) on the definition of 'branch'; and the Czech Republic, Hungary and Portugal in relation to point (30) on the definition of 'group'.

Cases raising issues of non-conformity, mainly as a result of lacking definitions in the legislation implementing the Directive, are as follows: Denmark, Hungary, Italy, Latvia and Malta in relation to point (1) on the definition of 'home Member State'; Belgium, Denmark, Estonia, Finland, Hungary, Italy, Latvia, Malta, the Netherlands and Sweden in relation to point (2) on the definition of 'host Member State'; Finland, France and Germany in relation to point (7) on the definition of 'payer'; Finland, France and Germany in relation to point (8) on the definition of 'payee'; Germany in relation to point (9) on the definition of 'payment service provider'; France and Germany in relation to point (10) on the definition of 'payment service user'; France in relation to point (11) on the definition of 'consumer'; France and Germany in relation to point (12) on the definition of 'framework contract'; France in relation to point (13) on the definition of 'money remittance'; Estonia, France and Germany in relation to point (15) on the definition of 'funds'; Denmark and France in relation to points (16), (17) and (18) on the definition of 'payment order', 'value date' and 'reference exchange rate', respectively; Denmark, Finland, France and Sweden in relation to point (19) on the definition of 'authentication'; Denmark and France in relation to point (20) on the definition of 'reference interest rate'; Denmark in relation to point (21) on the definition of 'unique identifier'; Sweden in relation to point (22) on the definition of 'agent'; Denmark, Estonia, France and Sweden in relation to point (24) on the definition of 'means of distance communication'; Germany and Sweden in relation to point (25) on the definition of 'durable medium'; Estonia and Latvia in relation to point (26) on the definition of 'micro-enterprise'; Germany in relation to point (27) on the definition of 'business day'; Estonia, France and Germany in relation to point (28) on the definition of 'direct debit'; and Denmark, Finland and Germany in relation to point (29) on the definition of 'branch'; Denmark, France, Germany and the Netherlands in relation to point (30) on the definition of 'group'.

France did not introduce any definition regarding consumers due to the terminology used in the legislation. Moreover, Member States which chose not to apply the options laid down in Articles 30(2) and 51(3) did not implement point (26). In addition to Estonia and Latvia mentioned above, this is the case for Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Sweden, Slovenia and Spain as well. On the contrary, Greece and Romania introduced a definition.

2.2 Payment service providers

Title II is connected with payment service providers only. It is apportioned between two chapters. Chapter 1 concerns payment institutions and consists of sections which are subsequently outlined. Section 1 concerns the authorisation requirements, initial capital, own funds and withdrawal of authorisation. Section 2 details the other requirements on the use of agents, liability and record keeping. The provisions concerning the national authorities and supervision of such payment institutions fall under Section 3. Section 4 relates to the waiver of certain institutions. Chapter 2 provides information on the common provisions related to payment institutions and all other payment service providers. Articles 5 to 25 are contained in Title II.

2.2.1 Applications for authorisation (Article 5)

Article 5 of Directive 2007/64/EC demonstrates that in order to be authorised as a payment institution, an application must be submitted and approved by the national authority of the home Member State. This application must be accompanied by a series of information, as delineated in points (a) to (l) of the first paragraph. These regard a programme of operation (Article 5(a)); a business plan (Article 5(b)); evidence of initial capital holding (Article 5(c)); a description of the measures taken to safeguard payment service users for payment institutions referred to in Article 9(1) (Article 5(d)); a description of the governance arrangements and internal control mechanisms (Article 5(e)); a description of the internal control mechanisms in relation to money laundering and terrorist financing (Article 5(f)); a description of the structural organisation (Article 5(g)); the identity of persons holding in the applicant, directly or indirectly, qualifying holdings (Article 5(h)); the identity of directors and persons responsible for the management of the payment institution and, where relevant, persons responsible for the management of the payment services activities of the payment institution (Article 5(i)); where applicable, the identity of statutory auditors and audit firms as defined in Directive 2006/43/EC¹⁵ (Article 5(j)); the applicant's legal status and articles of association (Article 5(k)); and the address of the applicant's head office (Article 5(l)).

In addition, for some of the informational requirements, namely Article 5(d), (e) and (g), a description of the audit and organisational arrangement must be included in order to ensure that users' interests are protected and to ensure continuity and reliability in the performance of payment services, as laid down in the second paragraph of Article 5.

Most of the Member States comply with the Directive provision. However, the Czech Republic, Cyprus, Germany, Hungary, Latvia, Portugal and Spain partially conform with some of the points. No provision implementing point (j) was located in Czech and Swedish legislation and all of Article 5 in Finnish legislation.

In general, the Directive provision is transposed in an appropriate manner. In some cases, there are extra provisions and more detail on the form. The requirements for authorisation are set out in codified legislation. However, France opted to describe the requirements as set out in application forms under the legislation, such as a questionnaire imposed upon qualified holders in order to ensure the sound and prudent management of the institution. Bulgaria and Malta also outline more locally defined regulations set out in the internal rules of their relevant authorities. Overall, the end result is the same.

In addition to the programme of operations in Article 5(a), if payment institutions want to provide auxiliary services, then they must also get prior approval. The requirement to demonstrate appropriate and proportionate systems, resources and procedures to operate soundly under Article 5(b), is not expressed and is generally inferred instead from reference to the financial statements (Denmark), the definition provided on the business plan (the Czech Republic) or reference to sound operations (Hungary). However, the Spanish legislation partially conforms in this scenario as the implementing provision is briefer and only mentions the first element of point (b) in relation to the forecast of the first three financial years.

Similarly, 'conditions of proportionality, appropriateness, soundness and adequateness' for the governance arrangements under Article 5(e) may not be explicit, but they are inferred in these cases. Nevertheless, Hungary partially conforms with this provision as information on this criteria lacks the appropriate detail.

For the provisions concerning the proof of having initial capital, the identity of the responsible persons and the legal status, many Member States require actual proof using certified documents, for instance, Bulgaria for Article 5(c) and (k); Spain requires a deposit in the national bank or one of its branches for Article 5(c) and a certification of registration for applicants already registered for Article 5(k); Hungary for Article 5(h); Portugal for Article 5(i) and the identity of directors and persons responsible for the management; Romania requires extra documents such as a certificate from the National Trade Register Office for Article 5(c). Nevertheless, Portugal contains more stringent requirements than those laid down in Article 5(c) on its initial capital and requires proof of the deposit of the amount, thus leading to partial conformity.

The Czech legislation partially conforms with point (g), due to the absence of reference to outsourcing arrangements or to national/international systems.

Moreover, national legislation does not always cross-refer to the Directives 2005/60/EC¹⁶ and 2006/48/EC and EC Regulation No 1781/2006¹⁷ in a similar way to that of the Directive. However, in these cases, corresponding provisions have been found in national legislation. However, Spain fails to apply Article 5(f) to terrorist financing and money laundering, thus leading to partial conformity. The absence of such a reference to the

¹⁵ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance), OJ L 157, 9.6.2006, p. 87–107.

¹⁶ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance), OJ L 309, 25.11.2005, p. 15–36.

¹⁷ OJ L 345, 8.12.2006, p. 1–9.

meaning of 'qualifying holding' under Article 4(11) of Directive 2006/48/EC such as that laid down in Article 5(h) is also regarded as a case for partial conformity in the Latvian legislation.

The identity of auditors is required to be submitted if applicable in accordance with Article 5(j). Cyprus and Germany partially conform. Whereas the Cypriot legislation is too concise, the German legislation does not mention audit firms and thus appears to be restrictive in relation to the practice of audits in the Member State. Moreover, a corresponding provision is not located in Czech and Swedish legislation.

In national legislation, informational requirements in Article 5(k) and (l) on the legal status and address may require more detail. However, the Latvian provision partially conforms with Article 5(k) on an institution's legal status, as it does not apply any cross-reference as the Directive provision does.

2.2.2 Initial capital (Article 6)

Article 6 of Directive 2007/64/EC provides that payment institutions shall hold a certain amount of initial capital at the time of authorisation, comprised of the items defined in Article 57(a) and (b) of Directive 2006/48/EC¹⁸.

A payment institution which provides the payment service listed in point 6 of the Annex to the Directive, shall hold EUR 20 000 in initial capital, according to Article 6(a) of the Directive; where it provides a payment service defined in point 7 of the said Annex, the initial capital shall amount to EUR 50 000 according to Article 6(b) of the Directive and where it provides the payment services listed in points 1 to 5 of the mentioned Annex, EUR 125 000 according to Article 6(c) of the Directive.

All Member States have correctly implemented the Directive provision as well as all amounts underlying Article 6 of the Directive according to the categories of payment services provided. Nevertheless, Belgian legislation also refers to both points 6 and 7 of the Annex to the Directive in relation to Article 6(b) of the Directive, which makes the scope of legislation broader. The reference amount is the one defined for services under point 6 of the Annex in relation to these services. Moreover, three non-euro area Member States refer to their own currencies in their legislation, namely Bulgaria, Hungary and Lithuania. Lithuania actually refers to both the national currency and the euro, whereby the euro is the reference currency. In both Bulgaria and Hungary, the referred amounts are however subject to currency fluctuations.

The implementation of Article 6 of the Directive also follows different approaches. Some Member States do not include a reference to the authorisation and the initial capital components, as laid down in Article 57(a) and (b) of Directive 2006/48/EC, which is referred to in the introductory wording of the Directive provision and/or to the permanent nature of the

amount of the initial capital, referred to in points (a), (b) and (c) of the Directive provision ('at no time'). In this regard, Article 6 of the Directive is also to be regarded in the light of Article 5(c) of the Directive, regarding information underlying an application for authorisation and Articles 7 and 8 regarding own funds.

2.2.3 Own funds (Article 7)

Article 7 of Directive 2007/64/EC provides rules on own funds, their amount, preventive measures to protect them and possible derogations.

Amount

Article 7(1) requires the payment institutions' own funds not to fall below the amount required under Articles 6 or 8, whichever is the higher. Own funds are those within the meaning of Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC.

All Member States have correctly implemented the Directive provision, mostly using a close wording to that of the Directive provision.

As for the amount, the Luxembourg legislation provides that if the amount of own funds fall below the required amount, the authority can, when the circumstances so justify, allow the payment institutions a limited amount of time to rectify the situation or to cease to engage in business. The Maltese authority may also allow such a situation. The Cypriot legislation refers to the obligation of the payment institutions to maintain own funds, at all times, in accordance with the authority's regulations. Similarly, the German legislation requires payment institutions to fulfil their obligations in the interest of adequate capital.

As for the definition of own funds, legislation on payment services either contains the provisions laid down in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC or refers to other legislation, mainly that implementing Directive 2006/48/EC. The Italian legislation mentions the characteristics of the own funds (called surveillance capital) and the method of calculating them.

Prevention of multiple use

In terms of Article 7(2) of the Directive, the prevention of the multiple use of elements eligible for own funds is required where payment institutions belong to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking. It is also required where a payment institution has a hybrid character and carries out activities other than payment services listed in the Annex. In such cases, Member States are required to take the necessary measures.

The majority of the Member States comply with the Directive provision, with the exception of Denmark, Finland and France.

Some of the Member States specify the way to prevent the multiple use of elements eligible for own funds, which can take the form of a deduction (Austria, Cyprus and Sweden). Slovakia requires that financial sources from payment service users and financial service users shall not be merged. In Malta, the national authority sets, on a case-by-case basis, a level of initial capital to be commensurate with the level of risk per-

¹⁸ Capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares as well as reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss.

taining to the number and type of activities as laid out in the business plan.

The Belgian legislation also stipulates details, with regard to the case where a payment institution carries out activities other than the provision of payment services.

On the other hand, Denmark and Finland partially conform. The Danish legislation does not contain provisions which explicitly correspond to Article 7(2) of the Directive. The Finnish legislation is regarded as restrictive, while referring only to the case where the payment institution carries out other activities. The relevant provision could be located in the French legislation.

Option

Article 7(3) of the Directive sets out an option whereby Member States or their national authorities may choose not to apply Article 8 to payment institutions which are included in the consolidated supervision of the parent credit institution pursuant to Directive 2006/48/EC, provided the conditions laid down in Article 69 of Directive 2006/48/EC are met.

Cyprus, Estonia, Germany, Greece, Finland, France, Ireland, Latvia, Luxembourg, the Netherlands, Spain and the United Kingdom, chose to apply the option set out in Article 7(3) by means of specific national provisions. On the other hand, although Italy notified the application of the option, the relevant provision could not be located in the legislation.

For Estonia, Finland, France, the Netherlands and the United Kingdom, the rule is set in the legislation to exclude certain types of institutions. In Finland, prior consent of the authority is nevertheless required. In all other Member States, the national authorities are entitled to decide, on a case-by-case basis, such as specified in Irish legislation. National legislation also specifies the conditions under which an institution may be granted an exemption, such as, in Latvia and Luxembourg. Cyprus sets clear categories of institutions and undertakings entitled to such a waiver and subjects each of them to specific conditions.

2.2.4 Own funds calculation (Article 8)

Article 8 of Directive 2007/64/EC provides that payment institutions hold, at all times, own funds calculated in accordance with one of three methods laid down in the Directive provision. National authorities determine the calculation method. The Directive provision also sets out optional limits for the amount of own funds.

Methods

Article 8(1) of the Directive provides that payment institutions shall hold, at all times, own funds and defines the three calculation methods of own funds based upon fixed overheads, payment volume and income indicator. These are three alternative methods and national authorities determine the method which is to be used.

According to Method A, own funds are calculated based on a 10 % ratio against fixed overheads of the preceding year, or of the fixed overheads projected in a business plan if payment institutions did not complete a full business year at the date of the calculation. The ratio can be adjusted in case of material

change by national authorities. According to Method B, own funds are calculated based on payment volume (PV), where they represent one twelfth of the total amount of payment transactions executed in the preceding year and thus equal to the sum of the ratios of PV slices³⁹ multiplied by a scaling factor²⁰. Finally, according to Method C, own funds are required to be at least equal to the indicator²¹, calculated over the previous financial year on the basis of the twelve-monthly observation at the end of that year, multiplied by the multiplication factor²² and by the scaling factor k. Own funds calculated according to Method C are required not to fall below 80 % of the average of the previous three financial years for the relevant indicator, as provided for in the Directive provision.

Most Member States comply with the Directive provision. However, Denmark, Finland, Portugal, Romania, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland) partially conform with the Directive provision.

Generally, most national legislation lists the three methods set out in Article 8(1) of the Directive. Nevertheless, a few Member States chose the relevant method(s) in their implementing legislation. Bulgaria thus opted for Method B, Latvia and Slovakia for Method A and Italy for Methods A and B.

Most national legislation closely follows the wording of the Directive provision. However, some legislation is less or more detailed. The meaning of overheads referred to in Method A, is specified in the Belgian, Czech, French, German and Swedish legislation. Examples underlying a material change under Method A are provided within the Lithuanian legislation. The term 'material change' is referred to as a 'significant change' in the Estonian and Latvian legislation, as a 'substantial change' in Spanish legislation and as a 'specific reason' in Finnish legislation, which may have an impact on the scope of the option. In relation to Method B, Lithuania specifies the meaning of payment volume, whilst Estonia specifies the meaning of third party. In relation to Method C, Hungary specifies the link between the various elements of the indicator.

Additional elements and requirements are also introduced in the methods, such as hybrid institutions in Belgian and Czech legislation, so as to reflect their peculiarity whilst applying the calculation method. However, whilst Belgian legislation refers

³⁹ The Directive sets out five ratios of PV slices, which read as follows: 4,0 % of the PV slice up to EUR 5 million, 2,5 % of the PV slice above EUR 5 million up to EUR 10 million, 1 % of the PV slice above EUR 10 million up to EUR 100 million, 0,5 % of the PV slice above EUR 100 million up to EUR 250 million and 0,25 % of the PV slice above EUR 250 million.

²⁰ The scaling factor k is provided for in Article 8(2) of the Directive.

²¹ The indicator provided for in Article 8(1) of the Directive, point (a) of Method C, is the sum of the interest income, the interest expenses, commissions and fees received, as well as other operating income, whether positive or negative.

In this regard, the indicator calculation may not include income from extraordinary or irregular items. Moreover, where undertakings are subject to supervision under the Directive, the indicator calculation may be reduced as a result of expenditures on outsourcing. Business estimates may be used if audited figures are not available.

²² The calculation of the multiplication factor is based upon ratios of the indicator slices, which amount to 10 % of the indicator slice up to EUR 2,5 million, 8 % from EUR 2,5 million up to EUR 5 million, 6 % from EUR 5 million up to EUR 25 million, 3 % from EUR 25 million up to 50 million and 1,5 % above EUR 50 million.

to hybrid institutions in Method A, the Czech legislation refers to these institutions for both Methods A and B. Adjustments may be required for those payment institutions which did not complete a full business year in addition to an adjustment plan (Portugal for Methods A and B) or in case of deviation from the projected or previous overheads (Slovenia for Method A). The term for those payment institutions that did not complete a full business year may be specified such as the six month period in Estonian legislation. Any changes shall be communicated to the national authority in Slovenia.

Other national legislation is not as precise. In Hungary, the positive and negative signs of the indicator are not present, although they can be inferred. Nevertheless, owing to requirements which are not addressed in the national legislation, partial conformity was concluded regarding Denmark (Method C), Romania (Method A), Portugal, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland) (Method C). In addition, Finnish legislation is incomplete in relation to Article 8(1) and a few elements only relating to Methods B and C are laid down. No national provision could be located within the Maltese legislation in relation to Article 8 in its entirety.

Portugal partially conforms for not addressing all aspects regarding the indicator under Method C. In addition, Methods A and C also contain optional requirements. As above mentioned material change, may lead national authorities to adapt the fixed overhead requirement. It is not mentioned in Danish, Hungarian and Slovak legislation. Method C contains two options regarding the possible exclusion of income from extraordinary or irregular items from the indicator and the possible reduction of the indicator as a result of expenditures on outsourcing where undertakings are subject to supervision under the Directive. Danish, Finnish and Swedish legislation do not refer to any of them, while Romania and Slovenia explicitly exclude the first one.

Following the Directive provision, national authorities are responsible for determining the calculation method. However, national legislation shows various approaches as to the responsibility for choosing the calculation methods when all three methods are transposed. Belgium, Cyprus, Greece, Lithuania, Portugal and the United Kingdom are unequivocal on their national authorities' responsibility in this regard. In France, the Netherlands, Slovenia and Sweden, payment institutions are required to choose the method which is to be applied. The Dutch legislation also states that this choice is agreed by the national authority. National authorities may however also intervene if the method chosen is inappropriate, such as in Romania and Slovenia.

Scaling factor k

The 'scaling factor k', which is addressed in Article 8(2) of the Directive, is required to be used in Methods B and C. The coefficient used is determined according to which payment services listed in the Annex to the Directive are provided: 0,5 where only the payment services listed in point 6 of the Annex are provided (Article 8(2)(a)), 0,8 where the payment services listed in point 7 of the Annex are provided (Article 8(2)(b)) and 1 where any of the payment services listed in points 1 to 5 are provided (Article 8(2)(c)).

The majority of the Member States comply with the requirements. Latvia and Slovakia did not transpose the Directive provision, since they chose to apply Method A. A corresponding transposing provision was not identified in the Finnish and Maltese legislation.

The implementation is close to the Directive in most legislation and only a few Member States follow a different approach, which has no impact whatsoever upon the substance of the Directive provision. Romania and the United Kingdom (England, Scotland, Wales and Northern Ireland) integrate the scaling factor in each provision laying down Methods B and C. Hungary sets coefficient 1 as the rule and the two other scaling factors are exceptions to the rule.

Optional limits to hold own funds

Article 8(3) of the Directive sets out an option, according to which, the amount of own funds may be up to 20 % higher or lower than the amount resulting from the calculation method used. National authorities are responsible for requiring payment institutions to hold own funds of up to 20 % higher or permit them to hold own funds up to 20 % lower than the calculated amount (the reference amount). This decision is based on criteria.

All Member States chose to apply the option provided for in Article 8(3) of the Directive, with the exception of Slovakia and Malta.

All Member States concerned apply the two possibilities provided for in the Directive provision of own funds up to 20 % higher or 20 % lower, with the exception of Bulgaria and Hungary, which only apply the first possibility. Most national legislation closely follows the wording of the Directive provision for national authorities may require or permit payment institutions to hold own funds up to 20 % higher or lower than the reference amount. Other national legislation follows a general approach and the 20 % limit is set in general in German and Hungarian legislation.

Additional elements or requirements are also laid down. In the Czech Republic the national authority may require that the amount is maintained to the permissible limits on a continuous basis. Slovenia also requires that the 20 % threshold of own funds, lower than the reference amount, may be decided under the condition that it does not have an impact on the sound and prudent conduct of payment institutions. Finland also subjects the possibility to go beyond or below the reference amount for an up to three year period.

Moreover, criteria on the basis of which the decision is taken are the evaluation of the risk-management processes, risk loss database and internal control mechanisms of payment institutions, according to the Directive provision. All Member States set out the three criteria. In some Member States, the criteria are broadly worded, such as in the German, Finnish, Slovenian, Spanish and Swedish legislation. On the other hand, in the Czech Republic and Hungary, the three criteria are among the criteria set out within the framework of the evaluation or review procedure.

2.2.5 Safeguarding requirements (Article 9)

Article 9 of Directive 2007/64/EC lays down safeguarding requirements for funds of payment institutions that provide payment services. With a view to protecting payment service users, these rules apply to hybrid institutions and may be extended to non-hybrid institutions.

Main rule

Article 9(1) of the Directive lays down the main rule on the safeguarding of funds in the case of the execution of payment transactions where the funds are received from payment service users or through a payment service provider. The requirements apply to hybrid institutions that also engage in other business activities other than the provision of payment services such as referred to in Article 16(1)(c) of the Directive. Article 9(1) sets out two alternative conditions, specifically, the segregation and insulation of funds (Article 9(1)(a) and (b)) or fund insurance (Article 9(1)(c)).

All Member States implement Article 9(1) as a whole, with the exception of Bulgaria and Italy regarding Article 9(1)(c). A few issues regarding conformity have also been detected such as those mentioned below. Most national legislation lays down a general rule on safeguarding requirements for funds related to payment services with reference to Article 9(3) as well and therefore does not duplicate reference to Article 16(1)(c) or its equivalent. However, Belgium and Latvia go further and cover all or more of the activities listed in Article 16(1). Nevertheless, Latvia partially conforms due to the generality of the implementing provision. Moreover, the decision to apply one or the other safeguarding requirements, which rests with Member States or national authorities under the Directive, is clearly decided by the authorities in Cyprus and Greece and can also be decided by payment institutions in Spain. In Luxembourg, payment institutions can change the safeguarding method upon an agreement with the national authority.

According to Article 9(1)(a) and (b), funds are kept separate at all times from any other funds held by any natural or legal persons who are not the payment service users or providers. In addition, at the end of the business day following the day of receipt of the funds, these, if still held by payment institutions, are deposited in a separate account in a credit institution or invested in secure, liquid and low-risk assets (Article 9(1)(a)). The funds are also insulated against claims of other creditors of the payment institutions, such as in the case of insolvency (Article 9(1)(b)). National legislation is in general close to the Directive provision, although the Danish legislation is brief on the principle of separate funds. The Belgian, Bulgarian and Cypriot legislation does not cover the investment possibility. No provision was located in the Finnish legislation in relation to Article 9(1)(b). In addition, some aspects of Article 9(1)(a) and (b) of the Directive are more elaborate in national legislation. In Belgium, funds are held in a separate common or individual account. Credit institutions where funds can be deposited are listed (Belgium, Sweden). In France, the investment possibility is more detailed. Secure, liquid and low-risk assets are defined in the primary or secondary national legislation of some Member States, such as in Austria, Romania and Spain. Alternatively, the implementation of Article 9(1)(b) by Sweden derives from the implementation of Article 9(1)(a) and specific legislation on accountancy funds.

In the case of the insulation of claims of payment institutions' creditors, most Member States closely follow the Directive provision. The interests of the payment service users, laid down in the Directive provision, is emphasised in some national legislation. In Austria, users are entitled to the right of separation of funds in order to be protected, whereas users are given precedence to claim in Ireland, Romania and Slovenia. Some Member States do not necessarily refer to claims in general as the Directive provision does and rather focus on the event of insolvency. In this regard, bankruptcy leading to insolvency is sometimes referred to as the sole event wherein such claims may take place, such as, in Bulgaria and the Czech Republic. As a consequence, owing to the restrictive approach of the German legislation, partial conformity is observed. In a similar manner, Cyprus refers to winding up and dissolution.

Alternatively, the funds may be safeguarded by an insurance policy or other comparable guarantees, to cover an amount equivalent to that which would have been segregated otherwise according to Article 9(1)(c). In this second safeguarding possibility, an insurance company or a credit institution is responsible for the insurance or guarantee, provided it does not belong to the same group as payment institutions. The amount is payable in the event that payment institutions do not meet their obligations. Most Member States comply with the Directive requirements, with the exception of Bulgaria and Italy, which did not implement that alternative. The Czech Republic partially conforms for not mentioning the requirement related to the exclusion from the payment institution's group. On the other hand, the meaning or conditions underlying guarantees are specified in Danish and Spanish legislation.

Future payment transactions

Article 9(2) of the Directive provides that the portion of funds which is to be used for future payment transactions is also subject to the safeguarding requirements under Article 9(1) of the Directive. The majority of Member States properly implement this obligation under the first sentence of the Directive provision. However, the Slovak legislation is formulated in a general manner and does not explicitly provide for funds concerning future payment transactions. No similar provision could be located in the Danish and Hungarian legislation.

The second sentence of Article 9(2) of the Directive further lays down an option, according to which Member States may allow that this requirement is applied to a representative portion assumed to be used for payment services, where the portion of the funds is variable or unknown in advance. In this case, the portion has to be reasonably estimated on the basis of historical data and subject to the satisfaction of national authorities. All Member States, excluding Austria, Bulgaria, Denmark, Hungary and Slovakia, implement this option. Bulgaria and Hungary notified the use of the option, although no corresponding provision could be located. On the other hand, Greece reserves the right to use the option as a result of the transposition of the wording of the Directive provision.

The Czech, Dutch and German legislation is labelled in more general terms, whilst still conforming. However, even though the Finnish legislation partially conforms; it is not specific enough on the historical data. Other legislation is more detailed, such as in France, in relation to the reference ratios in case that a payment institution did not complete a full year.

Lithuanian legislation is more detailed with respect to the documents, which are required to be transmitted to the national authority and Slovenian legislation in relation to the procedure.

Possible extension to non-hybrid institutions

Article 9(3) provides for an option, according to which any payment service providers, regardless of their activities, may be required to safeguard their funds. Most Member States introduced the option through a general provision encompassing all payment service providers, regardless of their activities. On the other hand, many Member States introduced the option through a specific provision, which is similar to the Directive provision, such as Greece and Malta. Nevertheless, the application of the option in Estonia, Ireland and Malta is required by their national authorities.

The Czech Republic, Denmark, Finland, Latvia and Luxembourg did not choose to apply the option.

Optional limits

Article 9(4) of the Directive provides for an option to limit the application of safeguarding requirements to payment service users, whose individual funds exceed the threshold of EUR 600. Denmark, Estonia, Finland, Ireland, Luxembourg, Romania, Sweden and the United Kingdom implemented the option. Denmark, Italy, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland) directly introduced the option in the form of an obligation in their legislation, which rests with payment institutions. In the other Member States, the application of the option is up to the decision of the Minister (United Kingdom (Gibraltar)), to the national authorities (Estonia, Ireland and Luxembourg), or to the payment institutions themselves (Finland and Romania). Cyprus reserves the right to use the option.

The maximum threshold referred to in the Directive provision, has been adapted in some cases, specifically in Italy and Romania, where the threshold is set at EUR 100. Sweden set the threshold at EUR 300, whilst the United Kingdom (England, Scotland, Wales and Northern Ireland) set the threshold at GBP 50. In Finland, EUR 150 is the rule whilst EUR 600 can be agreed upon.

2.2.6 Granting of authorisation (Article 10)

Article 10 of Directive 2007/64/EC lays down rules and conditions which need to be satisfied prior to the granting of an authorisation as payment institutions.

Applying payment institutions

Article 10(1) of Directive 2007/64/EC establishes that payment institutions shall be granted authorisation to provide payment services. The Directive provision, under Chapter 1 on payment institutions, specifies that this requirement applies to those payment institutions and excludes all other payment service providers according to Article 4(9) of the Directive, those listed in Article 1(1)(a) to (c), (e) and (f) as well as those legal or natural persons benefiting from the waiver under Article 26. Authorisation is required for commencing the provision of payment services. In addition to this, the Directive provision re-

quires that an authorisation shall only be granted to a legal person established in a Member State.

The majority of the Member States comply with the Directive provision, with the exception of Malta, which partially conforms. National legislation is close to the Directive provision, whereby the legal significance of the authorisation is the ability to provide payment services on the territory of the Member States where payment institutions are established. However, reference to the payment service providers excluded from the scope of Article 10(1) of the Directive, is not systematically duplicated as a result of the structure of national legislation and specific provisions dealing with payment institutions. Some Member States have also gathered similar requirements for different institutions. In this regard, the Maltese legislation partially conforms as far as there is no distinction between any of the payment service providers.

Aspects relating to the legal form of those payment institutions are also to be referred to in Article 4(4) of the Directive on the definition of 'payment institution', where they are not provided in the implementing provisions of Article 10(1) as such. This is the case for Bulgaria, Denmark, Estonia, Latvia, Lithuania, Luxembourg and Sweden. Article 10(1), read together with Article 4(4), upholds conformity in this regard. The form of payment institution is also specified, such as in Austria, Belgium, Estonia, Finland, Latvia, Malta, Sweden and the United Kingdom. Belgium excludes certain forms. Estonia provides for a specific form, which is required for any payment services, with the exception of money remittance. Moreover, conditions for foreign payment institutions to provide payment services are also laid down, such as, in the Czech Republic and Luxembourg. Luxembourg thus subjects foreign payment institutions to a similar authorisation procedure as the Luxembourg institutions.

Granting of authorisation

An authorisation, according to Article 10(2) of the Directive, is granted provided the information and evidence accompanying the application complies with Article 5 of the Directive and the national authorities' overall assessment, following scrutiny of the application, is favourable. The Directive provision also sets, as an option, the consultation of central banks or any other relevant public authorities with national authorities before granting authorisation.

Most of the Member States comply with the requirements of the Directive provision, with the exception of Latvia. Legal practices vary, according to which, some Member States are close to the Directive provision, such as, Belgium, Bulgaria, Cyprus, Greece, Ireland, Luxembourg and the United Kingdom (Gibraltar). However, reference to the overall assessment and scrutiny is not explicit in some legislation. In this regard, the implementation of both Article 10(2) and Article 5 of the Directive is to be linked where Member States are brief on the conditions underlying the granting of authorisation. Implementation is also to be linked to Article 11 of the Directive, on the communication of the decision whereby reasons for refusing authorisation granting should be stated. All these elements, where properly implemented, provide a body of evidence in favour of the proper implementation of Article 10(2). This is the case for Estonia, France, Malta, the Netherlands, Portugal and the United Kingdom (England, Scotland, Wales

and Northern Ireland). Other Member States lay down provisions regarding the reasons for satisfying and/or not satisfying an application, such as Austria, the Czech Republic, Denmark, Germany, Slovenia, Spain and Sweden. From such provisions, the assessment and scrutiny of national authorities is also inferred. However, partial conformity is observed for Germany on this ground and the extent to which Latvia conforms is subject to scrutiny.

Bulgaria, Cyprus, Estonia, France, Hungary, Ireland, Lithuania, Luxembourg, Romania, Spain and the United Kingdom (Gibraltar) chose to apply the possibility for their national authorities to hold consultations before granting authorisation, as laid down in the second sentence of Article 10(2). Luxembourg and the United Kingdom (Gibraltar) follow the two alternatives of consulting central banks and relevant public authorities. In other Member States, the central banks, such as in France and Hungary, or public authorities such as in Ireland and Romania, are consulted. In Lithuania, information may be supplied to authorities, rather than making use of consultation. In Belgium, after authorisation is granted, information is disclosed to the central bank.

Registered office

Article 10(3) of the Directive requires payment institutions to have their registered office and their head office in the same Member State, that is, in the home Member State.

All the Member States comply with the Directive provision, with the exception of Germany and Latvia, for which no similar provision was located notwithstanding reference to the provision implementing Article 5(l) on the address of the applicant's head office in the case of Latvia. Since Chapter 1 regulates payment institutions established in the territory of the home Member State, compliance is thus inferred. Sweden differentiates between registered natural and legal persons and requires a legal person to have its headquarters in Sweden and a natural person to be resident in Sweden. The Slovenian legislation also provides a definition of head office which is considered the place of the registered office, or in the case of no registered office, the place where its management operates.

Sound and prudent management

According to Article 10(4) of the Directive, national authorities grant authorisation ensuring that payment institutions have sound and prudent management. This is characterised by two aspects: payment institutions shall firstly have robust governance arrangements for their payment services business. They include a clear organisational structure, well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which they are or might be exposed. They shall secondly have adequate internal control mechanisms, which include sound administrative and accounting procedures. These are arrangements, procedures and mechanisms pursuant to the Directive provision, which shall be comprehensive, as well as, proportionate to the nature, scale and complexity of the payment services provided.

All the Member States comply with the Directive provision. Most of the Member States follow the wording of the Directive provision. Lithuania and Spain link the obligation to reasons for refusing the granting of an authorisation.

Other Member States provide for more detailed legislation on the meaning of the various aspects underlying the requirements set forth in the Directive, such as Belgium and the Czech Republic. Both Member States provide for the requirements regarding arrangements, procedures and mechanisms related to the organisational structure, internal control mechanisms and risk management. Their legislation aims to be comprehensive, whilst being proportionate to the specificity of the payment services provided and risks they are or might be exposed to. Belgian legislation, for instance, provides for procedures to identify, measure, manage, pursue and report on important risks, or security measures for electronic information. In addition, the Czech legislation also requires continuous and periodic checks to ensure the adequacy and effectiveness of management and control systems. A few Member States, which follow the wording of the Directive provision, also add additional elements, such as, mechanisms for the computer systems of the payment institutions (Luxembourg) or proceedings for the verification of compliance with regard to prevention of money laundering and terrorist financing (Slovenia). This latter element highlights the interrelation between Articles 5 and 10 of the Directive.

In this regard, a third category of Member States adopt a streamlined approach, whereby all requirements are summed up, whilst still covered and inferred, such as, Denmark, Estonia, Finland, Germany, Italy, Latvia, the Netherlands, Slovakia and Sweden. Most of their legislation refers to adequacy in respect of structure, control and risks. Some is nevertheless more generally worded than other, such as, Dutch, Italian and Latvian legislation. Their provisions implementing Article 10(4) of the Directive, have, in particular, to be regarded in the light of Article 5(e) of the Directive.

A separate entity for hybrid institutions

Article 10(5) sets out an option, according to which, national authorities may require payment institutions that carry out payment services, as well as other business activities, to establish a separate entity for the payment services business. Such a separate entity is established when the other activities impair or are likely to impair the financial soundness of payment institutions, or the monitoring ability of national authorities to ensure payment institutions comply with all obligations provided for in the Directive.

The Directive provision has been implemented by most of the Member States. Denmark and Estonia follow a brief approach, according to which the reasons of financial soundness and supervision of compliance with payment services related rules are not provided for. On the contrary, Spain also provides for the procedure to follow in such an event and Cyprus subjects the possibility to require the establishment of a separate entity when payment institutions already provide payment services and engage in other business activities. However, the possibility of establishing a separate entity in Slovenia appears to be the exception, where the rule is the refusal of granting authorisation.

In this regard, the Czech Republic, Finland, Germany, Hungary and Sweden follow a different approach, to which Slovenia could also be associated. None of the five Member States above mentioned provide for the possibility of the establishment of a separate entity when payment institutions carry out

payment services as well as other business activities. In the case where the financial soundness is impaired or likely to be, or supervision is affected or likely to be, they are more stringent than the Directive and the prohibition of concurrently carrying out payment services and other business activities is provided for in the Czech Republic, Finland, Hungary and Sweden. The Czech Republic nevertheless subjects such concurrent activities to authorisation, provided they do not affect the financial soundness and supervision. Activities can also be limited in Finland and Germany. Such provisions are prudent with regard to the interests of payment service users and providers. They are also restrictive for payment institutions that intend to diversify their activities. In this regard, such a prohibition is considered too restrictive in the case of Sweden, which partially conforms.

Suitability of shareholders and members

The lack of suitability of the shareholders or members that have qualifying holdings may be a ground for refusing the granting of an authorisation. National authorities may decide so according to Article 10(6) of the Directive, in relation to the need to ensure the sound and prudent management of payment institutions.

All the Member States conform with Article 10(6) of the Directive, with the exception of Austria. Generally, the wording of national legislation is similar to that of the Directive provision. Not all the Member States state that if such requirement is not met, authorisation shall be refused, such as Denmark and Sweden. However, the corresponding provisions in these Member States are included in those provisions dealing with information and evidence, that form the basis for the assessment of the application for the granting of an authorisation, and hence failure to meet such requirements leads to a refusal. In this regard, the extent to which Austrian legislation properly addresses the Directive requirement is unclear and subject to clarifications.

Diverging practices are observed regarding the way 'suitability' and 'qualifying holdings' are referred to, without hampering conformity. 'Suitability' takes the form of 'credibility' and 'competence' in the Czech Republic, 'trustfulness' in Finland, or 'appropriateness' in Slovenia. Moreover, the conditions underlying suitability is also provided for in Estonia and Spain for instance. In Germany, suitability is one of the reasons for which the granting of an authorisation may be refused.

'Qualifying holdings' may take the form of 'a significant interest' in Germany, or 'significant holdings' in Latvia, which is to be related to the meaning of 'qualifying holdings' under Article 4(11) of Directive 2006/48/EC, as referred to in Article 5(h) of the Directive. These Member States thus integrate, in their legislation, some variables underlying the assessment on qualifying holdings. In a similar vein, the Finnish legislation also integrates the 10% threshold regarding capital, shares and voting rights.

The Dutch, Hungarian and Italian legislation also uses different wording. In terms of the French legislation, the national authority 'also checks' the suitability of the shareholders or members that have qualifying holdings, as opposed to the wording used in the Directive provision, that is, that 'the national authorities shall refuse to grant an authorisation'.

The Spanish legislation develops further upon the requirements set out in the Directive provision, in relation to the suitability of the shareholders or members that have qualifying holdings.

Close links

Article 10(7) of the Directive provides that where close links exist between payment institutions and other natural or legal persons, authorisation is granted only if those links do not prevent the effective exercise of the supervisory functions of the national authorities. In this regard, Article 10(7) refers to the definition of 'close links' as defined in Article 4(46) of Directive 2006/48/EC.

All the Member States conform with Article 10(7), with the exception of Latvia.

Portugal follows another perspective and provides that a case for refusal of an authorisation shall be applicable, if the appropriate supervision of the institution to be established is affected by close links between the institution and other persons.

The Irish, Portuguese, Spanish and United Kingdom implementing legislation, specifically reproduces the content which is present in Article 4(46) of Directive 2006/48/EC. Other Member States simply refer to close links or to the provision transposing Article 4(46) of Directive 2006/48/EC. In the case of Finland, the implementing legislation refers to 'significant links'. Nevertheless, Latvian legislation is considered incomplete in this respect and thus partially conforms.

Laws, regulations or administrative provisions of a third country

According to Article 10(8) of the Directive, authorisation is granted only if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institutions have close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of their supervisory functions.

All the Member States conform with Article 10(8). The Danish legislation is however not too explicit, even though compliance is inferred.

In the case of Belgium, France and Spain, the respective implementing provisions are formulated in a different manner. For example, the Spanish implementing provisions are detailed and lengthy and deal with a number of conditions which need to be satisfied by branches and agents that wish to establish themselves in Spain.

Freedom of establishment and freedom to provide services

Article 10(9) of the Directive deals with the validity of an authorisation, which concerns all Member States, and is required to allow payment institutions to provide payment services throughout the EU, either under the freedom to provide services or under the right of establishment, provided that such services are covered by the authorisation.

All the Member States conform with Article 10(9), except for Germany, Latvia and the Netherlands, for which the relevant provisions could not be retrieved.

Belgium, Cyprus, Denmark, Estonia, Portugal, Romania, Slovakia, Spain and Sweden, refer to the prior notification as referred to in Article 25 of the Directive, concerning the freedom to provide services and the right of establishment.

2.2.7 Communication of the decision (Article 11)

Article 11 of the Directive requires that national authorities communicate their decision within three months following receipt of an application, which period starts to run after all elements for the application were provided in case of an incomplete application. Any refusal entails the communication of the reasons for such a decision.

The majority of the Member States properly implement the Directive provision, with the exception of Denmark, Estonia, Hungary, Italy, Luxembourg, Malta, Portugal, Spain and the United Kingdom (England, Scotland, Wales and Northern Ireland).

Further requirements are provided in national legislation, such as, the advice on possibilities to appeal the decision in the Slovak legislation. In addition, the Belgian legislation specifies the way to communicate the decision, from which the reasons are implied, as they are not explicitly stated. Romanian legislation also specifies a term for informing the applicant as to whether the application is complete.

However, in this regard, issues of partial conformity were detected. The Luxembourg and Spanish legislation provides for tacit refusal if no decision is given within three months and thus partially conforms, as they exclude the communication of the reasons. Luxembourg, Portuguese and UK (England, Scotland, Wales and Northern Ireland) legislation provide for a special delay of twelve months to take such a decision. There is however an issue regarding the renewal of the three month term. Estonia, Hungary, Malta and Slovenia foresee the possibility to extend this term up to six months. Such an extension does not seem unreasonable, contrary to Luxembourg and Spain, and is common practice, but is not foreseen in the Directive provision. Nevertheless, partial conformity is concluded for Estonia, Hungary and Malta, whilst conformity has been observed for Slovenia. The Maltese legislation is not clear as to the communication of the reasons for refusal either.

The Danish and Italian legislation, does not mention that reasons for refusal shall be provided. They nevertheless partially conform although they may be inferred from the main provision laying down the communication of the decision. The same goes for Sweden, where reasons following refusal can be inferred from a more detailed provision in addition to being a general principle of law.

2.2.8 Withdrawal of authorisation (Article 12)

Article 12 of Directive 2007/64/EC provides for cases where an authorisation may be withdrawn together with the underlying conditions.

Grounds for withdrawal

Article 12(1) of the Directive determines the grounds for withdrawing an authorisation. These may result from the non-use

of the authorisation within twelve months, the express renunciation of the authorisation, or the cessation of business for more than six months, unless authorisation lapses if so provided (Article 12(1)(a)). Withdrawal may also result if the authorisation was granted through false statements or any other irregular means (Article 12(1)(b)); the non-fulfilment of the conditions for the granting of an authorisation (Article 12(1)(c)); the threat to the stability of the payment system if payment services business continue (Article 12(1)(d)); or for any other cases provided for by national law (Article 12(1)(e)).

All the Member States properly implement the Directive provision.

There are however differences as to the terminology used, such as the German legislation that uses more general wording to cover renunciation and cessation in relation to Article 12(1)(a). The Czech, Estonian, Finnish, Slovak and Slovenian legislation does not foresee the case of authorisation, which is implied. On the other hand, authorisation may also be withdrawn in cases of partial use of the authorisation in the Cypriot legislation, which may lead to uncertainty as to the extent of the meaning of 'partial use'.

As to the length of the six month period related to cessation, it can be waived in Malta. In addition, national legislation such as the Swedish legislation specifies the scale of the measures which the national authority may take, from a warning to a withdrawal. This is also so in the case of the Belgian legislation, which also foresees periods for remedies beforehand.

In relation to Article 12(1)(d), the Austrian, Estonian and Hungarian legislation also refers to the consequences of the stability of the payment system, such as, the inability to perform their obligations or the significant impact on the interests of its clients. On the other hand, the French legislation is more streamlined and refers in general to the violation of any rule which implementation is supervised by the authority.

In relation to Article 12(1)(e) concerning cases for withdrawal other than those set out in the Directive provision, the Member States provide, in their legislation, for different grounds, such as, bankruptcy or liquidation proceedings (Austria, Latvia, Lithuania, Malta and Sweden), the incapacity to satisfy the claims of the payment institutions' creditors (Bulgaria, Hungary, Ireland, Lithuania and Luxembourg), non-compliance with the acts governing payment institutions (Bulgaria, Cyprus, the Czech Republic, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Romania, Slovakia and the United Kingdom), the inability to protect the interests of the clients and/or consumers (Lithuania, Portugal and the United Kingdom) or a merger or transfer of all activities (Malta and Sweden).

Reasons

Article 12(2) provides for the reasons for a withdrawal and their communication.

Most of the Member States comply with the Directive provision. Bulgaria partially complies due to the absence of reference to the persons who are required to be informed, whereas it correctly implements aspects related to the reasons. The United Kingdom (England, Scotland, Wales and Northern Ireland) also partially conforms due to the absence of reference to the reasons. On the contrary, the Danish and Swedish legis-

lation does not contain any such provision, which is rather implied through the general principle of law (Sweden) and upheld with the possibility to appeal the authority's decisions (Denmark). In this regard, the Slovak legislation specifically provides that the decision shall contain advice on appeals.

Other legislation also brings more detail as to the informational procedure. Belgian legislation also specifies the way of transmitting information (registered mail or mail with acknowledgement), while the Lithuanian legislation sets a time limit within which the notification of the decision should take place (five calendar days). The Portuguese legislation also requires information to the Commission and the national authorities in case of cross-border activities.

Publicity

Article 12(3) provides that the withdrawal of an authorisation shall be made public.

All the Member States comply with the Directive provision, with the exception of Italy. The Bulgarian, Cypriot and Spanish legislation only provides that the information shall be published, whilst other Member States also bring elements regarding the way to make information public, such as, through the website of the national authority in Austria, Belgium, Estonia, Hungary, Latvia, Lithuania, Slovakia and Slovenia, or in the official journal such as Germany, Romania and the United Kingdom. Romania further adds that the publication shall be done in two newspapers, while Slovakia also refers to the journal of the national authority. In Finland, publication is done in the register. Estonia further requires that the information shall take place no later than the next business day following the decision. No specific provision could be located in the Swedish legislation. However, in the case of Sweden, this is observed as normal practice for authorities.

On the other hand, Italian legislation does not mention publicity; the decision is communicated to the parties and thus does not conform for being restrictive.

2.2.9 Registration (Article 13)

Article 13 of the Directive requires that all payment institutions, regardless of their nature, are registered in their home Member State, as well as laying down the underlying requirements.

Register

The home Member States shall establish a public register of the authorised payment institutions, the legal and natural persons benefiting from the waiver under Article 26, their agents and branches, as well as of the institutions referred to in Article 2(3). Most of the Member States follow a streamlined approach and do not mention the institutions referred to in Article 2(3) of the Directive. Similarly, the Italian and Romanian legislation does not expressly mention the persons benefiting from a waiver. Comparatively, the Belgian, Bulgarian, Cypriot, Hungarian, and Lithuanian legislation generally refers to those authorised or licensed payment institutions. The Estonian and Portuguese legislation adopts a similar approach, while the Estonian legislation lists all specific undertakings, which shall be listed in the register. The Spanish legislation provides for two registers.

Characteristics

According to the second paragraph of Article 13, the register shall identify the payment services provided by the payment institutions or the natural or legal persons benefiting from a waiver according to their authorisation and registration, respectively. In addition, both authorised payment institutions and natural and legal persons are listed separately. Moreover, this register shall be publicly available, accessible online, and updated on a regular basis.

All the Member States properly implement the Directive provision. However, the extent to which Latvia conforms is unclear.

For those which chose to apply Article 26, the separation between authorised payment institutions and natural and legal persons is not clearly stated, even though compliance has been presumed, such as for Belgium, Estonia, Finland, Sweden and the United Kingdom. Practical evidence indeed shows compliance that the Swedish authority, for instance, keeps a separate list on its website. In the same vein, the Estonian authority publishes such a list of payment services.

Concerning the register, regular updates are also presumed in the Danish, Dutch, Estonian and Hungarian legislation.

2.2.10 Maintenance of authorisation (Article 14)

Article 14 of the Directive provides that any change affecting the accuracy of the information and evidence provided in the payment institutions' application for authorisation (in accordance with Article 5 of the Directive), shall be communicated without undue delay to their national authority.

All the Member States comply with the Directive provision, with the exception of Luxembourg.

Amongst other additional specifications, the Danish legislation also provides that, where applicable, any foreseeable, relevant changes shall be provided in advance. On the contrary, the Latvian legislation relates such notification to intended significant changes.

The Portuguese legislation also lists some changes concerned by the notification in relation to Article 5 and also foresees the possibility of notification on any other changes. In this regard, the Luxembourg legislation, which also lists the changes, is nevertheless considered partially conform, as to the unclear extent of whether all changes are covered.

The Austrian, Irish, Latvian and Slovakian legislation, amongst others, also specifies the form of the notification, that is, in written form.

Regarding the moment of the communication, Maltese legislation requires it to be immediate. The French, Estonian, Italian, Latvian and Romanian legislation, does not expressly mention the required time-period within which the notification is to take place, whilst still complying. The Hungarian legislation specifically provides that the notification shall take place within two business days. Comparatively, the Lithuanian legislation provides that the notification shall be immediate but however no later than fifteen days following the change.

2.2.11 Accounting and statutory audit (Article 15)

Article 15 of Directive 2007/64/EC provides for the accounting and audit rules that payment institutions shall fulfil.

International accounting standards

According to Article 15(1) of the Directive, payment institutions shall apply, *mutatis mutandis*, accounting rules laid down in Directive 78/660/EEC²³ and, where applicable, Directives 83/349/EEC²⁴ and 86/635/EEC²⁵ and Regulation (EC) 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

Most of the Member States comply with the Directive provision, while such a provision could not be located in German and Maltese legislation.

Latvia partially conforms. Concerning Latvia, there is no mention of the applicability, *mutatis mutandis*, of the provisions of the Directives referred to in Article 15(1) of the Directive.

Auditors

According to Article 15(2) of the Directive, annual accounts and consolidated accounts of payment institutions are audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC, unless exempted under Directive 78/660/EEC and, where applicable, Directives 83/349/EEC and 86/635/EEC.

The majority of the Member States are in line with the Directive provision, with the exception of Spain. In the case of Finland, the legislation on payment services does not contain any specific provisions relating to the payment institutions' accounting obligations, which are then referred to as those under the Accounting Act.

However, Spain partially conforms since the Spanish law states that the audit must be performed in accordance with the First Additional Disposition of Law 19/1988, which has not been amended by Law 12/2010, transposing Directive 2006/43/EC.

Hybrid institutions

According to Article 15(3), for supervisory purposes, payment institutions provide separate accounting information for payment services listed in the Annex and activities referred to in Article 16(1), which is subject to an auditor's report. That report is prepared, where applicable, by the statutory auditors or an audit firm.

All the Member States comply with the Directive provision, save Finland on the grounds mentioned above, for which no provision was located.

Disclosure of information by auditors

According to Article 15(4) of the Directive, the obligations established in Article 53 of Directive 2006/48/EC shall apply, *mutatis mutandis*, to the statutory auditors or audit firms of payment institutions in respect of payment services activities.

All the Member States comply with the Directive provision, with the exception of Finland, on the grounds mentioned above, according to which no provision was located.

Partial conformity is observed for Latvia and Malta, due to the unclear implementation of the Directive provision for Article 53 of Directive 2006/48/EC.

2.2.12 Activities (Article 16)

In addition to the activities of payment services, listed in the Annex to the Directive, payment institutions may engage in other activities, as laid down in Article 16 of Directive 2007/64/EC, which provides for a list of such activities. The Directive provision also provides for the requirements related to the carrying out of those activities.

Possible activities

Article 16(1) of the Directive provides for the activities, other than the provision of payment services, that payment institutions are entitled to engage in. These activities consist of the provision of operational and closely related ancillary activities, which include the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data (Article 16(1)(a)). They can also engage in the operation of payment systems, without prejudice to Article 28 (Article 16(1)(b)), as well as, any business activities other than the provision of payment services, in accordance with EU and national law (Article 16(1)(c)).

The majority of the Member States comply with the Directive provision, using close wording.

However, France did not transpose Article 16(1)(b). In France, the operation of payment systems is a free activity. In the Netherlands, no provision corresponding to Article 16(1)(b) could be located.

Payment accounts

According to Article 16(2) of the Directive, payment institutions may hold only payment accounts used exclusively for payment transactions, when they are engaged in the provision of one or more of the payment services listed in the Annex. The funds received from payment service users shall not constitute a deposit, repayable funds within the meaning of Article 5 of Directive 2006/48/EC, or electronic money within the meaning of Article 1(3) of Directive 2000/46/EC.

All the Member States properly implement the Directive provision, with the exception of the Czech Republic and Latvia. No such provision could be located in the Hungarian legislation.

The Czech Republic partially conforms with the extent that, payment accounts which are required to be held exclusively for

²³ Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11–31.

²⁴ Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1–17.

²⁵ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, OJ L 372, 31.12.1986, p. 1–17.

payment transactions, are not addressed in an explicit manner. In the case of Latvia, the implementing provision is concise and does not ensure a proper implementation within the meaning of the Directive.

Granting of credit

According to Article 16(3) of the Directive, payment institutions may grant credit in relation to payment services listed in the Annex under points 4, 5 and 7, only if they meet certain conditions. These conditions are the following: the credit is ancillary and granted exclusively in connection with the execution of a payment transaction (Article 16(3)(a)); the credit is repaid within a short period of no more than twelve months after their execution, notwithstanding national rules on providing credit by credit cards (Article 16(3)(b)); such credit is not granted from the funds received or held for the purpose of executing a payment transaction (Article 16(3)(c)); and payment institutions' own funds are, at all times and to the satisfaction of the national authorities, appropriate in view of the overall amount of credit granted (Article 16(3)(d)).

All the Member States properly implement the Directive provision, with the exception of the Czech Republic and Denmark.

The Czech Republic partially conforms, since the above mentioned conditions are introduced as alternative conditions rather than cumulative ones. Nevertheless, no provision corresponding to Article 16(3)(c) and (d) could be located, as is the case of Denmark in relation to Article 16(3)(c).

Deposits and repayable funds

Article 16(4) of the Directive lays down a prohibition, according to which, payment institutions must not conduct the business of taking deposits or other repayable funds, within the meaning of Article 5 of Directive 2006/48/EC.

All the Member States properly implement the Directive provision.

Consumer credit legislation

According to Article 16(5) and Articles 30(3) and 51(4) of the Directive²⁶, the legislation on payment services shall not prevent the application of legislation on the conditions for granting consumer credits, especially Directive 87/102/EEC²⁷ as well as any other EU and national legislation. This concerns the conditions not harmonised in the Directive as far as they comply with EU legislation.

Most of the Member States implement the Directive provisions and introduce one or several provisions corresponding to the Directive ones within their implementing legislation. However, such provisions were not located in Bulgarian, Danish, Dutch, Estonian, Finnish, German, Italian, Latvian and Swedish legislation. This does not nonetheless impede the application of rules in other relevant legislation such as provided for in the

Directive, in the absence of any provision that would prevent it.

2.2.13 Use of agents, branches or entities to which activities are outsourced (Article 17)

Article 17 of Directive 2007/64/EC provides for the requirements where payment institutions intend to use agents, branches, as well as, outsource activities to entities.

Information on the agent

Article 17(1) of the Directive sets out the information that payment institutions shall communicate to the national authorities of the home Member States when they intend to use an agent. The information concerns the name and address of the agent (Article 17(1)(a)); a description of the internal control mechanisms in order to comply with Directive 2005/60/EC (Article 17(1)(b)); as well as, the identity of the directors and persons responsible for the management of the agent, including evidence that these are fit and proper persons (Article 17(1)(c)).

All the Member States comply with the Directive provision, with the exception of Bulgaria, Latvia and the United Kingdom (England, Scotland, Wales and Northern Ireland).

Some of the Member States also add further requirements, such as the communication of the agents' identity numbers (Finland, Latvia and Lithuania), or the suitability of the directors and persons responsible for the management of the agent, such as their qualifications and competences (France and Hungary). The Czech Republic requires them to be trustworthy, competent and have sufficient experience.

Generally, national legislation goes further regarding the procedure of communicating the information, which is set at five business days in Hungary and at least thirty days before the agent commences its activity in Ireland.

However, the Bulgarian legislation partially conforms, due to unclear or lacking requirements, in relation to Article 17(1)(b) and the Latvian legislation due to the legal uncertainty due to the absence of a cross-reference to the anti-money laundering legislation. In this vein, the United Kingdom (England, Scotland, Wales and Northern Ireland) does not conform for the legislation is not as strict as the Directive on this matter.

Registration of the agent

Following the notification on information regarding agents, national authorities may list them in the register provided for under Article 13.

All the Member States comply with the Directive provision.

Verification of the provided information

However, according to Article 17(3), national authorities may take further action to verify information in the case of incorrectness, before listing the agents in the register.

Most of the Member States comply with the Directive provision. However, no such provision could be located in the Cypriot and Latvian legislation. Unless implied, since information

²⁶ Conclusions on the implementation of Articles 16(5), 30(3) and 51(4) are presented together under this Section.

²⁷ Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, OJ L 42, 12.2.1987, p. 48–53.

is deemed complete, general rules may apply instead, such as the conclusion in the case of the Czech Republic.

As to the procedure, the Hungarian legislation requires agents to make a statement with full probative force.

Refusal of registration

As laid down in Article 17(4), national authorities can refuse the agents' registration, where information is not to the satisfaction of the national authorities.

Apart from Sweden, for which no provision could be located, and Latvia, which does not conform due to an over restrictive provision, all the other Member States comply with the Directive provision. Such a requirement may however be implied.

Information obligation of the national authority of the host Member State

Article 17(5) of the Directive also subjects registration to the information of the national authority of the host Member State by that of the home Member State, to take their opinion where payment institutions wish to provide payment services in that Member State through an agent, pursuant to the procedures set out in Article 25.

All the Member States properly implement the Directive provision. However, in the Dutch, Finnish and Hungarian legislation, the opinion of the national authorities of the host Member State is not referred to. However, by way of inference in relation to Article 17(6), the requirement is addressed.

Refusal or withdrawal of registration

According to Article 17(6), if the national authority of the host Member State has reasonable grounds to suspect, in relation to the use of agents or branches, existing or attempted money laundering and terrorist financing or an increased risk of money laundering or terrorist financing is taking place, it shall inform the national authority of the home Member State which may either refuse the registration or, where applicable, withdraw the registration of the agent or branch.

The legislation of most of the Member States, *inter alia*, Bulgaria, Denmark and Spain, is more concise and does not refer to any attempt or risk in relation to money laundering and terrorist financing. In turn, the Danish legislation further provides that the payment institution may no longer use the said agent for the provision of payment services. The Finnish legislation also implicitly assures that the national authority will inform the national authority of the host Member State of any issue pertaining to money laundering or terrorist financing. Regarding the possibility for the national authority of the Member State to refuse or to withdraw authorisation, the Irish legislation does not expressly mention withdrawal.

The Hungarian and Spanish legislation also takes the position as host Member States and thus provides for information to the national authority of the home Member State.

Outsourcing of operational functions

Article 17(7) of the Directive provides that, where the payment institutions intend to outsource a material function, its national authority shall be informed accordingly. Outsourcing of important operational functions may neither materially impair

the quality of their internal control mechanisms, nor national authorities' ability to monitor compliance with their obligations (Article 17(7), first subparagraph).

The Directive provision also provides a definition of operational function, as well as, the conditions which shall be complied with when outsourcing a material function. The operational function is regarded in the light of a defect or failure in its performance that would materially impair the continuing compliance of payment institutions' requirements of their authorisation under Title II, or their obligations under the Directive, their financial performance, or the soundness or the continuity of their payment services (Article 17(7), second subparagraph). Payment institutions shall comply with certain requirements when outsourcing important operational functions, according to which, the outsourcing does not lead to delegation by senior management of its responsibility (Article 17(7), third subparagraph, point (a)); it does not alter the relationship and obligations towards their payment service users (Article 17(7), third subparagraph, point (b)); and it does not undermine the conditions underlying authorisation (Article 17(7), third subparagraph, points (c) and (d)).

The majority of the Member States comply with the Directive provision. However, many follow a streamlined and more concise approach. The Bulgarian legislation does not expressly provide for compliance with the requirements of authorisation and the Estonian, German and Slovenian legislation impair on national authority's ability to monitor compliance. The Irish legislation does not expressly mention the quality of the internal control of the payment institutions and the national authority's ability to monitor the compliance with obligations. Comparatively, the Danish legislation refers to the 'requirements of its authorisation'. The Czech and German legislation seems to implicitly comply with points (b), (c) and (d), where they provide, similarly, in a general manner, that the payment institution shall comply with all the obligations that apply to it.

On the other hand, the Austrian, Finnish and Slovak legislation requires a written contract and the elements it shall contain. The Hungarian, Irish and Spanish legislation further provides for information concerning the outsourcing of at least one month in advance. The Hungarian and Irish legislation provides an identical deadline.

However, the Finnish legislation does not contain provisions, which would correspond to the points laid down in the third subparagraph. The Finnish legislation does not explicitly cover any points. Similarly, the Swedish legislation presents a similar situation and does not explicitly implement any points. However, the implementing provision is observed to be conform. It is broadly worded and hence covers such requirements. No provision could be located in the Danish and Italian legislation corresponding to point (d) either. In fact, points (c) and (d) may be streamlined under a single provision.

Information

Article 17(8) of the Directive requires payment institutions to ensure that agents or branches acting on their behalf inform the payment service users accordingly.

Most of the Member States properly implement the Directive provision. Austria, the Czech Republic and Germany partially

conform. However, no such similar provision was located in Estonian, Latvian and Maltese legislation.

Whereas the Directive provision provides for a direct informational obligation upon the agent or branch, the Austrian legislation follows a more indirect informational obligation through the register and thus partially conforms. The Czech legislation does not address the informational duty. The Belgian, Danish, German and Spanish legislation refers only to agents. On this ground, partial conformity is observed in relation to Germany.

On the other hand, the Spanish legislation further provides that contracts include such information.

2.2.14 Liability (Article 18)

Article 18 of Directive 2007/64/EC provides that, where payment institutions rely on third parties for the performance of operational functions, they take reasonable steps to ensure that the requirements of the Directive are complied with. This does not however preclude payment institutions from their liability.

Operational functions outsourcing

According to Article 18(1) of the Directive, payment institutions take reasonable steps to ensure that the requirements of the Directive are complied with while outsourcing their operational functions.

Generally, all Member States conform with the Directive provision. Yet, Latvia sets the requirement in a negative form, whereby the contract immediately terminates in case of determined irregularities while third parties perform operational functions.

The implementation of the Directive provision also varies amongst the Member States. In this regard, the Czech Republic, Finland, Germany, Hungary, Latvia and Slovenia lay down a broad rule on the activity of outsourcing of operational functions. Compliance with the Directive requirements is thus inferred. This is also the case for Estonia and Italy. On the contrary, both Member States set a general rule which does not directly refer to outsourcing. Moreover, Sweden has not enacted any specific provision in relation to an existing generally recognised principle of law.

Some Member States have also introduced additional elements and requirements, such as supervision in Austria. The Belgian, Cypriot, French, Portuguese and Spanish legislation also sets out the steps that payment institutions should take and how they should act when they outsource operational functions. Finland and Germany also emphasise formal aspects of the outsourcing relationship which is based on a contract or an agreement.

The acts of employees, agents, branches or entities

According to Article 18(2) of the Directive, payment institutions remain liable for the acts of their employees, agents, branches or any other entities to which they outsource their activities.

Most of the Member States comply with the Directive provision. Sweden did not transpose Article 18(2) on the basis of the above mentioned generally recognised principle of law.

Moreover, unless the transposition is close to the Directive provision, such as in Austria, Bulgaria, Greece, Ireland, Luxembourg, Malta, Romania and the United Kingdom (Gibraltar), some national legislation does not specify the acts of employees, agents, branches or entities. Latvia, Lithuania and Slovenia are close to Article 18(2), while stating that the receipt of outsourcing services shall not relieve payment institutions from their liability or obligations in general. Alternatively, Cyprus lists situations which entail payment institutions' liability.

Belgium, Denmark, France, Lithuania, the Netherlands, Portugal, Slovakia, Spain and the United Kingdom (England, Scotland, Wales and Northern Ireland) follow different wording through eventually several provisions, whilst still complying with the Directive provision. In other Member States, namely the Czech Republic, Estonia, Finland, Hungary and Italy, general provisions on liability do not specifically refer to the requirements underlying Article 18(2), although they can be inferred from these provisions.

2.2.15 Record-keeping (Article 19)

Article 19 of Directive 2007/64/EC provides that the payment institutions are required to keep all appropriate records for at least five years. These records are those relevant for the purpose of Title II of the Directive on payment service providers. These requirements are set without prejudice to any EU or national legislation in general and to Directive 2005/60/EC.

All Member States properly implement Article 19; some of them follow the Directive and others are more specific.

Reference to the appropriate records is either provided by way of a reference similar to that provided for in the Directive provision, such as, in Austria, Germany, Ireland, Latvia, Sweden and the United Kingdom, or is more explicit and concerns all documents relating to payment institutions, such as, in Bulgaria and Denmark. This legislation has thus a broader scope than other legislation. In this regard, Finland covers the documents relating to the authorisation and information and Slovenia to the conditions for the granting of an authorisation and maintaining such an authorisation. The Belgian and Dutch legislation refers to the documents of the transactions conducted.

Concerning the retention period, some Member States provide for the term of at least five years. This period is either specified in the implementing legislation or is to be referred to in other legal texts, such as in Luxembourg. Exceptions to the period are also provided for and apply if the law so provides (Estonia and Slovenia) or if national authorities so provide (Estonia). In this vein, stricter periods are also laid down according to the nature of the documents: eight to ten years in Hungary and ten years in France for accounting documents. The time when the retention period starts running may also be specified, such as, from the termination of contracts, relationship and status, amongst others (Slovakia and Slovenia) or from the termination of the operation (Romania).

Reference to Directive 2005/60/EC and other legislation is not systematic in most national legislation, whilst still complying.

Additional requirements may regard the obligation of record-keeping by the legal successor of the payment service providers, such as specifically laid down in Czech legislation.

2.2.16 Designation of competent authorities (Article 20)

Article 20 of Directive 2007/64/EC lays down rules on the designation of the national authorities by Member States with the view to authorising and supervising payment institutions.

The national authorities

According to Article 20(1) of the Directive, Member States shall designate national authorities responsible for the authorisation and prudential supervision of payment institutions.

The national authorities may be either public authorities or bodies recognised by national legislation or public authorities that are expressly empowered for that purpose by national legislation, including national central banks as provided for in the first subparagraph of Article 20(1). In this regard, a national authority entitled for the supervision is established in all Member States. In addition, Denmark, Finland, Germany, Hungary, Luxembourg, Malta, the Netherlands, Spain and Sweden also involve other authorities for matters covered by the legislation. In Luxembourg and Spain for instance, the national authority is entrusted with supervisory powers, whilst the responsible Minister is entrusted with specific functions in relation to the authorisation. Other authorities, such as the competition authority and the central bank, where they are not the national authorities may also be involved, such as in Luxembourg.

With reference to the Directive provision, central Banks are designated as the national authority in Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Ireland, Italy, Lithuania, the Netherlands, Portugal, Romania, Slovenia, Slovakia and Spain. In the remaining Member States, the national authorities are public or administrative bodies. The Commission has been accordingly informed on the designation of these authorities, as required under the third subparagraph of Article 20(1).

The second subparagraph of Article 20(1) also requires national authorities to be independent from economic bodies and to avoid conflicts of interest. National legislation implementing the Directive provision does not explicitly mention these requirements, with the exception of Belgian, Czech, Lithuanian and Swedish legislation that refers to both. Bulgarian legislation only refers to conflicts of interest, whilst the French legislation refers to independence. Compliance is however implied, especially with reference to authorities' statutes. In addition, national legislation also complies with the prohibition for payment institutions, credit institutions, electronic money institutions and post office giro institutions, to be designated as national authorities.

Necessary powers

To be able to conduct their authorisation and supervision, national authorities shall be entrusted with the necessary powers pursuant to Article 20(2) of the Directive.

In general, national legislation has no such provision similar to that of the Directive. Powers are to be referred to in the acts founding the said authorities, in addition to the rules implementing Article 21 of the Directive. Therefore, only examples or references to the above mentioned acts are provided in relation to payment services.

Cooperation

Where there is more than one authority to deal with matters falling under Title I of the Directive, Article 20(3) of the Directive requires close cooperation between those authorities, including those authorities that are not responsible for the supervision of credit institutions.

With reference to Denmark, Finland, Germany, Hungary, Luxembourg, Malta, the Netherlands, Spain and Sweden which involve more than one authority, cooperation is thus of particular relevance for these Member States. All Member States concerned comply with the Directive provision.

Home Member State authority

Article 20(4) of the Directive provides that the tasks of the national authorities are their responsibility as authorities of the home Member State.

Most Member States do not contain a similar provision corresponding to the Directive one. A few Member States such as Greece and Luxembourg enacted such provisions. Otherwise, national legislation designates the competent authorities. Their primary responsibility unquestionably falls within the ambit of national legislation and their capacity as authorities of the home Member State in relation to payment institutions established or operating in their territory. Slovenian legislation also provides the national authority with competence in other Member States or third countries.

Scope of the supervision

National authorities supervise the provision of payment services as well as the activities under Article 16(1)(a) of the Directive. As laid down in Article 20(5) of the Directive, national authorities are not implicitly required to supervise other business activities of payment institutions with reference to Article 20(1) of the Directive.

Belgium, Greece, Ireland, Lithuania, Luxembourg and Romania adopted a similar provision to that of the Directive requirement. On the other hand, the Dutch, German and Swedish legislation has no such similar provision for instance. Otherwise, the responsibility of the national authorities falls within the ambit of national legislation on payment services which implementation they supervise. In this regard, Sweden did not consider necessary to adopt such a provision. This does not however preclude responsibilities of national authorities from other activities falling within the ambit of other legislation. In this regard, the Maltese legislation is unclear.

2.2.17 Supervision (Article 21)

Article 21 of Directive 2007/64/EC sets out the main functions of national authorities to exercise their supervision and to check compliance with Title II of the Directive.

Controls

Article 21(1) of Directive 2007/64/EC requires that the national authorities' controls for checking continued compliance with Title II of the Directive are proportionate, adequate and responsive to the risks to which payment institutions are exposed (Article 21(1), first subparagraph). To the end of their control, national authorities are entitled to require payment

institutions to provide any information needed to monitor compliance, to carry out on-site inspections at payment institutions, their agents or branches as well as at entities to which activities are outsourced (Article 21(1), second subparagraph, points (a) and (b)). They are also entitled to issue recommendations, guidelines as well as binding administrative provisions (Article 21(1), second subparagraph, point (c)). They can also suspend or withdraw an authorisation, in accordance with Article 12 (Article 21(1), second subparagraph, point (d)).

All the Member States adopted provisions for their national authorities on related duties. The majority comply with the Directive provision, with the exception of Ireland, Latvia, the Netherlands, Portugal and the United Kingdom (England, Scotland, Wales and Northern Ireland).

In relation to the first subparagraph of Article 21(1), where authorities' control shall be proportionate, adequate and responsive to the risks, some national legislation addresses such requirements in another way relating them to necessity (Hungary) or reasonableness (the Netherlands). On the other hand, such requirements are not present in the French and German legislation on payment services and relate to general duties to which their authorities are entitled. However, the lack of preciseness led to conclude partial conformity for Portugal. In addition, partial conformity was also concluded, for Ireland, as there is a risk that the payment institutions covered by an authorisation do not fall under the supervisory powers of the national authority. In the United Kingdom (England, Scotland, Wales and Northern Ireland), the authority is not referred to as the authority entitled with such duties. In addition, no corresponding provision was located in the case of Denmark, France and Germany although this is presumed, as in the assessments for France and Germany.

Some legislation provides for additional details regarding the way to conduct duties referred to in the Directive provision. For instance, the Spanish legislation specifies the required documents.

This also concerns national practices when dealing with on-site inspections, such as those laid down in point (b) of the second subparagraph of Article 21(1), whereas some contains more detailed procedures. On the contrary, the Austrian legislation is vague on on-site inspections, even though covered by the possibility to take all measures necessary.

Ireland, Latvia and the Netherlands partially conform. Whilst Irish legislation goes beyond the Directive provision, the Latvian legislation does not cover agents and branches and the Dutch legislation does not explicitly cover on-site inspections.

In relation to point (c) of the second subparagraph of Article 21(1), much legislation, such as, that of Austria, Cyprus, France, Italy, Latvia, Portugal, Slovakia, Slovenia, and Sweden, specifies the purpose and context under which national authorities may issue binding or unbinding provisions. Concerning Denmark, it can be inferred from the wording of its provision that the national authority is entitled to issue guidelines and formats. As for Germany, notwithstanding that no provision was referred to, the national authority is empowered to issue recommendations, guidelines and binding administrative provisions.

However, the United Kingdom (England, Scotland, Wales and Northern Ireland) partially conforms for the lack of such a national provision corresponding to point (c).

In relation to point (d) of the second subparagraph of Article 21(1), if all Member States refer to the withdrawal of authorisation, not all refer to the suspension of authorisation, such as Denmark, Estonia, Hungary, Ireland, Italy, Latvia, Lithuania and Slovenia, which is implied. In this regard, suspension is a preliminary step to withdrawal, where relevant, and both the Cypriot and French authorities may suspend the authorisation in whole or in part.

Penalties

On the basis of Article 21(2) of the Directive, without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, national authorities may adopt or impose penalties or measures to end breaches or their causes against payment institutions or against those who effectively control their business.

All the Member States comply with the Directive provision.

While some Member States stick to the Directive provision, others provide for sanctions and penalties to be applied in relation to the nature of breaches.

Financial soundness

Article 21(3) of the Directive provides that, notwithstanding the requirements of Article 6 concerning initial capital requirements, own funds requirements in terms of Article 7(1) and (2), and the requirements relating to the calculation of own funds in terms of Article 8, national authorities shall be entitled to take steps pursuant to Article 21(1), to ensure sufficient capital for payment services. This especially concerns the situation where the non-payment service activities of the payment institutions impair or are likely to impair the financial soundness of the payment institution.

Belgium, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, Portugal and Spain transposed Article 21(3) in a way similar to the Directive. Austria, Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, the Netherlands and Sweden lay down a more general provision. On the other hand, Bulgaria, Italy, Romania, Slovakia and Slovenia, provide for more detailed provisions, including the possible measures. Concerning Finland, measures are laid down in legislation other than in that on payment services.

However, Latvia and the United Kingdom (England, Scotland, Wales and Northern Ireland) partially conform. Whereas the first one does not cover the case where the non-payment activities of an institution may impair the financial soundness of the payment institution, the second one does not cover the requirements of the Directive provision.

2.2.18 Professional secrecy (Article 22)

Professional secrecy laid down in Article 22 of Directive 2007/64/EC applies to national authorities. It concerns persons, as well as activities, more specifically in relation to the exchange of information.

Persons

Article 22(1) of the Directive requires that professional secrecy is respected by persons working or having worked for the national authorities, as well as experts acting on their behalf. Such an obligation is without prejudice to cases covered by criminal law.

All Member States properly implement the Directive provision.

Most Member States have laid down provisions of a broad scope, stating that the employees of national authorities and experts to which tasks are outsourced are bound by professional secrecy. On the other hand, other Member States provide for more detailed provisions on the various aspects underlying professional secrecy and refer to the persons concerned, the acts and activities concerned, juridical consequences and/or the recipients of reporting, such as, Austria, Belgium, Ireland, Latvia, Spain and United Kingdom. Alternatively, legal acts laying down such requirements are referred to, such as in Denmark.

Exchange of information

Article 22(2) of the Directive provides that during the exchange of information, professional secrecy shall be strictly applied to ensure the protection of individual and business rights.

Article 22(2) of the Directive is transposed in all Member States.

Most Member States refer to the respect of professional secrecy in case of cooperation, eventually through broad provision(s). The implementation of Article 22(2) is interrelated to Article 22(3) for those Member States which chose to apply the option. Apart from requiring stricter professional secrecy in the case of the exchange of information which regards the persons, authorities and other third parties concerned, the exchange of information also implies cooperation.

On the other hand, the Maltese legislation on professional secrecy requirements of authorities and their staff applies with the view to implementing Article 22(2). Exchange of information is not explicitly stated and is inferred from these rules instead.

Optional requirements

While applying Article 22 of the Directive, Member States may choose to apply, *mutatis mutandis*, Articles 44 to 52 of Directive 2006/48/EC.

Most Member States implement the option set out in Article 22(3), with the exception of Denmark, Finland, Germany, Hungary, Slovakia and the United Kingdom (England, Scotland, Wales and Northern Ireland). In some Member States, such as the Czech Republic, Greece, Lithuania and Portugal, the Directive provision is implemented by way of a reference to other legal acts, which incorporate the provisions of Directive

2006/48/EC. On the other hand, in other Member States, there is no such provision similar to that of the Directive and one has to refer to the relevant legislation. A few Member States, such as Luxembourg, inserted provisions relating to Directive 2006/48/EC in their legislation on payment services.

Although the United Kingdom notified the application of the option, the relevant provision has only been found in relation to Gibraltar.

2.2.19 Right to apply to the courts (Article 23)

Article 23 of Directive 2007/64/EC introduces the right to apply to courts to challenge the national authorities' decisions, including where an authority fails to act.

Since the right to challenge decisions of national authorities, referred to in Article 23(1) of the Directive, before the courts is part of the general principle of law inscribed in constitutions, as well as legislation regulating public authorities, or any other act concerning the authorities as such, reference to this right is not systematically integrated in the implementing legislation on payment services. Only Bulgaria, Denmark, Finland, Lithuania, Latvia, Malta, Romania, Slovenia and Slovakia refer to this right in their implementing legislation. However, Sweden partially complies with the Directive provision as a result of the exclusion of some categories of decisions from this right.

The same can be concluded on the failure to act of the national authorities, referred to in Article 23(2) of the Directive, which is either specifically mentioned in legislation or is inferred from those provisions which implement Article 23(1) of the Directive, wherein omissions are the counterpart of acts. No such provision could be located in Slovenian legislation. Similarly, the Danish, Greek, French, Latvian and Swedish legislation does not include such a provision. The Danish and Swedish provisions implementing Article 23(1) cover the whole Directive provision, although not explicitly Article 23(2). As observed in the other Member States, the requirement is a general principle of law or is laid down in other legislation. Nevertheless, the United Kingdom (England, Scotland, Wales and Northern Ireland) partially conforms, as the scope of the provision does not fully ensure legal certainty in respect of certain jurisdictions.

2.2.20 Exchange of information (Article 24)

Article 24 of Directive 2007/64/EC regulates the cooperation and exchange of information between the authorities from the Member States designated under legislation applicable to payment service providers.

Cooperation

Article 24(1) of the Directive refers to the cooperation between national authorities of the different Member States, and, where appropriate, cooperation of the former with the ECB and national central banks and other relevant authorities designated under EU or national legislation applicable to payment service providers.

All the Member States properly implement the Directive provision and lay down the rule on cooperation between authorities. Most of the Member States follow the formulation pre-

sent in the Directive provision. Others, such as Romania, distinguish between cooperation by the home and host Member State. Others, such as Finland, follow a streamlined approach, whilst still conforming.

Exchange of information

Article 24(2) of the Directive specifies that the national authorities are additionally required to cooperate with other authorities while exchanging information. This applies to exchange of information with: other national authorities responsible for the authorisation and supervision of payment institutions (Article 24(2)(a)); the ECB and the national central banks, when acting in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems (Article 24(2)(b)); as well as, the authorities designated under EU legislation, such as those dealing with the protection of individuals with regard to the processing of personal data under Directive 95/46/EC²⁸ and money laundering and terrorist financing under Directive 2005/60/EC (Article 24(2)(c)).

All the Member States comply with the Directive provision, with the exception of Hungary, which partially conforms in relation to Article 24(2)(b) and absence of reference to the ECB.

In relation to Article 24(2)(c), not all of the legislation mentions the specific authorities referred to in the Directive provision, but refers to any other authorities in a general manner, such as the Austrian one. On the other hand, Latvian legislation explicitly covers cooperation with bodies, such as those dealing with audits and payment institutions' suspension. It also specifies that exchange of information with the authorities referred to in Article 24(2)(b) and (c), constitutes restricted information. The Cypriot and Luxembourg legislation provides for cooperation with authorities from third countries.

2.2.21 Exercise of the right of establishment and freedom to provide services (Article 25)

Article 25 of Directive 2007/64/EC regulates the right of establishment and freedom to provide services of authorised payment institutions in another Member State and the underlying supervision by national authorities.

Procedure

Pursuant to Article 25(1), payment institutions intending to provide payment services in another Member State, according to the right of establishment or the freedom to provide services, shall first inform the national authority of their home Member State (Article 25(1), first subparagraph). National authorities of the home Member States have one month, from receipt of such information, to communicate information on the name and address of the concerned payment institutions, the names of those responsible for the management of the

branch, their organisational structure, as well as, the kind of payment services intended to be provided, to the national authority of the host Member State concerned (Article 25(1), second subparagraph).

All the Member States correctly implement the Directive provision, with the exception of Malta. Most of them closely follow the Directive requirements.

The two situations where payment institutions located in their territory intend to provide payment services in another Member State, and where those located in another Member State intend to operate in their territory entail different duties and obligations for national authorities. They are specified such as in Italian and Maltese legislation. National authorities may indeed be the information providers as the authority of the home Member State or the recipient of such information as the authority of the host Member State.

A clear distinction between the right of establishment and the freedom to provide services is also provided, such as, in Danish, Italian and Luxembourg legislation. The information to be provided in relation to the right of establishment is more specific.

Information obligations under Luxembourg legislation regarding the right of establishment are also more stringent, although cross-cutting with information to branches under Article 17. Some aspects related to the form and procedures for the notification are also laid down, such as, in the Irish legislation.

However, Malta partially conforms as far as the one month delay is not addressed and regarding some detail about the elements on which to communicate.

Cooperation

Article 25(2) provides for cooperation between authorities of the home and host Member States, to ensure the control over branches, agents and entities to which activities are outsourced and to take the necessary steps pursuant to Article 21.

All the Member States properly implement the Directive provision in respect of cooperation between authorities from the home and host Member States. The Finnish and Irish implementing measures transpose the Directive provision in a general way, providing for cooperation with their counterparts, whilst still conforming.

On-site inspections

Article 25(3) specifies that where the national authorities of the home Member States wish to carry out on-site inspections in the territory of another Member State, they shall inform the national authority of the home Member State (Article 25(3), first subparagraph), unless they delegate such power to the authorities of the host Member States (Article 25(3), second subparagraph).

All the Member States properly implement the Directive provision, with the exception of Sweden. Most of them lay down a provision which is similar to that of the Directive, although the Irish one is worded in a general manner. On the other hand, the Luxembourg legislation provides for two possibilities, specifically, one where the Luxembourg authority acts as the national authority of the home Member State and the second

²⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31–50.

one when it acts as the national authority of the host Member State.

The Swedish legislation is not clear on the information the Swedish authority should provide to the authority of the host Member States when it wishes to carry out on-site inspections, although general provisions on national authorities' cooperation may cover this duty. Therefore, it partially conforms.

Exchange of information

Under Article 25(4) of the Directive, national authorities provide each other with all relevant and/or essential information, concerning, in particular, infringements or suspected infringements by agents, branches or entities to which activities are outsourced. The national authorities are required to communicate all relevant information upon request, whilst all essential information is required to be communicated on their own initiative.

All the Member States properly implement the Directive provision, with the exception of Hungary, for which no provision could be located. Member States provide for cooperation with national authorities and the provision of information.

Austrian legislation is brief and does not mention the provision of all relevant or essential information. This is also so in the case of Denmark. Nevertheless, compliance with this requirement including Article 24(2), is implied.

Money laundering and terrorist financing

Article 25(5) specifies that the provisions laid down in Article 25, are without prejudice to the legislation on money laundering and terrorist financing.

Austria, Belgium, Bulgaria, Cyprus, France, Greece, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom, provide for such a provision. In the other Member States, no such provision could be located.

However, the provision does not require transposition, and national legislation does not provide for any provision preventing the application of legislation on anti-money laundering and terrorist financing. Therefore, the implementation of this Directive provision is in principle regarded as being conform. Nevertheless, this may be clarified as requested for Latvia and Malta.

On the other hand, Denmark has upgraded its legislation on anti-money laundering and terrorist financing to include payment services within its scope.

Nevertheless, the Irish legislation partially conforms, since the paragraph corresponding to Article 25(4) is not included within the scope of the implementing provision of Article 25(5).

2.2.22 Waiver (Article 26)

Article 26 of Directive 2007/64/EC provides for an option to apply certain provisions of the Directive to legal and natural persons. The Directive provision specifies the conditions under which natural and legal persons can benefit from that waiver.

The conditions of the waiver

Article 26(1) sets out an option, according to which, natural and legal persons may be entered in the register provided for

in Article 13. According to that option, Member States, or their national authorities, may waive the application of Sections 1 to 3, in all or in part, to these persons. However, Articles 20, 22 to 24 cannot be derogated from.

They may apply the option if the average of the total amount of payment transactions executed by these persons, including their agents, over the preceding twelve months does not exceed EUR 3 million per month. This amount is assessed on the basis of the projected total amount in their business plan, unless an adjustment is required by the national authorities (Article 26(1)(a)). In addition, the natural persons responsible for the management or operation of the business are required not to have been convicted of offences relating to money laundering or terrorist financing or other financial crimes (Article 26(1)(b)).

Belgium, the Czech Republic, Denmark, Estonia, Finland, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia, Sweden and the United Kingdom chose to apply the option. However, Belgium and the United Kingdom (Gibraltar) do not apply the whole Directive provision, which requires further implementation. In addition, the Italian legislation lays down the main conditions provided for in Article 26(1) of the Directive and the implementation of the provision is also subject to further specifications. Cyprus also transposed the possibility to apply the waiver.

The waiver applies to small payment institutions in the Czech Republic, Ireland and the United Kingdom (England, Scotland, Wales and Northern Ireland), which can provide same services as payment institutions. In Denmark, Lithuania and Slovenia, activities are restricted. These persons are referred to as payment institutions in Latvia and Lithuania and as waived payment institutions in Slovenia in relation to Article 26(3). On the other hand, the waiver applies to registered institutions in Italy.

In Denmark and Lithuania, a restricted authorisation is delivered, whilst the authorisation requirement is exempted in Latvia. As to the registry, a specific register is established in the Czech Republic and Denmark.

Some national legislation determines whether some or part of the rules referred to in Sections 1 to 3 of the Directive provision are derogated from or not. The Czech, Lithuanian and Slovenian legislation specifies the provisions, which are applicable to persons benefiting from the waiver. The Dutch legislation mentions those provisions that can be derogated from. Alternatively, the Luxembourg, Estonian, Finnish and Swedish responsible authorities should take a decision to that end.

In relation to the total amount of payment transactions executed pursuant to Article 26(1)(a), most Member States follow the amount set in the Directive provision. Estonia, Finland, Lithuania and Slovenia set a smaller amount of EUR 1 million, LTL 1 million, EUR 100 000 and EUR 50 000, respectively. However, under Finnish legislation this smaller amount concerns natural persons and is regarded as partially conform in the absence of such a requirement in the Directive, whereas the requirement of the Directive of an amount not exceeding EUR 3 million is also implemented and set as a rule.

Not all legislation refers to the agents of the concerned persons, such as the Irish, Swedish and UK (England, Scotland,

Wales and Northern Ireland) legislation, or the adjustment plan, such as, the Czech, Dutch, Italian, Latvian, Lithuanian and Swedish legislation. In this regard, the Irish legislation is considered partially conform, due to reference to the projected amount over the preceding twelve months, without any mention of the first sentence of the Directive provision.

In relation to the suitability of the managing board set out in Article 26(1)(b), most Member States closely follow the Directive provision. Alternatively, the Danish, Estonian and Lithuanian legislation is more detailed and provides for a list of persons concerned and/or details relating to the offences. On the contrary, the Finnish and Slovenian legislation is more general, without specifying offences, or referring to other provisions, respectively.

Headquarters

Article 26(2) of the Directive also sets out that these persons shall have their head office or place of residence in the Member State in which they conduct business.

Most Member States comply with Article 26(2), with the exception of Denmark, which allows undertakings having their head offices outside Denmark to be granted with restricted activities. Likewise in the case of the Netherlands, it's legislation does not explicitly require registration and only mentions the conduct of business in its territory. Both Member States partially conform with the Directive provision.

The Lithuanian legislation sets additional requirements, since it refers to the legal form and the executives of the payment institution, which should be set in accordance with the legal acts adopted by its supervisory institution.

Territoriality of the authorisation

According to Article 26(3) of the Directive, these persons shall be treated as payment institutions. However, Article 10(g) and Article 25 shall not apply to them.

When not explicit, such as in the Danish and Dutch legislation, the implementation of the Directive provision is to be related to the activities that those persons can perform in the Member States, which apply the option. This also relates to the conditions under which they can conduct their activities disregarding the possible derogations.

Article 10(g) and 25 are not systematically cross-referred to, such as, in the Swedish and United Kingdom legislation. As was concluded in relation to Sweden, those persons are not granted an authorisation. Therefore, they cannot carry out cross-border activities for payment services in another Member State. However, Slovenian waived payment institutions, may perform payment services of the execution of money remittances not only in Slovenia, but also in the territory of a third country, including through a branch or agent.

Limitation of the activities

Article 26(4) of the Directive sets out an option upon the Member States, wherein they may also provide that any natural or legal person registered in accordance with Article 26(1) may engage only in certain activities listed in Article 16.

Estonia, Ireland, Luxembourg, the Netherlands and Slovenia chose to apply the option. The Italian and UK (Gibraltar) legis-

lation prescribes additional legislation to further implement the Directive provision.

Nevertheless, Article 26(4) of the Directive has been implemented in various ways. Luxembourg follows the Directive provision and adopts a similar provision, without specifying the activities. The Luxembourg authority may decide to limit activities.

On the other hand, some Member States set out some of the activities listed in the Annex to the Directive that can be performed, such as, Estonia and Slovenia wherein only the activity of money remittance can be carried out, or the Netherlands, where all activities are allowed with the exception of money remittance. In Ireland, the authority may decide to limit the activities to operational and closely related ancillary services, operation of payment systems and payment activities other than the provision of payment services, such as those laid down in the legislation.

Change in the conditions

Article 26(5) of the Directive sets out an obligation upon the persons who are required to notify their national authorities in the case of a change in their situation which is relevant to the conditions specified under Article 26(1). In addition to this, Member States are required to take the necessary steps to ensure that, where the conditions set out in Article 26(1), (2) and (4) are no longer fulfilled, the persons concerned are then required to seek authorisation within thirty calendar days, in accordance with the procedure laid down in Article 10.

The implementation of Article 26(5) is uneven. Most Member States comply with the requirements. The Italian legislation provides for additional legislation to specify the implementation of the Directive provision. On the other hand, Lithuanian legislation also further specifies that, the restricted activity licence shall be revoked upon failure to be granted with an authorisation within thirty days.

However, the Czech Republic, Denmark, Ireland and the Netherlands partially conform, since the requirement relating to the seeking of an authorisation when conditions on the basis of which the waiver was granted no longer exist is not specified. Luxembourg also partially conforms, due to an incorrect reference to one of the paragraphs referred to in the Directive provision.

Money laundering and terrorist financing

Article 26(6) of the Directive lays down that Article 26 shall not apply in respect of the provisions of Directive 2005/60/EC and related provisions on anti-money laundering and terrorist financing.

Only Lithuania, the Netherlands, Slovenia and United Kingdom formally transposed the provisions of Article 26(6).

In the remaining Member States, no corresponding provisions were located. However, this is without prejudice to the relevant legislation in this area.

2.2.23 Notification and information (Article 27)

The adoption of Article 27 of Directive 2007/64/EC by the Member States depends on the adoption of the optional provision of Article 26. Article 27 states that if a Member State avails itself of the waiver provided for in Article 26, it shall notify the Commission accordingly by 1 November 2009 and it shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of natural and legal persons concerned and, on an annual basis, of the total amount of payment transactions executed as of 31 December of each calendar year, as referred to in Article 26(1)(a).

Data as to the date of notification required under this provision was not communicated as the purpose of this conformity assessment is related to substance rather than to procedure. Dates of entry into force of the national legislation may be an indicator; although they are not sufficient. Nevertheless, partial conformity is observed for Latvia and the United Kingdom.

2.2.24 Access to payment systems (Article 28)

Article 28 of Directive 2007/64/EC prescribes for requirements to ensure that access to payment systems is guaranteed to payment service providers and users, as well as to other payment systems.

Access to payment systems

Article 28(1) of the Directive requires objective, non-discriminatory and proportionate rules on access of authorised or payment service providers that are legal persons to payment systems. These rules should not inhibit access more than it is necessary to safeguard specific risks, and to protect the financial and operational stability of the payment system. The Directive provision then enumerates the requirements that cannot be imposed on payment service providers, such as restrictive rules that would prevent effective participation in other payment systems (Article 28(1), second subparagraph, point (a)); rules that would discriminate between authorised or registered payment service providers in relation to the rights, obligations and entitlements of participants (Article 28(1), second subparagraph, point (b)); as well as any restrictions based on institutional status (Article 28(1), second subparagraph, point (c)).

Most of the Member States implement the Directive provision in a literal or similar manner. Not all of them distinguish between authorised and registered providers, although they opted for general wording encompassing both categories.

However, Estonia has not transposed Article 28, which is regarded as conform as far as the restrictions are concerned and no contradicting provisions, which hamper implementation are located. The same can be concluded for Denmark, which has only implemented the introductory wording of the Directive provision.

Exclusion to Article 28

Article 28(2) of the Directive provides for the exclusion of the application of Article 28(1) to payment systems under Directive 98/26/EC²⁹ (Article 28(2)(a)) and payment systems only gathering payment service providers who belong to a group composed of entities linked by capital and one of these linked entities has effective control over the other linked entities (Article 28(2)(b)). The exclusion also concerns payment systems where one payment service provider acts or can act as a single provider for both the payer and the payee, he is exclusively responsible for the management of the system and he licences other payment service providers to participate in the system who have no right to negotiate fees (Article 28(2)(c)).

Most of the Member States have chosen to apply either a literal transposition or a transposition reflecting Article 28(2) of the Directive. Estonia did not transpose the Directive provision as previously mentioned. Sweden did not transpose Article 28(2)(b) on the ground that these payment systems are not considered to be payment systems in Sweden.

However, German legislation partially conforms. German legislation also includes financial company groups as an additional exemption.

2.2.25 Prohibition for persons other than payment service providers to provide payment services (Article 29)

Article 29 of Directive 2007/64/EC provides that persons that are neither payment service providers nor explicitly excluded from the scope of the Directive should be prohibited from providing the payment services listed in the Annex to the Directive.

All of the Member States implement Article 29 of the Directive in a correct manner. Some of the Member States transposed the Directive provision by means of similar wording, whilst other Member States implemented the Directive provision using somewhat different wording, or applying more general rules, whilst still conforming.

No provision was located in the Swedish legislation. Compliance results from the general requirements for authorisation when providing payment services.

²⁹ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, OJ L 166, 11.6.1998, p. 45–50.

2.3 Transparency of conditions and information requirements for payment services

Title III contains information on the transparency of conditions and information requirements for payment services. It is divided into four chapters: the general rules, rules for single payment transactions, rules for framework contracts and common provisions for all. Articles 30 to 50 are contained in Title III.

2.3.1 Scope for the general rules applicable to the transparency of conditions and information (Articles 31–34) (Article 30)

Article 30 of Directive 2007/64/EC defines the scope of the general rules applicable to the transparency of conditions and information requirements for payment services, as provided for in Articles 30 to 34 under Title III.

The Directive provision (Article 30(3)) also provides that the Directive does not prevent the application of other relevant Community or national legislation on consumer credit, which is also reiterated in Articles 16(5) and 51(4)³⁰.

Rule

Article 30(1) of the Directive sets out that Title III of the Directive applies to single payment transactions and payment transactions under framework contracts. In this regard, the provisions of the said Title may be excluded, in part or in whole, where payment service users are not consumers, if the parties so agree.

Most Member States have an equivalent provision corresponding to that of the Directive within their legislation, which is either literal, such as Belgium, Greece, Luxembourg, Malta and the United Kingdom (Gibraltar), or which reflects its content, for instance, Bulgaria, Hungary, Portugal and Spain. In this regard, the transposition of Article 30 of the Directive reflects various legislative practices. If the spirit of the Directive provision in relation to Article 30(1) can be assumed throughout the transposition of the provisions laid down in Title III, not all include a provision similar to that of Article 30(1). Scopes related to the Title are also differently reflected, such as, in Czech and Estonian legislation.

Consequently, not all Member States transposed the first sentence of the Directive provision, whilst still laying down a provision reflecting the second sentence of Article 30(1) regarding the exclusion of all or part of the provisions when payment service users are not consumers, such as, in Austria, Finland, France, Latvia, Lithuania and Sweden. However, while applying the second sentence, not all Member States mention the extent of the waiver such as, in Slovakia. Some Member States also emphasise the interests of the payment service users, requiring that the waiver shall not be done to their detriment (Austria, Hungary and Sweden).

Optional application to micro-enterprises

According to Article 30(2) of the Directive, micro-enterprises shall be subject to the provisions of Title III in the same way as consumers, if Member States so decide.

Only the Czech Republic, Cyprus, Hungary, Ireland, Italy, Malta, Portugal, Slovakia and the United Kingdom have chosen to apply this option. As for national provisions, some Member States have linked the provisions corresponding to those laid down in the second sentence of Article 30(1) on consumers and Article 30(2), such as, Cyprus, the Czech Republic, Hungary and United Kingdom (England, Scotland, Wales and Northern Ireland).

2.3.2 Other legislation (Article 31)

Article 31 of Directive 2007/64/EC regulates the application of other provisions of EU legislation in relation to the Directive.

Prior information

The first paragraph of Article 31 of the Directive lays down that the application of Title III does not prevent the application of other relevant legislation, both EU and national, on prior information.

A few Member States transposed the first paragraph of Article 31, namely Belgium, Cyprus, Finland, France, Greece, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovenia, Spain and the United Kingdom (Gibraltar). Reference to 'national legislation' or to 'legislation', which both encompasses EU legislation, is made in the case of Belgium, Finland, France, Hungary, Portugal, Slovenia and the United Kingdom (Gibraltar).

For all other Member States, no such provision could be located. Nevertheless, in the absence of national provisions which do not prevent the application of other legislation and unless stated otherwise, these Member States are presumed to comply with the Directive provision.

Distance marketing

The second paragraph of Article 31 of the Directive lays down that for distance contracts, the information provided for in Article 3(1) of Directive 2002/65/EC³¹ on distance marketing of consumer financial services also applies, with the exception of points (2)(c) to (g), (3)(a), (d) and (e), and (4)(b). Instead, Articles 36, 37, 41 and 42 of Directive 2007/64/EC apply.

Most Member States properly implement the Directive provision. The requirements of the second paragraph are introduced by means of a provision which refers to the legislation implementing Directive 2002/65/EC in a way similar to that of the Directive. Alternatively, some Member States directly refer to the provisions excluded from the scope of the legislation on payment services only where distance contract is concerned, such as, the Czech Republic and Italy. Other Member States adapted their legislation on distance marketing, where-

³⁰ See Section 2.2. 12.

³¹ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, OJ L 271, 9.10.2002, p. 16–24

in they indicate the provisions on information excluded from the scope of payment services, such as, Hungary and Sweden. Other Member States introduced the provisions referred to in their implementing legislation on payment services or on distance marketing. No similar provision was found in the legislation of Latvia, Malta and the Netherlands.

2.3.3 Charges for information (Article 32)

Article 32 of Directive 2007/64/EC lays down the principle that information should be free of charge. The rule can be derogated from and charges apply under certain conditions.

Information free of charge

According to Article 32(1) of the Directive, information provided under Title III by the payment service providers to payment service users, shall be free of charge. All Member States properly lay down the said rule.

Charges for information

Article 32(2) of the Directive however allows the rule to be derogated from and charges may be applied for additional or more frequent information, or for the transmission of information by means of communication other than those provided for in the framework contract. In this event, charges are agreed between payment service providers and payment service users and information provided at the payment service users' request. In addition, according to Article 32(3) of the Directive, these charges shall be appropriate and in line with the payment service providers' actual costs.

All Member States comply with the Directive requirements on the charges for information and on those underlying these charges, as set forth in Article 32(2) and (3) of the Directive. Nevertheless, the Czech legislation does not explicitly mention that charges may be agreed upon for information provided by means of communication other than those specified in the framework contract. Additional details are provided for in the Finnish legislation, which specifies that corrective or precautionary measures shall not be charged.

2.3.4 Burden of proof (Article 33)

According to Article 33 of Directive 2007/64/EC, Member States may stipulate, that the burden of proof lies with the payment service provider to prove that it has complied with the information requirements set out in Title III.

Most of the Member States, with the exception of Austria, Bulgaria, Denmark, Estonia, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland), apply the option. The provisions of the UK (Gibraltar) legislation, allows the possibility of applying the option set out in Article 33, although to date, this option has not yet been implemented. Moreover, no provision could be located in the Finnish legislation, although the use of the option was notified. All the other Member States properly implement the Directive provision.

2.3.5 Derogations for low-value instruments and electronic money (Article 34)

Article 34 of Directive 2007/64/EC provides for derogations to some information requirements relating to payment transactions based on a framework contract in case of low-value payment instruments and electronic money.

Rule

Article 34(1) of the Directive provides for possible derogations for payment instruments according to the framework contract. These derogations may apply to payment instruments that concern only individual payment transactions not exceeding EUR 30. Alternatively, they may apply to payment instruments that either have a spending limit of EUR 150 or which store funds not exceeding EUR 150 at any time.

Article 34(1)(a) envisages derogation from Articles 41, 42 and 46. Payment service providers provide payers with only the necessary information relating to 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. The payers are also indicated where to find any other information and conditions set out in Article 42, which are made available in an easily accessible manner. Article 34(1)(b) concerns the possible derogation from Article 44. Provided it is agreed, payment service providers do not propose changes in accordance with the framework contract as provided for in Article 41(1). Article 34(1)(c) concerns the possible derogation from Articles 47 and 48 after the execution of a payment transaction. Provided it is agreed, there are three alternatives. As set forth in Article 34(1)(c)(i), payment service providers provide or make available only a reference enabling payment service users to identify the payment transaction, its amount and any charges and/or information on the total amount and charges of the payment transactions if several of the same kind. Alternatively, according to Article 34(1)(c)(ii), point (i) may be derogated from where the payment instrument is used anonymously or where the payment service provider is not technically in a position to provide it. In this case, the payers shall however have the possibility to verify the amount of funds stored.

All Member States comply with the Directive provision.

All Member States properly implement the three scenarios provided for in the introductory wording of Article 34(1). Nevertheless, both Bulgaria and Hungary refer to the thresholds in their own currencies, which are thus subject to fluctuation. Moreover, the thresholds diverge for Romania and the United Kingdom (England, Scotland, Wales and Northern Ireland), which are to be regarded in the light of Article 34(2) for the Member States who chose to apply the option. In this regard, all Member States concerned implement the above mentioned thresholds, whilst Romania directly refers to the thresholds it chose to apply in relation to Article 34(2) (EUR 25 for single payment transactions, EUR 100 for spending limits and stored funds). The same is also applicable to stored funds in the United Kingdom (England, Scotland, Wales and Northern Ireland), which sets a higher threshold of EUR 500.

All derogations are also properly implemented by the Member States in respect of Article 34(1)(a), (b) and (c). Some differences rest with wording, whereby for instance the Bulgarian

legislation does not mention the event of anonymous use of payment instruments, referred to in Article 34(1)(c)(ii), and broadly speaking refers to any technical impossibility for payment service providers to provide the required information.

Option to reduce or double the amounts

Article 34(2) of the Directive provides for an option concerning national payment transactions and prepaid instruments. For the former, Member States or their national authorities may reduce or double the amounts referred to in Article 34(1). For the latter, Member States may increase those amounts up to EUR 500. The following conclusions for Article 34(2), also apply to the implementation of Article 53(2) by the Member States³². Both Directive provisions are similarly worded, and Member States chose to implement them either into separate provisions following the structure of the Directive, (Ireland, Greece, Luxembourg, the Netherlands, Romania and the United Kingdom), or into a single provision, streamlining the implementation of both Directive provisions (Austria, the Czech Republic, Germany, Finland and Italy).

All the above Member States thus apply the option.

The majority of the Member States have chosen to double the amount of payment transactions. Austria and the United Kingdom (England, Scotland, Wales and Northern Ireland) only doubled individual payment transactions and payment instruments that have a spending limit. Most Member States also follow the Directive provision for prepaid instruments of an amount of EUR 500, whilst Greece has determined an amount of EUR 200 and Austria and the Netherlands an amount of EUR 400. On the other hand, Germany has determined a single reference amount of EUR 200. In this regard, some Member States, for instance, Finland, the Netherlands and the United Kingdom (England, Scotland, Wales and Northern Ireland) refer to stored funds rather than to prepaid instruments.

Romania is the only Member State which chose to reduce the amounts referred to in the Directive provision to EUR 25 for payment transactions and EUR 100 for spending limits and stored funds.

Belgium and the United Kingdom (Gibraltar) reserve the possibility to use the option, which is transposed into their legislation and shall be further dealt with in secondary legislation.

2.3.6 Scope for provisions on single payment transactions (Articles 36-39) (Article 35)

Article 35 of Directive 2007/64/EC sets out the scope of Chapter 2, which applies to single payment transactions provided for in Articles 35 to 39 of the Directive. The scope set out in Article 35(1) is of a generic nature. Article 35(2) further specifies that the payment service providers are not obliged to provide or make available information in the cases wherein either the information was already given to the payment service user on the basis of a framework contract with another payment

service provider or in the case wherein the information will be given to them according to that framework contract.

Article 35(1) has been implemented by the majority of Member States that issued legislation with a similar or close structure to that of the Directive. Some Member States included references to the provisions regarding single payment transactions which do not follow a similar structure as that of the Directive, such as Denmark. On the other hand, Estonia and Sweden do not include similar references within their legislation.

All the Member States also properly implement Article 35(2). In principle, national legislation is close to the Directive provision and lays down the same rule. In this respect, the Czech Republic favours a specific approach instead of laying down a general rule and links the rule to the various steps in relation to payment transactions – before entering the contract, after the payee's acceptance of the order and after the payment transaction.

2.3.7 Prior general information (Article 36)

Article 36 of Directive 2007/64/EC lays down the general requirements for prior information that apply to single payment transactions. Prior information shall be provided before payment service users are bound by a contract or an offer. However, this may be derogated from in the specific circumstances outlined therein.

Rule

Article 36(1) of the Directive requires payment service providers to make the information and conditions, specified in Article 37, available to the payment service users before being bound by any single payment service contract or offer. Article 36(1) also lays down the way in which the information should be given. Such information shall be provided in an easily accessible manner, on paper or on another durable medium at the request of the payment service users. In addition, the information provided must be in easily understandable words and in a clear and comprehensible form. Finally, the language in which the information is provided must be either in the official language of the Member State where the service is offered, or in the language agreed between the parties.

All the Member States transposed Article 36(1) in a conform manner. The Directive provision is implemented by way of a single provision similar to that of the Directive or disseminated according to the structure of national legislation. Dissemination into national legislation is mainly related to the choice of some Member States to gather common requirements regarding prior information laid down in Article 36(1), as well as in Article 41, regarding framework contracts. The Czech Republic, Finland, France, Ireland and United Kingdom (England, Scotland, Wales and Northern Ireland) gather requirements on easy access in a single provision covering the above mentioned Directive provisions and then lay down different provisions on prior information as to the extent covered – single payment transactions and framework contracts. The same applies to Portugal regarding the language requirement.

The wording also differs in some legislation, whilst still complying with the requirement set in Article 36(1) and is more direct, for instance, in Estonian legislation. In this regard, Es-

³² Conclusions on the implementation of Articles 34(2) and 53(2) are presented together under this Section.

tonia, Finland, France, Germany, Hungary and Portugal emphasise the characteristics of the information to be provided. Hungarian legislation also specifies what is to be regarded as an 'easy accessible manner', namely the payment service provider's website and mail. In turn, Slovakia and the United Kingdom (England, Scotland, Wales and Northern Ireland) refer to both providing and making information available.

Regarding the language, national legislation is more or less specific on the languages in which the information and conditions shall be provided. Nevertheless, Maltese legislation does not refer to any languages agreed between the parties, but only to English and Maltese instead.

Derogations

Article 36(2) and (3) of the Directive set out two possible derogations regarding the information referred to in Article 36(1) which is to be made available prior to the commitment. Article 36(2) provides for situations where the single payment service contract is concluded by way of a means of distance communication. In this case, where payment service providers cannot comply with the requirements of Article 36(1), these shall be fulfilled immediately after the payment transaction is executed. Article 36(3) states that the obligations under Article 36(1) may also be discharged and a copy of the draft single payment service contract or of the draft payment order may be supplied instead, in the form laid down in Article 36(1). Such drafts are required to contain the information and conditions specified in Article 37.

Both provisions are properly implemented by the Member States. Article 36(3) sets out an option which was not chosen to be applied by the Czech Republic, Denmark, Finland, Italy and Sweden. Moreover, Austria, Estonia, Germany and Hungary merely refer, in their legislation, to the supply of a copy of the draft single payment service contract.

2.3.8 Information and conditions (Article 37)

Article 37 of Directive 2007/64/EC provides for information and conditions regarding single payment transactions that payment service providers shall provide or make available to the payment service users. These are either mandatory or optional.

Mandatory elements

According to Article 37(1) of the Directive, four mandatory information and conditions are required to be provided or made available to payment service users. These include a specification of the information or unique identifier necessary for a payment order to be properly executed (Article 37(1)(a)), the maximum execution time for payment services (Article 37(1)(b)), all charges payable by the payment service user, including the breakdown of the charges' amounts (Article 37(1)(c)), and, where applicable, the actual or reference rate to be applied to payment transactions (Article 37(1)(d)).

All Member States properly implement the Directive provision and the majority of them chose to follow similar wording. Cypriot legislation also specifies the meaning of charges. Other legislation is briefer on one or more elements in Article 37(1)(a) to (b), such as, Austria, Germany, Italy and Sweden. The Austrian legislation is briefer on most points, whilst still covering

them. On the other hand, Germany and Sweden do not explicitly mention the unique identifier, which can be inferred from the whole point which is properly transposed.

Optional elements

Where applicable, any other relevant information and conditions shall be made available in an easy accessible manner. Article 37(2) of the Directive refers to the information and conditions laid down in Article 42 of the Directive in relation to framework contracts.

All Member States, with the exception of Sweden, provide for such a possibility and comply with the requirements. Reference to 'easy accessible manner' however varies in Hungary, which as mentioned above directly specifies the means for providing information. Other legislation, such as that of Cyprus, Czech Republic, Germany, Lithuania and the United Kingdom (England, Scotland, Wales and Northern Ireland), does not duplicate the availability of information in a manner similar to that of Article 37(2) of the Directive, which is thus to be regarded in the light of Article 36 of the Directive on prior general information requirements.

2.3.9 Payer's information after receipt of the payment order (Article 38)

Article 38 of Directive 2007/64/EC requires the payment service providers of payers to provide them with specific information immediately after receipt of payment orders. Such information concerns the payment transaction as such and covers a reference for the identification of the transaction and where appropriate, information relating to the payee (Article 38(a)); the amount of the transaction in the currency used in the order (Article 38(b)); the amount of any related charges payable by the payer and their breakdown, if applicable (Article 38(c)); if applicable, the exchange rate, including a reference to the rate where it is different from the actual or reference exchange rate referred to in Article 37(1)(d) as well as the amount of the transaction after currency conversion (Article 38(d)); and the date of receipt of the order (Article 38(1)(e)). Such information is to be provided in accordance with the requirements under Article 36(1).

All Member States comply with the Directive provision and information requirements.

Some national legislation differs as to the immediateness of the provision of information. Whereas the Estonian legislation mentions that information is provided after receipt of the order, the Slovak and Swedish legislation requires the provision of information 'without undue delay' and 'as soon as possible' respectively. In both Slovakia and Sweden, both time requirements may be regarded as being as stringent as the term 'immediately', or of a broader nature, depending on interpretation and practice. Additionally, Ireland also specifies and subjects information on the payee, set out in Article 38(1)(a), according to the legislation on anti-money laundering and terrorist financing.

2.3.10 Payee's information after execution (Article 39)

Article 39 of Directive 2007/64/EC requires the payment service providers of payees to provide them with information immediately after the execution of payment transactions. Such information concerns the payment transaction and includes a reference for the identification of the transaction and, where appropriate, the payer, as well as information transmitted with the transaction (Article 39(a)); the amount of the payment transaction in the currency of the funds that are at the payee's disposal (Article 39(b)); the amount of any related charges payable by the payee and, where applicable, their breakdown (Article 39(c)); the exchange rate used and the amount prior to currency conversion, if applicable (Article 39(d)) and the credit value date (Article 39(e)). Such information is to be provided in accordance with the requirements under Article 36(1).

All Member States properly implement the Directive provision and its requirements. Comments on Estonian, Slovak and Swedish legislation, mentioned in Article 38, are also valid in respect of immediateness, as well as, on the additional specification in Irish legislation, regarding reference to legislation on anti-money laundering and terrorist financing, introduced in the implementing provision of Article 39(a) on information on the payer. In addition, Cypriot legislation also subjects the credit value date, referred to in Article 39(e), to cases where it exists, whilst still addressing all other Directive requirements for value date.

2.3.11 Scope for provisions on framework contracts (Articles 41-48) (Article 40)

Article 40 of Directive 2007/64/EC sets out the scope of Chapter 3, which applies to framework contracts provided for in Articles 41 to 48 of the Directive. The scope laid down in Article 40 is of a generic nature as to the extent covered by the said Chapter.

Similarly to the comments provided for in relation to Article 35, the Directive provision has been implemented by the majority of Member States and their legislation follows a similar or close structure to that of the Directive. Alternatively, in legislation which does not follow a similar structure, such as the Danish, reference to the provisions regulating framework contracts is made. On the other hand, Estonian and Swedish legislation do not contain such references.

2.3.12 Prior general information (Article 41)

Article 41 of Directive 2007/64/EC lays down the general requirements for prior information that apply to framework contracts. Prior information shall be provided in good time before payment service users are bound by a framework contract or an offer. However, this may be derogated from in the specific circumstances outlined therein.

Rule

Article 41(1) of the Directive requires payment service providers to make the information and conditions, specified in Article 42, available to the payment service users before being bound

by any framework contract or offer. Article 41(1) also lays down the way in which the information shall be given. Such information shall be provided in good time on paper or on another durable medium. In addition, the information and conditions are required to be given in easily understandable words and in a clear and comprehensible form. The information is required to be provided either in the official language of the Member State where the service is offered, or in the language agreed between the parties.

All the Member States properly implement the Directive provision and address the Directive requirements. However, the approach for the provision of the information and conditions 'in good time' differs in some Member States. Belgian, German and Hungarian legislation refers to the provision of information 'in due time'. Austrian, French, Latvian and Portuguese legislation requires information before the user is bound by the contract or offer and the Danish legislation also sets a limit, according to which information is provided not later than at the time the framework contract is established. In this regard, Romanian legislation qualifies the term 'in good time' and sets a limit of fifteen days. Lithuanian and Slovenian legislation also explicitly add that this time – which is phrased, respectively, as 'reasonable' and 'enough' – is set to the benefit of the payment service user to get acquainted with the information.

As to language, the Maltese legislation does not provide that the information can be provided in a language agreed between the parties and mentions English and Maltese as the only languages for the contract.

Derogations

Article 41(2) and (3) of the Directive set out two possible derogations regarding the information referred to in Article 41(1), which is to be made available prior to the commitment. Article 41(2) provides for situations where the framework contract is concluded at the request of the service payment users by way of a means of distance communication. In this case, where payment service providers cannot comply with the requirements of Article 41(1), they shall fulfil these duties immediately after the conclusion of the framework contract. Article 41(3) states that the obligations under Article 41(1) may also be discharged and a copy of the draft framework contract, including the information and conditions specified in Article 42, may be supplied instead.

Both provisions are properly implemented by the Member States. Article 41(3) sets out an option which was not chosen by Denmark, Finland, Italy and Sweden. The Czech Republic transposed the requirements set out in Article 41(3) in an indirect form, using a more general provision from which the requirements of the Directive provision can only be inferred.

2.3.13 Information and conditions on the payment service provider (Article 42)

Article 42 of Directive 2007/64/EC sets out the requirements for seven categories of information and conditions underlying framework contracts, to be provided to payment service users.

Payment service provider

Article 42(1) of the Directive determines information concerning payment service providers. According to Article 42(1)(a), such information covers the payment service providers' name, geographical address of their head office and, where applicable, the geographical address of their agents or branches where the payment service is offered, as well as, any other address, including the electronic mail one, relevant for the communication. According to Article 42(1)(b), the information concerns the particulars of the relevant supervisory authorities and of registers provided for in Article 13, or any other relevant public register regarding authorisation, as well as the registration number, or equivalent means of identification in the concerned register.

All Member States correctly implement the Directive provision. However, the approach differs as to the geographical address of payment service providers' agents and branches set out in Article 42(1)(a). The Belgian, Estonian, Irish, Portuguese, Romanian, Slovak, Slovenian and Spanish legislation rather refers to the address of those agents and branches established in their territory. The Hungarian one instead refers to their address in the EEA Member States where the payment service users are located. The French and Swedish legislation sets the address of agents or branches in a general manner. All other Member States follow the Directive wording.

In addition, in relation to Article 42(1)(b), the Hungarian and Italian legislation only refers to their national authority. In addition, the Swedish legislation further adds that information under the Directive provision is provided in the form of a statement regarding authorisation and registration.

Use of the payment service

According to Article 42(2) of the Directive, information on the use of payment services covers a description of the main characteristics of the payment service (Article 42(2)(a)); a specification of the information or unique identifier to be provided by payment service users for the execution of payment orders (Article 42(2)(b)); the form of and procedure for giving consent to execute a payment transaction, as well as, withdrawal of the consent, as laid down in Articles 54 and 66 (Article 42(2)(c)); a reference to the point in time of receipt of the order, as defined in Article 64, and the cut-off time, if any, set by the providers (Article 42(2)(d)); the maximum execution time (Article 42(2)(e)) and the possible agreement on spending limits for the use of payment instruments, in accordance with Article 55(1).

All Member States comply with the Directive provision, even though the wording is more or less general, such as, in the case of Sweden, or streamlined in the case of Austria and Denmark regarding Article 42(2)(d). However, such cases have to be regarded in the light of the Directive as a whole, and more precisely, in the light of the Directive provisions concerned, as transposed by the Member States. On the other hand, the Irish

legislation further requires a statement on the form of and procedure for giving consent, in addition to the Directive requirement regarding the implementation of Article 42(2)(d).

Charges, interest and exchange rates

Article 42(3) of the Directive provides for information on charges, interest and exchange rates. Information is required for all charges payable by payment service users to payment service providers, as well as, where applicable, for their breakdown (Article 42(3)(a)). Information also regards the interest and exchange rates, where applicable, or where reference to interest and exchange rates are used, the calculation method of the actual interest, as well as the criteria used to determine the reference rates (date and index or base) (Article 42(3)(b)). Information is also provided on, if agreed, the changes in reference interest or exchange rates, their immediate application and related information in accordance with Article 44(2) (Article 42(3)(c)).

All Member States comply with the Directive provision and implement all underlying points. The Estonian legislation is more streamlined in relation to Article 42(3)(c), as a result of the cross-reference to the equivalent provision of Article 44(2) of the Directive.

Communication

Article 42(4) of the Directive sets out the information requirements for communication. These cover, where applicable, the agreed means of communication for the transmission of information or notifications as laid down in the Directive provision, including the technical requirements for the payment service users' equipment (Article 42(4)(a)); the manner and frequency to provide or make information available (Article 42(4)(b)); the language or languages used in the framework contract and subsequent communication (Article 42(4)(c)); and the payment service users' right to receive the contractual terms of the framework contract and information and conditions in accordance with Article 43 (Article 42(4)(d)).

The majority of Member States have implemented the Directive provision in a way similar to that of the Directive. However, the implementing provision of Article 42(4)(b) and (d) is set in a single provision in Estonian legislation, which is closer to the wording of Article 42(4)(b). By way of reference to the corresponding provision of Article 43 of the Directive, it covers the requirements provided for in Article 42(4)(d). Overall, the Estonian legislation is briefer in relation to Article 42(4), and is not explicit on other elements set out in Article 42(4)(a) regarding the technical requirements for the payment service users' equipment, and in Article 42(4)(c) regarding the language requirement of the framework contract and subsequent communication. These are inferred also as a result of other provisions of the legislation, which properly implement the Directive provision. The same is concluded on the Irish legislation in relation to Article 42(4)(d), which does not cross-refer to the equivalent to Article 43 of the Directive.

Safeguards and corrective measures

Article 42(5) of the Directive sets out the information requirements for safeguards and corrective measures. The Directive provision requires, where applicable, a description of the steps to be undertaken by payment service users to keep payment instruments safe and the way to notify payment service pro-

viders in cases of loss, theft, misappropriation or unauthorised use of these payment instruments pursuant to Article 56(1)(b) of the Directive (Article 42(4)(a)); and, if agreed, the conditions under which payment service providers reserve the right to block a payment instrument in accordance with Article 55 (Article 42(5)(b)). Information also covers the liability of the payer as laid down in Article 61, including information on the relevant amount (Article 42(5)(c)). Information is also required to be provided on how and within what period of time any unauthorised or incorrectly executed payment transactions, in accordance with Article 58, and the payment service providers' liability in case of unauthorised transactions are to be notified pursuant to Article 60 (Article 42(5)(d)); as well as the payment service providers' liability for the execution of payment transactions in accordance with Article 75 (Article 42(5)(e)). Finally, information on the conditions for refund in accordance with Articles 62 and 63 shall also be provided (Article 42(5)(f)).

All the Member States comply with the Directive provision. Differences are mainly related to cross-references to the Articles referred to in the Directive provision, which are not systematic in all national legislation, such as in the Finnish, Irish and Lithuanian legislation. However, compliance is inferred, especially as the provisions are interrelated. Lack of preciseness, such as in the transposition of Article 42(5)(b) by Estonia and the absence of reference to the agreement, is however properly covered by the provision implementing Article 55(2) of the Directive, as well as in the transposition of Article 42(5)(c) by Hungary and the lack of a reference to the relevant amount, is however covered by the implementing provision of Article 61.

Changes in and termination of framework contracts

Article 42(6) of the Directive lays down information requirements regarding changes in and termination of the framework contract. Information covers, if agreed, the acceptance of changes by the payment service users in accordance with Article 44, unless a notification is addressed to the payment service provider of the non-acceptance of the changes before the proposed date of entry into force (Article 42(6)(a)); the duration of the contract (Article 42(6)(b)); and the right of the payment service users to terminate the framework contract and any agreements in accordance with Article 44(1) and Article 45 (Article 42(6)(c)).

Similarly to Article 42(5), all Member States properly implement the Directive provision even though not all of them cross-refer to the provisions referred to in Article 42(6), such as, Denmark, Finland, Ireland and Lithuania. Others follow a streamlined approach and do not provide for all aspects provided for in the Directive provision, such as, the Czech legislation, which does not refer to the time-frame for refusing changes in relation to Article 42(6)(a), or the Danish legislation which merely refers to the right to terminate the framework contract referred to in Article 42(6)(c). However, proper implementation is not affected with reference to the provisions regulating these aspects.

Redress

Article 42(7) of the Directive lays down information requirements regarding redress. Information is provided in the form of a contractual clause regarding the law applicable and/or the competent courts (Article 42(7)(a)), as well as the out-of-court

complaint and redress procedures available to payment service users in accordance with Articles 80 to 83.

Member States comply with the Directive provision. In relation to Article 42(7)(a), only Denmark did not introduce a reference to the courts. In relation to Article 42(7)(b), Romania and the United Kingdom (England, Scotland, Wales and Northern Ireland) also add information regarding to whom payment service users may file a complaint and the methods for having access to the out-of-court complaint and redress procedures, respectively. In addition, discrepancies mainly rest with the absence of cross-references in a way similar to that of the Directive, such as in Austrian, Bulgarian, Estonian, Irish and Swedish legislation. However, this does not affect conformity.

2.3.14 Accessibility of information and conditions of the framework contract (Article 43)

According to Article 43 of Directive 2007/64/EC, payment service users have the right to request and receive the contractual terms of the framework contract, as well as the information and conditions specified in Article 42, on paper or on another durable medium. The request can be made at any time during the contractual relationship.

All the Member States properly implement the Directive provision, mostly in a way similar to that of the Directive provision. Some Member States opted for more general wording and not all duplicate the format in which the requested documents shall be provided. With reference to Article 41 of the Directive and other practices in the Member States, this requirement is implied.

2.3.15 Changes in the conditions of the framework contract (Article 44)

Article 44 of Directive 2007/64/EC lays down the requirements regarding changes in the conditions of the framework contract, including in the interest and exchange rates.

Framework contract

Article 44(1) of the Directive addresses changes in conditions of the framework contract. According to the first subparagraph of Article 44(1), payment service providers propose changes in the framework contract, including in those information and conditions specified under Article 42, in the same way as provided for in Article 41(1), no later than two months before their date of application. Pursuant to the second subparagraph of Article 44(1), payment service users are required to be informed that they are deemed to have accepted the changes if they do not notify their non-acceptance before the proposed date of their entry into force. In this case, payment service providers shall also specify the immediate right of the users to terminate the framework contract, which is to be without charge, before the changes apply.

Most Member States comply with the Directive provision and with the requirements set out therein, with the exception of Spain.

References to the Directive provisions laid down in the first subparagraph of Article 44(1) are not systematic. Where legis-

lation, such as, the Austrian, Czech, Estonian, French, German, Hungarian and Slovak one, does not refer to Article 42, the sole mention of 'changes in the framework contract' is sufficient to imply the correct application of the concerned provision. On the other hand, the Cypriot, Finnish, French, Irish and Slovenian legislation does not refer to the manner within which changes are to be carried out pursuant to Article 41(1). This is also presumed where users are bound by a framework contract as laid down in Article 41(1) and consequently by any changes in this framework contract. Nevertheless, both Finnish and French legislation integrate some requirements of Article 41(1).

In relation to the second subparagraph of Article 44(1), the Finnish legislation does not mention the right to terminate the framework contract without charge, which is nonetheless addressed in the implementing provision of Article 45(2). On the contrary, the Hungarian legislation is more specific as to the time limit of the two month period, depending upon when the period starts to run.

Spain partially conforms with the first subparagraph of Article 44(1), where changes are proposed within no less than two months, instead of no later than two months.

Interest or exchange rates

Article 44(2) of the Directive specifies the conditions under which the changes in the interest or exchange rates may be applied immediately and without notice, pursuant to prior agreement in the framework contract and to the agreed basis of reference interest or exchange rates, in accordance with Article 42(3)(b) and (c). Nevertheless, the payment service users are required to be informed on changes in the interest rate 'at the earliest opportunity', in conformity with Article 41(1), unless a specific frequency or the manner within which to provide information was agreed upon. Moreover, changes in interest or exchange rates more favourable to the users may be applied without notice. Article 44(3) also stipulates that the interest or exchange rates shall be implemented and calculated in a neutral and non-discriminative manner to users.

All the Member States comply with Article 44(2) and (3).

As regards Article 44(2), the Irish legislation does not refer to Article 42(3)(b) and (c), which however can be inferred. In relation to the more favourable changes in interest or exchange rates which may be applied without notice, only a few of the Member States differs. The Swedish legislation does not mention changes without notice if they are more favourable and the general rule thus applies to changes.

As regards Article 44(3), some national legislation follows different approaches regarding principles underlying the implementation and calculation of the interest or exchange rates. The Estonian, Irish, Latvian, and Slovak legislation highlights their non-discriminatory character and does not mention neutrality. Neutrality is thus inferred from the non-discriminatory perspective. Moreover, Article 42(3)(b) lays down the criteria for such a calculation, which can thus be regarded as neutral. On the other hand, the Czech legislation only mentions neutrality from which non-discrimination is a consequence.

The Swedish legislation has no similar implementing provision either but a definition instead, which covers the Directive provision.

2.3.16 Termination (Article 45)

Article 45 of Directive 2007/64/EC sets out the terms under which framework contracts may be terminated.

Termination

According to Article 45(1) of the Directive, payment service users may terminate a framework contract at any time, unless the parties have agreed on a period of notice, which may not exceed one month.

All the Member States comply with the Directive provision and with the requirements set out therein. Italy does not refer to any agreed notice period and is thus more favourable to users in relation to Article 45(6).

Termination free of charge

Article 45(2) lays down that the termination is free of charge. This regards framework contracts concluded for a fixed period of more than twelve months, as well as those concluded for an indefinite period. In this case, the termination is free of charge after the expiry of the twelve month period. In all other cases, charges should be proportionate and in line with costs.

Austria, Belgium, Denmark, Finland, Germany and Italy have opted to apply more favourable terms to payment users, in accordance with Article 45(6). Therefore, framework contracts in these Member States may be terminated free of charge. In Belgium, Finland, Germany and Italy, framework contracts may be terminated at any time irrespective of their duration, as provided for in Article 45(1), with a one month notice period (not chosen by Italy). None of them implement Article 45(2).

When implementing Article 45(2), Austria sets a two month period for the notice whilst Denmark sets a six month period for the framework contract and the notice. Moreover, Portugal also sets the general rule of termination free of charge for consumers and micro-enterprises, whereas the requirements of the Directive provision apply to all other users.

On the other hand, the Romanian legislation provides more detail on the costs. Regarding Article 45(2), there is only one case of partial conformity in the German legislation, which fails to provide for an obligation concerning the ability to terminate, free of charge, for any scenario.

Payment service providers' notice

Article 45(3) of the Directive sets out that, if agreed, payment service providers may terminate a framework contract concluded for an indefinite period, by giving at least two months' notice, in the same way as provided for in Article 41(1). All the Member States properly introduced this possibility in their relevant legislation.

Charges for payment services levied on a regular basis

Article 45(4) of the Directive covers the regular charges. In the case of termination of a framework contract, they are payable only proportionally up to the termination, or if they are paid in advance, they are required to be proportionally reimbursed.

Regarding charges paid in advance, the Irish legislation also states that such charges are proportionally reimbursed for 'any payment attributable to a time after the termination'.

Reservation of national laws and regulations

Article 45(5) of the Directive retains the use of national contract law provisions concerning void or unenforceable contracts.

All Member States conform with the provision, despite the fact that most Member States did not notify specific national provisions. Conformity is inferred due to the overall tenet doctrine of contract law.

More favourable provisions

Article 45(6) sets out an option allowing Member States to provide more favourable provisions for payment service users.

Austria, Belgium, Denmark, Finland, Germany, Italy and Portugal chose to apply the option in relation to Article 45(2), as previously mentioned. This is implemented by way of a general rule for terminating contracts free of charge, at any time either by any users (Belgium, Finland, Germany and Italy) or in relation to specific categories of users (Portugal). More favourable provisions also apply to framework contracts and notice of more than twelve months, and a lower period may apply in Austria and Denmark.

2.3.17 Information before execution of individual payment transactions (Article 46)

Article 46 of Directive 2007/64/EC concerns individual payment transactions under a framework contract initiated by a payer. In this case, at the payer's request, payment service providers provide explicit information on the maximum execution time and the charges payable by the payer and, where applicable, a breakdown of the amounts of any charges for this specific transaction.

All the Member States properly implement the Directive provision by means of wording which is more or less similar to the Directive provision. France applies the requirement to both framework contracts and deposit account agreements.

2.3.18 Information for the payer on individual payment transactions (Article 47)

Article 47 of Directive 2007/64/EC sets out requirements relating to information on individual payment transactions which is required to be provided to payers, as well as, related conditions after the amount is debited or the order is received.

Information requirements

According to Article 47(1), payers shall receive specific information on individual payment transactions after the amount of the transaction is debited from their account or after the receipt of the payment order where payers do not use any payment account. The information is provided by the payer's payment service provider without undue delay, in accordance with Article 41(1). Information covers a reference to identify each transaction, as well as, where appropriate, information on the payee (Article 47(1)(a)). Information also concerns the amount of the transaction, which is provided either in the currency in which the account was debited, or in the currency used for the payment order (Article 47(1)(b)); the amount of any charges for the transactions, as well as their breakdown,

where applicable, or the interest payable by the payer (Article 47(1)(c)); and, where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, as well as the amount after the currency conversion (Article 47(1)(d)). Finally, information relating to the debit value date or the date of receipt of the payment order is also provided (Article 47(1)(e)).

All the Member States comply with the Directive provision. As for the transposition, Finland merged some of the requirements of Article 47 together, which gives a less specific character to the implementing provision, whilst still complying. Other Member States, such as Austria, France, Italy and the Netherlands chose to merge information requirements intended to both payers and payees, as laid down in Articles 47 and 48, into a single provision. Provisions implementing both Directive provisions may then be cross-cutting.

The majority of the Member States follow a close, if not similar wording as that of the Directive provision. However, with reference to Article 47(1)(a), Ireland subjects the provision of information on the payee when legislation on money laundering and terrorist financing so requires, and not where it is appropriate. Reference to currencies, as laid down in Article 47(1)(b) and (d), is streamlined in the French legislation, wherein the provision transposing Article 47(1)(d) lays down all the requirements regarding currencies and also covers Article 47(1)(b).

Frequency and form

Article 47(2) of the Directive sets out requirements on the periodicity of information and the manner appropriate to store or reproduce such information. The said provision is optional and may be included in framework contracts. Periodical information shall be provided or made available at least once a month in an agreed manner so the payers can store and reproduce information unchanged. These requirements are set as a minimum.

All the Member States properly implement the Directive provision. Some Member States, such as, Finland and France, also specify the way within which the information is to be provided, that is, on paper or on another durable medium. Finland additionally mentions a network, provided such information is available for at least twelve months.

Optional information free of charge on paper

Article 47(3) of the Directive sets out an option, according to which, information shall be provided free of charge on paper once a month by payment service providers.

Austria, France, Greece, Hungary, the Netherlands, Portugal, Romania, Slovenia, Spain and Sweden chose to apply the option. Slovakia and Finland combines Article 47(2) and (3), which is however agreed between the parties and inserted in the framework contract (Slovakia) or proposed as an alternative to making information available (Finland). Belgium and the United Kingdom (Gibraltar) reserve the right to use the option, which if so, is to be implemented by secondary legislation.

Regarding the initiator, the provision of information does not rest with the payment service providers but with the users, upon request, instead, in Austria, Hungary, Portugal and Swe-

den. Regarding the beneficiary, only the consumer as payer is entitled to receive such information in Hungary, Romania and Slovenia. Regarding the format, information may be provided on another format, other than on paper form, at the request of the consumer (Romania); Slovakia is not stringent on the format, although corresponding to the ones mentioned in Article 41(1). In this regard, due to the fact that the paper format is not definitively defined, it would go against the spirit of the Directive. Consequently, as the Spanish legislation does not specify any format except the one agreed between the parties, it is regarded partially conform. Regarding periodicity, information is provided at least once a month in France and Spain.

However, in relation to the main elements of the Directive provision – paper form and free of charge, Austria requires a reasonable charge for the provision of information. The Dutch legislation does not specify that the information is to be provided free of charge and the Spanish legislation does not mention the paper format as mentioned above. Both Austria and Spain are regarded as partially conform in this regard.

2.3.19 Information for the payee on individual payment transactions (Article 48)

Article 48 of Directive 2007/64/EC sets out rules on the information on individual payment transactions which are to be provided to payees, as well as the related conditions after the transactions are executed.

Information requirements

According to Article 48(1) of the Directive, payees shall receive information on individual payment transactions after their execution. The information is provided by the payee's payment service provider without undue delay in accordance with Article 41(1). Information covers a reference to identify each transaction and, where appropriate, information on the payer, as well as any information transferred with the payment transaction (Article 48(1)(a)). Information also concerns the amount of the transaction which is provided in the currency in which the account was credited (Article 48(1)(b)); the amount of any charges for the transactions as well as their breakdown, where applicable, or the interest payable by the payee (Article 48(1)(c)) and, where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, as well as the amount before the currency conversion (Article 48(1)(d)). Information is also required on the credit value date (Article 48(1)(e)).

All the Member States properly implement the Directive provision. The same remarks as those provided for under Article 47(1) for Finland and Member States which adopt a streamlined approach, as in Austria, France, Italy and the Netherlands are also relevant in the context of the implementation of Article 48.

In relation to Article 48(1)(e), the Cypriot legislation refers to the value date, where it applies, whilst still conforming to all the Directive requirements regarding the value date, as previously mentioned.

Frequency and form

Article 48(2) of the Directive sets out requirements on the periodicity of information and the manner appropriate to store

or reproduce such information. That optional provision may be inserted in framework contracts. Periodical information shall be provided or made available at least once a month in an agreed manner to allow payees to store and reproduce information unchanged. These requirements are set as a minimum.

All the Member States comply with the Directive provision. Comments provided in relation to Article 47(2) are also relevant in relation to Article 48(2) regarding forms and medium specified in Finnish and French legislation.

Optional information free of charge on paper

Article 48(3) of the Directive sets out an option according to which, information shall be provided free of charge on paper once a month by payment service providers.

Similarly to the conclusions on the implementation of Article 47(3), Austria, France, Greece, Hungary, the Netherlands, Portugal, Romania, Slovenia, Spain and Sweden chose to apply the option. Belgium and the United Kingdom (Gibraltar) reserve the right to use the option, which if so, is to be implemented by secondary legislation. Slovakia and Finland combine Article 48(2) and (3), which is however agreed between the parties and inserted in the framework contract (Slovakia) or proposed as an alternative to making information available (Finland).

The comments present in relation to Article 47(3), also apply in a similar manner with regard to the way the Member States implement the option, which is adapted to the payee's views. Austria and Spain partially conform on the same grounds. In addition, Greece also partially conforms due to the provision of information once every three months contrary to the Directive provision.

2.3.20 Currency and currency conversion (Article 49)

Article 49 of Directive 2007/64/EC lays down the rules on the currency and currency conversion.

Agreed currency

According to Article 49(1) of the Directive, payments are made in the currency agreed between the parties.

Most of the Member States implement Article 49(1) with a similar wording. However, no such provisions in Danish, Finnish, French, German and Swedish legislation could be located. In this regard, compliance may be inferred, since this may be a contractual matter. Finland and Germany are regarded as conforming.

The Cypriot legislation further adds that the payment service provider can stipulate the currency in the cases where the payment service user is not a consumer or a micro-enterprise.

Information related to currency conversion

The first subparagraph of Article 49(2) of the Directive provides for the disclosure of all charges and the exchange rates when payment transactions are executed in another currency. Such elements are disclosed where a currency conversion service is offered before the initiation of the payment transaction, or if the currency conversion is offered at the point of sale or by the payee. In addition, payers must agree to the currency

conversion service where provided in accordance with the second subparagraph of Article 49(2).

All the Member States, except for Germany, implement the requirements laid down in the Directive provision. However, French legislation only refers to the situation where the payee offers a currency conversion service to the payer. Portuguese legislation is more specific, as it specifies the way by which the currency conversion service is done, through an automatic payment terminal. German legislation does not however mention the point of sale and is thus considered partially conform.

Moreover, the legislation of the Czech Republic, Estonia, Finland, France, Germany, Latvia and United Kingdom (England, Scotland, Wales and Northern Ireland), does not contain such a requirement relating to the agreement of the payer, which may however be inferred from the implementation of the first subparagraph of Article 49(2) as concluded in some of these assessments.

2.3.21 Information on additional charges or reductions (Article 50)

Article 50 of Directive 2007/64/EC lays down information obligations in relation to the requested charges and/or reductions for the use of a given payment instrument, which are required to be notified prior to the initiation of the payment transactions.

Payee's charges and reductions

According to Article 50(1) of the Directive, information on the requested charges and reductions is provided by the payees to the payers, prior to the initiation of the payment transactions.

All the Member States properly implement the Directive provision. Only France, Latvia, Lithuania, Slovakia and Sweden chose not to refer to the charges in relation to the implementation of Article 52(3), which provides for the possibility to prohibit or limit the right to request charges for the use of a given payment instrument. However, not all Member States that prohibit or limit such charges implement Article 50(1) in a way similar to that of the above mentioned Member States. Nevertheless, the approach in relation to Article 50(1) and 52(3) is not consistent, especially where Member States prohibit charges, even if they reserve the right to derogate from the prohibition.

Request of charges by a payment service provider or a third party

According to Article 50(2) of the Directive, information on charges is provided by the payment service providers or third parties who request charges from the users, prior to the initiation of the payment transactions.

All the Member States properly implement Article 50(2), with the exception of France and Romania, for which no such provision was located. The Slovak legislation does not refer to third parties, whilst still conforming. On the other hand, the Austrian and Czech legislation additionally set out an information obligation in the case of reductions.

2.4 Rights and obligations in relation to the provision and use of payment services

Title IV concerns the rights and obligations in relation to the provision and use of payment services. It is divided into five chapters. Chapter 1 deals with the common provisions. Chapter 2 concerns the authorisation of payment transactions. Chapter 3 on the execution of payment transactions is divided up into three sections: payment orders and the amounts transferred, execution time and value date and liability. Chapter 4 concerns data protection and Chapter 5 is also divided into two sections on complaint procedures and on out-of-court redress procedures. Articles 51 to 83 are contained in Title IV.

2.4.1 Scope for the rules on rights and obligations (Article 51)

Article 51 of Directive 2007/64/EC gives the Member States the option to exclude, in whole or in part, the applicability of certain provisions to payment service users who are not consumers. On the other hand, Title IV may also be applied to micro-enterprises in a same manner as to consumers.

The Directive provision (Article 51(4)) also provides that it does not prevent the application of other relevant EU or national legislation on consumer credit, which is also reiterated in Articles 16(5) and 30(3)³³.

Derogations for payment service users who are not consumers

Article 51(1) and (2) of the Directive provides that certain Directive provisions may not apply to payment service users who are not consumers. Article 51(1) stipulates that the exclusion of all or part of the concerned Directive provisions is agreed by the parties, whereas Article 51(2) sets out an option, which rests with the Member States.

According to Article 51(1), the Directive provisions that may be derogated from are Article 52(1), the second subparagraph of Article 54(2), Article 59, Articles 61 to 63, Articles 66 and 75. Such derogations also concern the time-period laid down in Article 58.

All the Member States properly implement the Directive provision. The majority of them follow the wording that is present therein, specifically in relation to the possibility to derogate in whole or in part from the referred provisions. Some of the Member States, like Denmark, Finland, France and Sweden, do not adopt such specific wording and adopt a derogation which is worded in a general manner, whilst still complying.

On the other hand, the Czech legislation excludes the application of some of these provisions, namely Article 52(1) and Articles 61, 62, 66, 75, 58 and 59.

According to Article 51(2), Member States may choose not to apply Article 83 on out-of-court redress, where the payment service user is not a consumer. Belgium, Denmark, Estonia, Finland, France, Lithuania, the Netherlands, Slovenia, Spain, Sweden and the United Kingdom, chose to implement the

³³ See Section 2.2. 12.

option. The implementation of the option did not require a new provision in Slovenia and Sweden. Another procedure or body is responsible for consumers through arbitration in Spain, or through an ombudsman in France and in the United Kingdom (England, Scotland, Wales and Northern Ireland). Belgium has chosen to apply the opt-out rule on non-consumers only in relation to Title III (pursuant to Article 30(2)) and Title IV (pursuant to Article 51(3)).

Micro enterprises

Article 51(3) of the Directive sets out an option providing that Title IV may be applied to micro enterprises in the same way as to the consumers.

Cyprus, the Czech Republic, Hungary, Italy, Malta, Portugal, Slovakia and the United Kingdom, chose to apply the option. Although Sweden applies the option, no corresponding provision could be located.

2.4.2 Charges applicable (Article 52)

Article 52 of Directive 2007/64/EC lays down the rules on charges applicable by payment service providers.

Charges for information obligations or corrective and preventive measures

Article 52(1) of the Directive lays down the rule, according to which, payment service providers may not charge payment service users regarding their information obligations or corrective and preventive measures dealt with in Title IV of the Directive. However, this rule may be derogated from pursuant to Articles 65(1), 66(5) and 74(2). In addition, these charges are agreed between providers and users and they are required to be appropriate and in line with the providers' actual costs.

All the Member States properly implement Article 52(1) by means of similar wording. The majority of them introduce the general rule concerning the prohibition of charges and possible exceptions pursuant to Articles 65(1), 66(5) and 74(2), which is done either by way of reference to the relevant provisions, or by way of more specific wording related to the scope of these provisions (Austria).

Alternatively, some Member States follow a more streamlined approach. Danish and Finnish legislation does not address the requirement concerning the agreement on the charges between providers and users, which is to be found in the provisions implementing the three Directive provisions. Cyprus, Germany and Ireland, lay down the main rule without referring to the three possible exceptions at all, whilst still conforming. Austria and Germany separate the information obligations from the corrective and preventive measures, due to the structure of their legislation.

On the other hand, Slovenia further specifies the conditions under which the parties to the contract may agree on the charges.

Charges on levies

On the basis of Article 52(2) of the Directive, where a payment transaction does not involve any currency conversion, payees and payers pay the charges levied by their respective payment service providers.

The majority of the Member States properly implement the Directive provision using close or similar wording to that of the Directive provision, with the exception of Spain. Bulgaria, Finland, Portugal, Slovenia and Spain, also allow the possibility to derogate from the share of the charges between the payers and the payees, following agreement, where payment transactions involve a currency conversion. Nevertheless, Spain is considered as going beyond the Directive provision in this regard and thus partially conforms. In addition, Hungary is more specific in providing what the costs are to include.

Payee's charges and reductions

In terms of Article 52(3) of the Directive, payment service providers shall not prevent the payees from requesting a charge or from offering him a reduction for the use of a given payment instrument. However, Member States may choose to forbid or limit the right to request charges, with the view of encouraging competition and promoting the use of efficient payment instruments.

Article 52(3) is correctly implemented by all the Member States, with the exception of Denmark, which does not conform, and Malta, for which no provision could be located. In this regard, Italy and Slovakia limit reductions to certain payment instruments. However, reductions are not mentioned in the legislation of Latvia, Luxembourg and Romania, where a general prohibition on charges applies instead.

The option set out in the second sentence has been implemented by Austria, Cyprus, Denmark, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Sweden and the United Kingdom. Not all legislation mentions the need to encourage competition and promote the use of efficient payment instruments and simply prohibits or limits the right to request charges.

Those that lay down a general prohibition on all charges in their legislation and consequently only allow the offering of reductions are, Austria, Greece, Latvia, Lithuania, Luxembourg, Romania, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland).

The Member States which apply a limitation, or a specific prohibition of charges on certain payment instruments are, Bulgaria, Cyprus, Denmark, France, Hungary, Italy, Portugal and Slovakia. For most of these Member States, two main trends appear, according to which, a first group specifies the payment instruments – often cash or card instruments – for which charges may be requested (Bulgaria, Cyprus, Hungary and Slovakia). In addition to the general prohibition, Lithuania also specifies certain instruments. Nevertheless, Denmark does not conform with the Directive provision due to surcharges imposed on consumers using card instruments (both debit and credit cards) issued by foreign banks in Denmark, while such surcharges are prohibited for these instruments issued by Danish banks. In 2010, the Commission addressed a letter of formal notice on the ground of discrimination; a new act has been enacted in June 2011³⁴.

³⁴ This new act will come into force in October 2011 and ensure a common application of the rules for foreign and Danish card instruments.

A second group of Member States does not specify the payment instruments concerned and secondary legislation is meant to determine them (France, Italy, Portugal, Spain and the United Kingdom (Gibraltar)). In Portugal, charges are determined either by legislation, or by the payee. In this regard, Belgium, as well as the United Kingdom (Gibraltar), introduced the wording of the Directive provision regarding the possibility to prohibit or limit the right to request charges, which is required to be further implemented by secondary legislation.

According to the Finnish legislation, the charges in question are required to be reasonable and not to exceed the payee's actual costs.

2.4.3 Derogations for low value payment instruments and electronic money (Article 53)

Article 53 of Directive 2007/64/EC lays down the possibility to derogate from certain provisions laid down in Title IV of the Directive for low value payment instruments and electronic money.

Similarly to Article 34(2), Article 53(2) provides for similar aspects such as the thresholds of low value payment instruments and possible derogations from these thresholds under paragraph 1. Not to duplicate the same conclusions on the implementation of Article 53(2) on the possibility to reduce or double the thresholds, these are presented together with Article 34(2) as previously mentioned³⁵.

Low value payment instruments

Article 53(1) of the Directive gives the possibility to payment service providers and their payment service users to agree in the framework contract on derogations from certain Directive provisions of Title IV in the case of low value payment instruments. As referred to in Article 34(1), these concern individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds not exceeding EUR 150.

According to Article 53(1), the Directive provisions which may be derogated from are Articles 56(1)(b), 57(1)(c) and (d) and Article 61(4) and (5), if the blocking or prevention of payment instruments' further use is not allowed (Article 53(1)(a)); Articles 59, 60, and Article 61(1) and (2), in case of anonymous use of payment instruments or impossibility of the provider to prove that a payment transaction was authorised (Article 53(1)(b)); Article 65(1), in case of non-execution of a payment order apparent from the context where providers are not required to notify the users of the refusal (Article 53(1)(c)); Article 66, where payers may not revoke payment orders after their transmission or consent to execute the transaction to payees (Article 53(1)(d)); and Articles 69 and 70, where other execution periods are applicable (Article 53(1)(e)).

The majority of the Member States properly implement Article 53, with the exception of Latvia and Sweden.

As to the scope laid down in Article 53(1), the characteristics of individual payment transactions are also to be regarded in the light of Article 34(1), where Member States such as Sweden, did not repeat them in its corresponding provision.

The same observations as those provided for under Article 34, are also applicable in the context of Article 53, since both provisions are repeating some elements related to low value payment instruments (characteristics, possible reduction or doubling of the thresholds). Bulgaria and Hungary refer to the thresholds in their national currencies and the United Kingdom (England, Scotland, Wales and Northern Ireland) and Romania only sets out those thresholds related to the implementation of Article 53(2).

However, Latvia is regarded as not conforming to the scope of the Directive provision, as its legislation lays down an obligation to derogate, rather than a possibility based on an agreement between providers and users.

Regarding the provisions that can be derogated from, the Lithuanian and Swedish legislation does not refer to Article 65(1), or its equivalent, in relation to Article 53(1)(c), and the Danish, Finnish, French, Italian, Lithuanian, and Swedish legislation, does not include a reference corresponding to Article 66, in relation to Article 53(1)(d). However, their scope is unequivocal. Moreover, the derogations laid down in points (a) to (e) are implemented in a disseminated way throughout the Danish and Finnish legislation, relating to the relevant provisions, which thus does not require any reference. However, the absence of the concerned provisions referred to in Article 53(1)(a), coupled with streamlined wording, led to partial conformity in the case of Sweden, in relation to the said provision.

Regarding the wording, some national legislation streamlines provisions when compared to the Directive provision, whilst still conforming. In relation to Article 53(1)(a), the Czech, Danish, French and Slovenian legislation is briefer, and does not refer to the prevention of the further use of these payment instruments. In relation to Article 53(1)(c), the meaning of 'apparent in the context' in case of non-execution, has been interpreted and transposed differently, such as in Estonia and France. Estonian legislation lays down that the refusal to notify occurs when the information cannot be reasonably expected from providers and the French legislation links the refusal to the awareness of the users at the time of the transmission of the payment order. In relation to Article 53(1)(d), the Swedish legislation streamlines the wording by simply providing for the impossibility to revoke after the approval of the execution of a payment order. However, non-conformity was concluded in the case of Sweden in relation to Article 53(1)(b), due to the non-specific nature of the provision as well as the absence of a sufficiently precise provision.

Application of Articles 60 and 61 with regard to electronic money

According to Article 53(3) of the Directive, Articles 60 and 61 shall apply also to electronic money. However, these Articles shall not apply if the payer's payment service providers do not have the ability to freeze the payment account or block the payment instrument. The second sentence of Article 53(3) sets out an option to limit this derogation to payment accounts or payment instruments of a certain value.

³⁵ See Section 2.3.5.

Most Member States properly implement the first sentence of Article 53(3), using similar wording, with the exception of Sweden, for which no provision could be located. In addition, Portugal partially conforms, since reference to the exception related to the inability to freeze payment accounts or to block payment instruments is not referred to, and the legislation thus rather lays down a general rule of application of the equivalent provisions to Articles 60 and 61.

Not all of the Member States qualify the term 'electronic money', by referring to specific national legislation, as referred to in the Directive provision: only Belgium, Cyprus, Finland, Greece, Luxembourg, Malta, the Netherlands and Spain do so.

The option set out in the second sentence of Article 53(3) is implemented by Austria, Belgium, Bulgaria, Cyprus, Germany, Italy, Romania and Slovenia.

Austria, Germany, Romania and Slovenia, apply the option to both payment accounts and payment instruments. Belgium, Cyprus and Italy, only apply the option to payment instruments, whilst Belgium specifies that all the instruments mentioned in Article 53(1) are concerned, whereas Cyprus and Italy specify, respectively, that stored funds and prepaid payment instruments are concerned.

These Member States also set different thresholds, specifically: up to EUR 150 in Romania and Slovenia, EUR 200 in Germany, EUR 400 in Austria, EUR 500 in Italy and, by contrast, EUR 1000 in Cyprus. Belgium applies the thresholds set forth in Article 53(1).

2.4.4 Consent and withdrawal of consent (Article 54)

Article 54 of Directive 2007/64/EC regulates the manner and procedure within which consent is to be given and withdrawn as well as its effect upon the payment transaction in the case of its absence.

Consent as a condition for authorising a payment transaction

According to Article 54(1) of the Directive, payment transactions are considered to be authorised only if the payers gave their consent for their execution. They may be authorised prior to or after their execution, if, in this latter case, the payers and their providers so agree.

All the Member States correctly implement Article 54(1) of the Directive and mostly follow the wording of the Directive provision. However, national legislation, such as that of Finland and Sweden, is not as specific as the Directive provision in relation to the moment within which consent shall be given – prior to or, if agreed, after the execution of the transaction, which can however be inferred. Consequently, this lack of preciseness is not regarded as affecting the level of conformity of the implementing provisions.

Czech legislation additionally specifies that consent may be given by means of a specific payment instrument as provided for in Article 55(1).

Form

Article 54(2) of the Directive requires payers and their providers to agree upon the form of giving consent to execute one or a series of payment transactions. The absence of consent leads to unauthorised payment transactions.

Most of the Member States have implemented the Directive provision in a correct manner, with the exception of Portugal and Sweden. The majority follow the wording of the Directive provision. Nevertheless, some national legislation, such as, the Czech, Danish, German and United Kingdom (England, Scotland, Wales, Northern Ireland) legislation, does not specifically mention that in the absence of consent, payment transactions are to be considered as unauthorised, although this is inferred from the fact that a transaction cannot be executed without consent.

Nevertheless, no similar provision was identified in the Swedish legislation, which adopts a general provision on consent related to Article 54(1). However, aspects related to the form of consent are dealt with in other provisions of the Directive, as an element in favour of proper implementation, for example in Article 42(2)(c), in relation to payment transactions based on a framework contract, which is properly implemented by Sweden. The absence of consent is not thus mentioned. However, it is presumed *a contrario sensu*, as mentioned above. The Portuguese legislation partially conforms, as far as unauthorised transactions result from non-compliance with the form of the consent agreed, and thus appears restrictive when compared to the ambit of the Directive provision.

Withdrawal

In terms of Article 54(3) of the Directive, the payer may withdraw consent at any time, provided it is withdrawn within the deadline for irrevocability laid down in Article 66 of the Directive. The withdrawal of consent to execute a series of payment transactions also invalidates any future payment transactions, which would be considered as being unauthorised.

Most of the Member States, with the exception of Sweden, implement Article 54(3) of the Directive in a proper manner, by way of similar wording. In this regard, consent is inferred in the Czech legislation, which is less specific in relation to the second sentence of the Directive provision.

Again, no such provision was identified in the Swedish legislation and the implementation may be however inferred from the correct implementation of Article 66.

Procedure

Pursuant to Article 54(4) of the Directive, the payers and their providers shall agree on the procedure for giving consent.

The majority of the Member States properly implement the Directive provision, with the exception of Sweden. Similarly, as for the previous points of Article 54, Sweden has no such proper provision, but proper implementation may be inferred from the implementation of other related Directive provisions.

2.4.5 Limits of the use of the payment instrument (Article 55)

Article 55 of Directive 2007/64/EC provides the requirements for agreement on spending limits for payment transactions, executed through a payment instrument, as well as the right of blocking payment instruments.

Spending limits

Article 55(1) of the Directive provides for cases where a specific payment instrument is used for the purposes of giving consent. Payers and their payment service providers may agree on spending limits for these payment transactions.

However, all the Member States properly implement Article 55(1), mostly by means of wording which is similar to that of the Directive provision. In Finnish and Swedish legislation, no such similar provision was located. However, the possibility is foreseen within their legislation as a result of inference from the implementation of for example Article 42(2)(f) on information about payment transactions based on a framework contract.

On the other hand, further specification on spending limits is provided in the Slovenian legislation. In addition, some national legislation is clearer on the purpose of such instruments as authenticating instruments, such as German legislation and as preventing instruments to curb losses resulting from fraudulent or unauthorised use such as Italian legislation.

Blocking

In terms of Article 55(2) of the Directive, payment service providers may reserve the right to block the payment instrument if so agreed in the framework contract. The blocking is based upon objectively justified reasons, which are related to the security of payment instruments, to the suspicion of their unauthorised or fraudulent use or, in cases of payment instruments with a credit line, to a significantly increased risk of the inability of the payers to fulfil their liability to pay.

All the Member States correctly implement Article 55(2), mostly by way of a similar wording, with the exception of France. However, 'objectively justified reasons' may be transposed by means of different wording such as, 'reasonable grounds' in the legislation of the United Kingdom (England, Scotland, Wales and Northern Ireland). Alternatively, the terminology is not mentioned at all in the Slovak and Swedish legislation, although it is inferred.

France partially conforms due to the absence of a reference to a 'payment instrument with a credit line'.

Notification of the blocking

Pursuant to Article 55(3) of the Directive, payment service providers inform the payers of the blocking of the payment instrument and the underlying reasons. Such a notification, which is agreed, shall be done before the blocking, where possible, or immediately thereafter at the latest. However, objectively justified security reasons or prohibitions in other relevant EU or national legislation may justify the non-notification.

Article 55(3) is properly implemented in all the Member States, by means of wording which closely follows that of the Directive provision.

Unblocking

According to Article 55(4) of the Directive, payment service providers unblock the payment instruments or replace them with new ones once the reasons for blocking no longer exist.

All the Member States correctly implement the Directive provision, mainly by similar wording. Additionally, German legislation requires prompt information of the users in the case of unblocking. Finland also additionally provides that the users may request the unblocking from the providers. The legislation of Germany, Hungary, and United Kingdom (England, Scotland, Wales and Northern Ireland) further specifies the timely manner within which the unblocking should be done.

2.4.6 Obligations of the payment service user in relation to payment instruments (Article 56)

Article 56 of Directive 2007/64/EC lays down obligations, which rest with payment service users, in relation to payment service instruments and underlying security measures.

Obligations

Article 56(1) of the Directive subjects payments service users, who are entitled to use payment service instruments, to certain obligations. According to Article 56(1)(a), they shall use payment instruments in accordance with the terms governing their issue and use. Nevertheless, according to Article 56(1)(b), they shall notify, without undue delay, the payment service providers, or the entities specified by the latter, when they become aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

All the Member States properly implement Article 56(1) of the Directive, mostly by means of similar wording. However, no corresponding provision implementing Article 56(1)(a) could be located in the German legislation.

The reasons underlying notification under Article 56(1)(b), follow different approaches in some national legislation. Not all elements – loss, theft or misappropriation – as laid down in the Directive provision are mentioned, and Member States use some of these circumstances to encompass others, such as, 'misappropriation' encompasses 'theft' in Denmark, Finland and Spain. Instead, Cyprus and Germany have introduced the concept of 'exposure to abuse' and 'abusive use'. On the other hand, Sweden has adopted a more streamlined approach, wherein 'disappearance' replaces 'loss' and 'theft' and Slovenia did not introduce the 'unauthorised use', although it is inferred from the other underlying reasons.

On the other hand, Danish legislation only refers to the provider, which is regarded as being used in a general manner and encompassing entities that are linked and specified by the providers.

Security

Article 56(2) of the Directive provides, that the payment service users are required, in particular, to take all reasonable steps to keep the personalised security features of the payment instrument safe, as soon as it is received.

All the Member States comply with the Directive provision. Bulgaria also introduced additional aspects underlying the way to keep security features safe.

2.4.7 Obligations of the payment service provider in relation to payment instruments (Article 57)

Similarly to Article 56 for payment service users, Article 57 of Directive 2007/64/EC lays down the obligations which rest with payment service providers in relation to payment service instruments and underlying security measures.

Obligations

Article 57(1) of the Directive sets out the obligations upon payment service providers who issue payment instruments. Payment service providers shall make sure that only payment service users have access to the personalised security features of the payment instruments, without prejudice to their own obligations under Article 56 (Article 57(1)(a)), as well as, to refrain from sending unsolicited payment instruments, except where a payment instrument, already given to the payment service user, is to be replaced (Article 57(1)(b)). They shall also ensure availability of appropriate means, at all times, for payment service users to be able to make a notification, pursuant to Article 56(1)(b), or to request unblocking, pursuant to Article 55(4), as well as, to provide the payment service users, on request, the means to prove that such notification was made during a period of eighteen months after the notification (Article 57(1)(c)). They shall also prevent all use of the payment instrument after the notification pursuant to Article 56(1)(b) has been made (Article 57(1)(d)).

All the Member States comply with the Directive provision, with the exception of Latvia.

Regarding Article 57(1)(a), Hungarian legislation has favoured a streamlined approach while referring to the framework contract and its conditions, rather than to the security features. On the other hand, regarding Article 57(1)(c), Latvian legislation also requires the proof of the payment service providers during eighteen months after the request to unblock the payment instrument.

In addition, not all of the national legislation necessarily duplicates cross-references in their implementing provisions, in a way similar to that of the Directive provision, such as Denmark, Finland, Ireland, Slovakia and Sweden, whilst still complying with the requirements set out therein. However, in relation to Article 57(1)(a), due to the lack of a cross-reference within the Latvian legislation, partial conformity was observed.

Risk bearer

According to Article 57(2) of the Directive, payment service providers bear the risk of sending payment instruments to the payers or of sending any personalised security features of it.

All the Member States properly implement the Directive provision, with the exception of Hungary and Sweden. No corresponding provision was located in the legislation of these two Member States.

The Romanian legislation is more explicit on the extent of the risk bearer, which concerns all the risks of both solicited and unsolicited payment instruments. The Latvian legislation also specifies the possibility to derogate from the providers' liability, if so agreed with the payment service users.

2.4.8 Notification of unauthorised or incorrectly executed payment transactions (Article 58)

Article 58 of Directive 2007/64/EC subjects rectification for unauthorised or incorrectly executed payment transactions giving rise to a claim to notification. In such an event, payment service users notify payment service providers without undue delay. The notification by the payment service user is required to take place on becoming aware of the said payment transactions giving rise to a claim, including the non-execution or defective execution under Article 75, and no later than thirteen months after the debit date, unless, where applicable, the information on these payment transactions was not provided or made available by the payment service providers in accordance with Title III.

All the Member States comply with the Directive provision, mostly by using similar wording.

For those Member States that streamline the transposition, elements such as 'rectification' (the Czech Republic and Denmark), or 'undue delay' (Germany), are not referred to and are related to the form of the transposition and structure of legislation. In a similar vein, the words 'incorrectly executed transactions' and 'unauthorised transactions' are not repeated in Swedish legislation. The Hungarian legislation provides for immediate refunds for any such unauthorised and incorrectly executed transaction, beyond the cases for unauthorised transactions, as laid down in Article 60(1).

Differences also relate to the absence of the cross-reference to the equivalent of Article 75 in some national legislation, such as that of Finland, France, Lithuania and Slovenia. However, the scope of their legislation aims to encompass any unauthorised or incorrectly executed payment transactions.

2.4.9 Evidence on authentication and execution of payment transactions (Article 59)

Article 59 of Directive 2007/64/EC contains rules on the burden of proof and the requirements/procedures, which need to be satisfied in case payment service users deny authorisation of a payment transaction or claim its incorrect execution.

Burden of proof

Article 59(1) of the Directive places the burden of proof upon payment services providers where payment service users deny authorisation of an executed payment transaction or claim its incorrect execution. Payment service providers shall prove the authentication of payment transactions, their accurate recording, their entering in the accounts, as well as, the fact that they are not affected by a technical breakdown or some other deficiency.

All the Member States properly implement the Directive provision, with the exception of Sweden, for which no such provi-

sion was located, on the ground that liability from payment service provides results *a contrario sensu* from cases where payers are not liable, as dealt with in Article 61. Some national legislation refers to the related procedures, such as the Czech and Danish legislation, without using the word 'authentication'. The Finnish legislation is in turn more general on this, whilst still complying. The Finnish legislation also distinguishes between the cases where proof is given, either for denial of authorisation or for claims of incorrect execution and related proof requirements. On the other hand, the Estonian legislation does not directly provide that the payment transaction is required to be entered into the accounts.

Limits of payment instruments as proof

Article 59(2) of the Directive provides for the use of payment instruments as proof in case of denial of authorisation to execute payment transactions by the payment service users. In this case, the recording of the use of payment instruments by the payment service providers, does not necessarily constitute sufficient proof to prove, either that the transaction was authorised by the payers or that the payers acted fraudulently or failed, with intent or gross negligence, to fulfil one or more of their obligations under Article 59.

All the Member States implement the Directive provision, with the exception of Sweden, on the same grounds above mentioned. Most of the Member States have either followed the wording of the Directive provision, or, although using different wording, are in line with the Directive provision. The Czech Republic does not directly implement the Directive provision and the general provisions laying down the principle of weighing evidence are applicable here. French legislation does not specifically mention the fraudulent use, which is however inferred.

2.4.10 Payment service provider's liability for unauthorised payment transactions (Article 60)

Article 60 of Directive 2007/64/EC deals with refunds in the case of unauthorised payment transactions, as well as additional financial compensation based on the applicable law of the contract.

Refund

Article 60(1) of the Directive obliges the payment service providers to refund, immediately, the amount of the unauthorised payment transaction to the payers. Where applicable, they shall also restore the debited payment account to the state in which it would have been, had the unauthorised payment transaction not taken place.

All the Member States, with the exception of Sweden, implement the Directive provision, using wording which is close to that of the Directive provision. Danish legislation follows another approach, according to which, providers are liable for any losses and are required to refund the amount to the payers. In the case of Sweden, no such provision was found, on the same grounds as explained under Article 59.

Further financial compensation

According to Article 60(2) of the Directive, further financial compensation may be determined. Such additional compensation is determined in accordance with the law applicable to contracts concluded between payers and their payment service providers.

Most of the Member States, with the exception of Denmark, Germany, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland), directly implement such a possibility. Some of them refer to legislation on damages as the law applicable to contracts on such matters (Czech Republic, Estonia and the Netherlands), or to any other legislation (Hungary).

Other Member States adopt a more specific approach in relation to the implementation of Article 60(2), such as Lithuanian legislation providing for more favourable terms, Belgian legislation specifying the meaning of further financial compensation, and Portuguese legislation specifying the related interests. For these Member States, further financial compensation is also generally addressed in the light of Article 76 of the Directive.

Denmark, Germany, Sweden, and the United Kingdom (England, Scotland, Wales and Northern Ireland) do not have any similar provision to that of the Directive, at least an explicit one, also in relation to Article 76. However, the possibility is not excluded and may be decided by the parties.

2.4.11 Payer's liability for unauthorised payment transactions (Article 61)

Article 61 of Directive 2007/64/EC provides for the exception to the rule of payments service providers' liability, laid down in Article 60, whereby payers are liable for the losses relating to any unauthorised payment transactions or misappropriation. Where payers act fraudulently, they bear the losses.

Rule

Article 61(1) of the Directive sets out a derogation from Article 60, according to which payers, and not payment service providers, bear the losses relating to any unauthorised payment transactions. Such a liability is based upon the use of lost or stolen payment instruments or their misappropriation, as a result of their failure to keep the personalised security features safe. The Directive provision also sets an amount up to a maximum of EUR 150.

Most of the Member States, with the exception of Ireland, Spain and Sweden, correctly implement the Directive provision.

The implementation of the Directive provision shows different approaches, wherein not all the aspects provided for in the Directive provision are repeated. German legislation does not refer to the misappropriation of a payment instrument, but more broadly to 'other abusive use' and French legislation, on the contrary, deals only with the loss or theft of the payment instrument. In this regard, the Swedish legislation appears too restrictive in relation to liability resulting from the failure to keep the personalised security features safe, and thus partially conforms.

Danish legislation only mentions the unauthorised use of a payment instruments, although it generally refers to the application of the personalised security features. According to the French legislation, the payer is not liable if the transactions are executed with the use of the personalised security features: the contrary entails his responsibility. Failing to specify the security features, the Spanish legislation partially conforms.

Bulgarian, Danish, Hungarian, Spanish and UK (England, Scotland, Wales and Northern Ireland) legislation, refers to the amount in their national currency. Slovak legislation refers to a lower amount of EUR 100 with reference to Article 61(3). The Directive may be unclear as to whether the amount of EUR 150 is a maximum reference to be laid down by legislation to be determined depending on the circumstances or whether it can be derogated, for any losses laid down in Article 61(1) and (3), where Member States chose to apply Article 61(3). In contrast, Ireland also applies a lower amount of EUR 75 and partially conforms. The Austrian legislation is also based upon the amount to losses resulting from slightly negligent breach.

Fraud, intent and gross negligence

Article 61(2) of the Directive deals with cases where the losses relating to any unauthorised payment transactions are incurred by the fraudulent acting of the payers, or by his failure to fulfil his obligations under Article 56 with intent or gross negligence. In these cases, the amount of the losses borne by the payer, are not limited to the amount specified in paragraph (1).

Most of the Member States, with the exception of Cyprus, Ireland and Portugal, correctly implement the Directive provision.

However, some Member States, for instance Finland, Italy and Slovenia, deal with the liability of the users in general, or with the liability of the account holders in the case of Sweden. The Swedish provision also provides a maximum limit for consumers.

Slight differences in wording are to be found in Finnish legislation, which does not contain any reference to fraudulent acts, whilst still covering the scope of the Directive provision. On the contrary, Austrian legislation mentions misappropriation. Portugal follows the Directive wording although it does not mention all acts of the payers on the basis of which they shall bear the losses. They cannot be inferred and partial conformity is thus observed.

A case of partial conformity was revealed in the Irish legislation, since, although it states that the payer shall bear all the losses, the non-application of the maximum amount of EUR 150 is not mentioned. The same was observed in the Cypriot legislation, since it goes beyond the scope of the Directive provision, in providing more details regarding the situations in which the payer shall bear all the losses.

Option for reducing the payer's liability

Article 61(3) of the Directive is optional and provides for the possibility to reduce the liability referred to in Article 61(1) and (2), if the payer failed to fulfil his obligations under Article 56, but has neither acted fraudulently nor with intent. In doing so, the nature of the personalised security features of the pay-

ment instrument and the circumstances under which it was lost, stolen or misappropriated, shall be taken into account.

Austria, Belgium, Finland, France, Hungary, Ireland, Italy, the Netherlands, Portugal, Romania, Slovakia, Sweden and the United Kingdom, chose to apply the option. However, although Denmark notified the implementation of the option to the Commission, the corresponding provision could not be located.

National legislation implements this option either by a wording similar to that of the Directive, or in a more general manner. In some Member States, the payer's liability is limited to a certain amount (EUR 150 in Finland, EUR 75 in Ireland, EUR 50 in Romania, EUR 100 in Slovakia, SEK 1200 for consumers in Sweden, and GBP 50 in the United Kingdom (England, Scotland, Wales and Northern Ireland)).

Austrian legislation reduces the liability by providing for a share of the liability. In addition, Italian legislation provides for a reduced liability in the event of payment instruments having particular security features. Slovenian legislation provides for a reduction of liability in a broad manner; however this applies only if the account holder is a consumer. Hungarian legislation is more specific in the description of the cases involving personalised security features.

A case of partial conformity was observed in Portugal, where the national legislation does not explicitly refer to the reduction of liability in cases where the payer has neither acted fraudulently, nor with intent. Partial conformity is also observed in Latvia. Notwithstanding that Latvia did not notify the application of the option, the adopted provision allows the payment service providers to reduce the liability.

Non-liability for the payer after notification

Article 61(4) of the Directive foresees that the payers shall not bear any financial consequences resulting from the use of the lost, stolen, or misappropriated payment instrument, after notification in accordance with Article 56(1)(b). However, this does not apply if they have acted fraudulently.

All the Member States correctly implement the Directive provision, with the exception of Denmark, for which no corresponding provision was located. According to the Cypriot legislation, non-liability of the payer after the notification is not an obligation, but can only be agreed upon by the parties to the framework contract.

Non-liability in the absence of appropriate means for the notification

According to Article 61(5) of the Directive, the payer shall not be liable for the financial consequences resulting from the use of the payment instrument, if the payment service provider does not provide appropriate means for the notification, at all times, of a lost, stolen or misappropriated payment instrument. However, this does not apply if the payer has acted fraudulently.

All the Member States correctly implement the Directive provision.

2.4.12 Refunds for payment transactions initiated by or through a payee (Article 62)

Article 62 of Directive 2007/64/EC lays down the conditions for refunds for authorised and executed payment transactions, when they are initiated by or through a payee.

Refund of authorised payment transactions

Article 62(1) of the Directive lays down that payment service providers shall refund the payers for authorised and executed payment transactions. The payer's right is subject to the absence of reference to the exact amount of the transaction in the authorisation (Article 62(1)(a)), which exceeded what the payers could reasonably expect on the basis of certain conditions – previous spending patterns, conditions in the framework contract and relevant circumstances of the case (Article 61(2)(b)). To that end, payment service providers may request the payers to provide factual elements relating to such conditions (Article 62(1), second subparagraph), even though direct debits may be refunded without meeting such conditions if so agreed in the framework contract (Article 62(1), fourth subparagraph). The full amount is refunded (Article 62(1), third subparagraph).

All the Member States properly implement the requirements laid down in Article 62, with the exception of Finland and Sweden. Most Member States follow the structure of the Directive provision.

On the implementation, some Member States have chosen a more or less stringent approach. For instance, the Danish legislation refers to the absence of approval of the exact amount in relation to Article 62(1)(a). The Czech legislation does not explicitly mention the refund of the 'total' amount, which is here regarded in the light of general requirements on unjustified enrichment.

'Factual elements' proving the conditions are met under the second subparagraph of Article 62(1) are expressed differently, such as 'data' (Lithuania), 'evidence' (Latvia and Slovenia), 'documents reasonably necessary to ascertain the conditions are met' (United Kingdom), 'documents and any further factual elements' (Italy), or 'all elements' (France). They tend to show a more or less formal approach with the view to covering as much elements as necessary to prove that the amount of the transactions exceeded expectations, without affecting the legal scope of the Directive provision.

In relation to the fourth subparagraph of Article 62(1), the Czech legislation is more general and provides for an agreement on more favourable conditions. Nevertheless, the Swedish legislation does not contain a similar provision to that of the fourth subparagraph of Article 62(1) and partially conforms with this provision to the extent that such a requirement is related to Article 51(1), wherein the parties may agree on different conditions as regards direct debits, although consumers would be excluded from such a derogation, unless the general rule applies.

Generally, the implementation also emphasises a streamlined approach favoured by some Member States. Some national legislation is direct and does not mention that payer's entitlement to refund applies to already executed transactions. It rather sticks to the initiation of the transactions as in the

Czech, Danish, Hungarian, Swedish and UK (England, Scotland, Wales and Northern Ireland) legislation.

Other legislation gathers some elements of the Directive provision in relation to refund. In this regard, the transposition of Article 62(1)(b) and the second subparagraph of Article 62(1), have been streamlined in both Czech and Hungarian legislation, which does not repeat the conditions referred to in Article 62(1)(b). These are referred in relation to the payment service providers' request laid down in the second subparagraph of Article 62(1), although Hungary only lays down a general rule regarding the burden of proof upon the payers.

The same can be concluded on the reference to the refund of the total amount of payment transactions, under the third subparagraph of Article 62(1). It is either dealt with in a streamlined way within the provision implementing Article 62, such as, in Spanish or UK (England, Scotland, Wales and Northern Ireland) legislation, or it is to be read together with Article 63(2), such as, in Bulgarian, Hungarian, German and Latvian legislation. Nevertheless, this may be clarified as mentioned in the case of Finland.

Reference exchange rate

Article 62(2) of the Directive clarifies the extent to which exchange rates may be used as a condition under Article 62(1)(b). In this regard, the reference exchange rate is given precedence if agreed by the parties, according to Articles 37(1)(d) and 42(3)(b), and the payers do not need to rely on other currency exchange reasons.

All the Member States properly implement the Directive provision. Finnish legislation has no such provision, although compliance is inferred with precedence given to the reference exchange rate in relation to the implementation of Articles 37(1)(d) and 42(3)(b).

No right to refund

Article 62(3) of the Directive provides for cases where payers have no right to refund. Such as agreed in the framework contract, payers are not entitled to a refund if consent to execute the payment transaction directly to the payment service provider was given, and, where applicable, information on the future payment transaction was provided or made available at least four weeks before the due date by the payment service provider or by the payee.

The majority of the Member States properly implement the requirements laid down in the Directive provision, with the exception of Finland. Finland partially conforms, since such a possibility is limited to direct debits only.

2.4.13 Request for refunds for payment transactions (Article 63)

Article 63 of Directive 2007/64/EC provides for the underlying conditions for the request for refund by the payer and payment service providers' decision to refund or refuse refunding.

Payer's request for refund

Article 63(1) sets out an eight-week period from the date when the funds were debited, for the payer to request the refund of

an authorised payment transaction initiated by or through a payee.

All the Member States comply with the Directive provision, most of which use wording which is similar to that of the Directive provision. The time limit is properly addressed and Bulgarian legislation refers to it in terms of days (fifty-six days), rather than in weeks. In this regard, legislative practices show that not all Member States duplicate reference to Article 62 due to unequivocal link and structure, nor do they refer to transactions initiated by or through payees on the same ground.

Payment service providers' refund or refusal

Article 63(2) of the Directive provides that payment service providers shall fully refund or refuse to refund the payer within ten days from receipt of the request. Refusal shall be justified and an indication of the bodies from which redress can be sought, in accordance with Articles 80 to 83 of the Directive, is required: if the payer does not accept the justification provided (Article 63(2), first subparagraph). However, refusal does not apply to direct debits, as laid down in the fourth subparagraph of Article 62(1) (Article 63(2), second subparagraph).

All the Member States comply with the Directive provision, with the exception of Latvia, which partially conforms due to incomplete cross-references.

Regarding the first subparagraph, the Lithuanian legislation limits information on where the matter, in the case of a refusal, shall be referred to consumers.

Regarding the second subparagraph, no corresponding provision could be located in the Austrian, Cypriot, Czech, Danish, Finnish, Slovenian and Swedish legislation. For all these Member States, with the exception of Sweden, an implementing provision is not necessary, due to the possibility provided for in the fourth subparagraph of Article 62(1) and properly addressed. As previously mentioned, no similar provision to that of the fourth subparagraph of Article 62(1) was located in Swedish legislation. Consequently, the possibilities for direct debits do not apply, unless decided by the contracting parties.

2.4.14 Receipt of payment orders (Article 64)

Article 64 of Directive 2007/64/EC provides for the requirements underlying the point in time of receipt of payment orders made by payment service users for their payment service providers.

Rule

According to Article 64(1) of the Directive, the moment when the payer's payment service providers receive a payment order constitute the point in time of receipt, whether the payment order is transmitted directly by payers or indirectly by or through payees. If the point in time of receipt is not a business day, the payment order is deemed to be received on the following business day. A cut-off time, near the end of a business day, may also be established by payment service providers, beyond which any payment order received is deemed to have been received on the following business day.

All the Member States properly implement the Directive provision. Although the originator of the payment order is not spec-

ified, such as in Finnish, French, Slovenian and Swedish legislation, it is implied.

On the point in time, the Danish legislation is less specific on receipt beyond the business day, with the exception of cases for cut-off time where it is specified, and is thus inferred. On the other hand, other legislation is more detailed. The German legislation defines the business day. Estonian and Hungarian legislation specifies the point in time related to the cut-off time, which must not be significantly different from the end of a business day under Estonian legislation.

According to the Hungarian legislation, the cut-off time shall not be more than two hours before the end of the business day. It also provides for the situation where the payment order is queued and for the case of credit transfer based on a remittance summons, where the payment order is considered as being received when the funds are made available.

Agreed day

Article 64(2) of the Directive provides for the possibility to agree on the execution day of a payment order, pursuant to Article 69, for example on a specific day, at the end of a certain period or on the day on which payers set funds at their payment service providers' disposal. If the agreed day is not a business day for payment service providers, the payment orders received are deemed to have been received on the following business day.

All the Member States properly implement the Directive provision, using close wording to that of the Directive provision, even though not all of them mention the equivalent of Article 69. The Danish, Estonian and Swedish legislation is briefer, since it only refers to the agreed day. Cases laid down in the Directive provision are thus implied.

2.4.15 Refusal of payment orders (Article 65)

Article 65 of Directive 2007/64/EC lays down requirements that shall be applicable in case of refusal of a payment order.

Notification

Article 65(1) of the Directive sets out obligations upon payment service providers, where the execution of a payment order is refused. The refusal is notified to payment service users, as well as, if possible, the reasons for refusal and the procedure for correcting any factual mistakes, unless prohibited by other relevant EU or national legislation (Article 65(1), first subparagraph). The payment service providers provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 69 (Article 65(1), second subparagraph), upon charge for the notification, if the refusal is objectively justified (Article 65(1), third subparagraph).

The majority of the Member States properly implement the Directive provision, with the exception of the Czech Republic and Denmark.

Some national legislation is briefer. The Swedish legislation does not explicitly mention that the notification is not required when it is prohibited by other legislation, as laid down in the first subparagraph of Article 65(1). The Danish, German and Swedish legislation does not duplicate some aspects underly-

ing the relationship between payment service providers and users, such as the way to provide and make the notification available, as agreed between the parties.

Member States also introduce additional requirements or elements regarding notification, which can also be related to payment service providers' information obligations and charges. Lithuanian legislation also includes cases where notification is not required due to the technical impossibility to notify in relation to the first subparagraph of Article 65(1). In relation to the second subparagraph of Article 65(1), the Hungarian legislation is more specific on the time limit for notification, as well as, on the formal aspects relating to the way refusal is notified. The Finnish legislation additionally requires the notification before the moment the payment transaction should have been made. With regard to the third subparagraph of Article 65(1), Cypriot, Finnish and Hungarian legislation also specifies that the charges shall not exceed the actual costs of the notification.

However, the Czech Republic and Denmark partially conform, since they do not provide that charges for the notification may be included if the refusal is 'objectively justified'.

Prohibition to refuse

Article 65(2) of the Directive provides that the execution of an authorised payment order shall not be refused by the payer's payment service provider, if all the conditions set out in the payer's framework contract are met, irrespective of whether the payment order is initiated by a payer or by or through a payee. This does not apply if this is prohibited by other relevant EU or national legislation.

All the Member States comply with the Directive provision. Nevertheless, if no such provision was located in the Danish and French legislation, the principle is the execution of an authorised payment transaction in compliance with the conditions of the framework contract.

Other national legislation is also more concise on some aspects, such as not repeating the author of the payment order (Finland and Germany), as well as, possible derogation in accordance with other legislation (Sweden).

Legal scope

According to Article 65(3) of the Directive, a payment order for which execution is refused, is deemed not to have been received for the purposes of Articles 69 and 75.

The Directive provision has been mainly implemented by way of a specific provision in the majority of the Member States, with the exception of Denmark and Finland. Both Member States nevertheless comply, on the ground that a refused order cannot be considered as having been received.

2.4.16 Irrevocability of a payment order (Article 66)

Article 66 of Directive 2007/64/EC provides the general rule on the irrevocability of payment orders and the limited circumstances and time limits within which payment orders may be revoked.

Irrevocability of a payment order

According to Article 66(1) of the Directive, the payment service users may not revoke a payment order once it has been received by the payer's payment service providers, unless otherwise specified in Article 66.

Article 66(1) of the Directive is correctly implemented by all the Member States, by means of similar wording.

Transaction initiated by or through the payees

If payment transactions are initiated by or through the payee, Article 66(2) of the Directive provides that the payers may not revoke the payment order after it has been transmitted, or consent has been given to execute the payment transaction to the payee.

Article 66(2) is correctly implemented by all the Member States, by means of similar wording.

Direct debits

According to Article 66(3) of the Directive, in the case of direct debits and without prejudice to refund rights, payers may revoke the payment order. This shall be done at the latest by the end of the business day preceding the day agreed for debiting the funds.

All the Member States properly implement the Directive provision, by means of similar wording.

However, the Finnish legislation does not mention refund rights. Alternatively, the Italian legislation also requires the notification to be made to the payee's payment service providers.

Agreed day

Article 66(4) of the Directive stipulates that in the case referred to in Article 64(2), payment service users may revoke a payment order at the latest by the end of the business day preceding the agreed day.

Article 66(4) is correctly implemented by all the Member States, mainly through similar wording.

Revocation after the time limits

Pursuant to Article 66(5), revocation after the time limits set under paragraphs 1 to 4 can only be agreed between the payment service users and their providers. In the case referred to in paragraphs 2 and 3, the payee's agreement is also required. Revocation may also be charged upon following an agreement in the framework contract.

All the Member States properly implement the Directive provision. However, Finnish legislation does not mention the possibility to agree on charges for revocation. Alternatively, the Cypriot legislation requires charges to be reasonable and to correspond to the actual costs.

2.4.17 Amounts transferred and amounts received (Article 67)

Article 67 of Directive 2007/64/EC deals with amounts transferred and amounts received and the possible deduction of charges.

Obligation to transfer the full amount of the payment transaction

Article 67(1) of the Directive obliges the payer's and payee's payment service providers, as well as any intermediaries of the providers, to transfer the full amount of the payment transactions and to refrain from deducting charges from the amount transferred.

All the Member States properly implement the Directive provision, whilst mainly using similar wording. Sweden also explicitly excludes fees' deduction in any circumstances other than those specified. On the other hand, the Finnish legislation is generally worded and does not specify the refraining from deducting charges.

In addition, while the Czech and Slovak legislation provides a definition of intermediaries, the Cypriot and UK (England, Scotland, Wales and Northern Ireland) legislation, leaves out the reference to the intermediaries, which are thus inferred.

Deduction of charges from the amount transferred

Pursuant to Article 67(2) of the Directive, the deduction of the charges of the payment service providers from the amount transferred before crediting it to the payees may be agreed by the payees and their providers. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

Article 67(2) is correctly implemented by all the Member States, mainly through the use of similar wording.

The Czech legislation additionally provides for the same possibility in the case of paying the transferred amount. In turn, the Slovenian legislation provides for the possibility to agree on making the charges available for the payees.

Reception of the full amount in the case of deduction of other charges

According to Article 67(3) of the Directive, the payer's payment service providers shall ensure that the payees receive the full amount of the payment transactions initiated by the payers where charges, other than those referred to in Article 67(2), are deducted from the amount transferred. The payee's payment service providers have a similar duty where the payment transactions are initiated by or through the payee.

All the Member States, with the exception of the Czech Republic, correctly implement the Directive provision.

In addition, the Cypriot legislation is more specific, as it links the deduction of other charges to third parties acting as intermediaries. Nevertheless, the Czech legislation follows a more restrictive approach, while referring to the situation of breach of the obligation under paragraphs (1) and (2) of the Directive provision, instead of referring to other charges and thus partially conforms.

2.4.18 Scope for the execution time and value date (Articles 69 to 73) (Article 68)

Article 68 of Directive 2007/64/EC provides the scope of application to payment transactions of rules regarding execution time and value date.

Payment transactions' currencies

Article 68(1) of the Directive sets out that the requirements regarding execution time and value date, under Section 2 of this Title of the Directive, apply to payment transactions in euro (Article 68(1)(a)); national payment transactions in the currency of the Member State outside the euro area concerned (Article 68(1)(b)); and to payment transactions involving only one currency transaction between the euro and the national currency of the Member State concerned (Article 68(1)(c)). In this latter case, the currency conversion is effected outside the euro area and, for cross-border transactions, the transfer is made in euro.

Member States mostly comply with the Directive requirements regarding payment transactions, either by way of a similar provision or by way of a streamlined provision. However, as a result of their streamlined nature, Portugal and Spain partially conform, whilst Belgium, Estonia, France, Ireland and Italy raise possible issues.

Cyprus introduces a negative requirement, according to which, the payment transactions referred to in the Directive provision do not apply to payees who do not have an account with the payment service provider (Article 70), and to cash placed on a payment account (Article 71). The Finnish and Estonian legislation also follows negative wording, according to which, some provisions of their legislation are excluded since they do not fall within the scope of the Directive provisions under Section 2.

However, the approach followed in relation to Article 68(1)(b) shows various practices, which are also related to the wording present in the Directive provision. Most Member States follow the Directive provision and the Danish and Hungarian legislation also specifies the provision corresponding to Article 68(1)(a) does not involve any currency conversion. On the other hand, the Belgian, French, Irish and Italian legislation does not have a similar provision to that of Article 68(1)(b) and rather covers both transactions in euro, as dealt with under Article 68(1)(a), and those involving a currency conversion, as dealt with in Article 68(1)(c). It may be regarded as not being necessary to transpose point (b) as observed in the case of Belgium and France, which are in the euro area. Thus, the extent to which Article 68(1)(b) shall be transposed may appear unclear. Estonian legislation does not provide for such a provision implementing Article 68(1)(c).

In addition, Bulgaria, Denmark, Hungary, Lithuania, Romania, Sweden and the United Kingdom, specify their national currencies, whilst others have a more general approach without such a specification. The French, Finnish and Hungarian legislation also refers to currencies of a Member State of the EEA in relation to Article 2(2).

As for Article 68(1)(c), Portugal and Spain partially conform in relation to currency conversion, which is not mentioned.

Other transactions

Article 68(2) of the Directive also provides for the extension of the scope of Section 2 of the Directive, with the exception of Article 73, to other payment transactions. Payment service users and providers may however decide otherwise. In this regard, should they agree on a longer period other than that laid down in Article 69, for intra-Community payment transactions, such a period shall not exceed four business days following the point in time of receipt in accordance with Article 64.

All the Member States properly implement the Directive provision. However, no such provision could be located for Germany. The approach is sometimes streamlined and all the elements of the Directive provision are not repeated. They bear to mention the scope, that is, the transactions other than those mentioned in Article 28(1), and the related time limit of four business days.

The Estonian, Finnish, French and Slovak legislation for instance covers transactions in the EEA. So does the Hungarian legislation, whilst still specifying that these requirements apply even when payment service providers are located outside the euro area.

Slovenia applies the Directive requirements to transactions, whilst also laying down such specific provisions to cash payments.

2.4.19 Payment transactions to a payment account (Article 69)

Article 69 of Directive 2007/64/EC regulates the time limits for the transfer of payment transactions to payment accounts.

Credited amount time limit

Article 69(1) of the Directive provides that the payer's payment service providers ensure that, after the point in time of receipt, in accordance with Article 64, the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day. However, this period may be derogated from by an agreement by the payers and their payment service providers and be extended up to three business days until 1 January 2012. Such a period may also be extended by a further business day for paper-initiated payment transactions.

Most Member States properly implement the Directive provision regarding the rule on the time limit for crediting and the possible derogations upon agreement between the payers and their providers, as well as those regarding paper-initiated payment transactions. However, not all the Member States seem to adopt these two derogations.

Most of the national legislation follows the content of the Directive provision, even though not all refers to the provision corresponding to Article 64, which is nevertheless unequivocal in cases where the implementing measures follow a similar structure to that of the Directive. Some of these Member States also specify and set out extra detail.

As to the possibility to extend the time limit up to three business days until 1 January 2012, this rule applies to cross-border payments in the Czech Republic, Denmark and Romania, whilst in Slovenia it applies by way of exclusion to national

transactions. Czech legislation mentions transactions, other than those in the territory of the Czech Republic in the Czech currency, as well as, for the conversion between the euro and Czech currency. Portuguese legislation also excludes internal transfers between payment accounts held with different payment service providers.

Under Italian legislation, the reference period may be that of the SEPA, provided it does not exceed three business days. Spain adds that the time limit should be up to two business days in the case of transactions initiated and received in Spain. Nevertheless, such a possibility was not taken, if not located in Dutch, Hungarian, Slovak and Swedish legislation for instance.

As for the time limit for paper-initiated payment transactions, Spain and the United Kingdom (England, Scotland, Wales and Northern Ireland) lead the way clearly showing how the additional business day is related to the time limits set in the Directive provision. The majority of the Member States follow the Directive provision's wording. However, the legislation of the United Kingdom relates this additional business day, either to the reference time limit set in the Directive provision, or to the extension of the time limit of up to three business days until 1 January 2012. Moreover, the Italian legislation also sets a specific extension by an additional day of the time limit until 1 January 2012. Slovenia also sets a time limit of the end of the next business day following receipt for special paper-based money orders until 31 December 2011.

Value date and amount available

Article 69(2) of the Directive states that the payee's payment service providers shall value date and make the amount of the payment transactions available to the payee's payment account after receipt of the funds by the payment service providers in accordance with Article 73.

All the Member States comply with the Directive provision. Not all provide for similar explicitness, especially in relation to the obligation upon payee's payment service providers to attribute a value date, which is nevertheless to be read in the light of Article 73 and related requirements regarding the value date and availability of funds.

Direct debit

Article 69(3) of the Directive states that the payee's payment service provider shall transmit a payment order initiated by or through the payees to the payer's payment service providers within the time limits agreed between the payees and their providers, with the view to ensuring settlement, as far as direct debit is concerned, on the agreed due date.

All the Member States comply with the Directive provision. Conciseness is observed in the Finnish provision, which is thus labelled in general wording, whilst still complying. On the other hand, Spain also mentions transactions carried out with payment cards in addition to direct debit.

2.4.20 Absence of payee's payment account with the payment service provider (Article 70)

Article 70 of Directive 2007/64/EC regulates the availability of funds where payees do not have a payment account with the payment service provider. The latter makes the funds available to the payee in compliance with the requirements set out in Article 69.

All the Member States properly implement the Directive provision. The obligation is implied under Estonian legislation, where payment service providers have an obligation to immediately make payments available to payees.

2.4.21 Cash placed on a payment account (Article 71)

Article 71 of Directive 2007/64/EC sets out requirements for the availability and value date of cash placed on a payment account. If consumers place cash on a payment account in the currency of that payment account, the payment service providers must ensure that the amount is made available and value dated immediately after the point of time of the receipt of the funds. For payment service users who are not consumers, the amount is made available and value dated at the latest on the next business day after the receipt of the funds.

All the Member States comply with the Directive provision. In addition, the Czech and Slovak legislation goes further, in the sense that the Slovak legislation distinguishes between a situation where cash is placed both in the payment institution and in a technical device. Moreover, the Czech legislation additionally lays down a time limit for a situation where a consumer or a micro-enterprise places cash in the currency of a non-Member State in which the payment account is maintained.

2.4.22 National payment transactions (Article 72)

Article 72 of Directive 2007/64/EC provides an option for the Member States to shorten the maximum execution times prescribed in Section 2 for national payment transactions.

Belgium, Bulgaria, the Czech Republic, Lithuania, Portugal, Slovakia and Slovenia have decided to adopt the option. The Netherlands and the United Kingdom (Gibraltar) have transposed the wording of the Directive provision and thus reserve the possibility to use the option. Although the use of the option was notified by Finland and Hungary, no such provision reducing the maximum execution times could be located.

Most of the Member States which chose to apply the option, such as Bulgaria, the Czech Republic, Lithuania, Portugal, Slovakia and Slovenia, reduce the time limit for the crediting the amount to the payee's payment service providers, in the case of national payment transactions, from the end of the same business day to the time of receipt of the payment order (in relation to Article 69(1)).

In Belgium, the time limit is restricted in relation to electronically initiated national payment transactions between two

payment accounts whereby the payment service provider of the payer and of the payee is the same person.

2.4.23 Value date and availability of funds (Article 73)

Article 73 of Directive 2007/64/EC sets out rules on the credit and debit value dates and on the corresponding availability of funds.

Credit value date

Article 73(1) of the Directive determines that the credit value date for the payee's payment accounts is no later than the business day following the amount that was credited to their payment service provider's account. The latter is responsible for ensuring the immediate disposal of the amount of the payment transactions to the payees after the credit.

All the Member States comply with the Directive provision. Most of the transposing legislation reads close to the Directive provision.

Immediateness is reflected in 'as soon as possible' under Swedish legislation, and 'without undue delay' under Slovak legislation.

National legislation also goes further, such as in the case of Slovenian legislation, which also foresees the credit on another day than a business one. The Spanish legislation also applies to checks or other transactions subject to a suspenseful clause when the credit is carried out in the account of the payment service provider. The Austrian legislation also specifies that the concerned point in time is also set as the base for the calculation of interest payments on the account of the payee, if permitted by law.

Debit value date

According to Article 73(2) of the Directive, the debit value date for the payer's payment accounts is no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

All the Member States properly implement the Directive provision, whilst following close wording.

Some of the Member States specify the meaning of the debit value date as the earliest debit value date for the payer's account, which shall not be earlier than the actual debit value date of this account. The German legislation also refers to the earliest time when payment accounts are debited. On the other hand, it is not earlier than the business day on which the amount is debited under Italian legislation. The debit value date, in connection with the execution of the payment transaction, is the same, or later than the date when the account is debited under Slovenian legislation.

As also mentioned above, the Austrian legislation also goes further and refers to that date as the base for the calculation of interest payments on the account of the payer, if permitted by law.

2.4.24 Incorrect unique identifiers (Article 74)

Article 74 of Directive 2007/64/EC regulates the unique identifier, which as a rule is set to ensure the correct payment order.

Rule

Article 74(1) of the Directive states that payment orders executed in accordance with the unique identifier, are deemed to have been correctly executed with regard to the payee specified by the unique identifier.

All the Member States comply with the Directive provision, while following close wording.

Further specifications in national legislation relates to due diligence of the payer's payment service providers on the coherence of the unique identifier, which can be a ground for rejecting a payment order with information to the payer. The same rule also applies when further information is given about the payees, other than that specified in the contract under Czech legislation.

Non-liability in case of incorrectness

According to Article 74(2) of the Directive, if the unique identifier provided by the payment service users is incorrect, payment service providers are not liable under Article 75 for non-execution or defective execution of the payment transaction (Article 74(2), first subparagraph). In such a situation, the payer's payment service providers make reasonable efforts to recover the funds involved in the payment transaction (Article 74(2), second subparagraph), which they may charge for, if agreed in the framework contract (Article 74(2), third subparagraph).

Most of the Member States comply with the Directive provision, with the exception of the Czech Republic, which partially conforms in relation to the first subparagraph of Article 74(2) and Denmark, for which no provision could be located in relation to the same provision.

In relation to the first subparagraph of Article 74(2), the Austrian and German legislation also specifies the non-liability of the providers if they pay due diligence (Austria), or their consequences depriving substance to any claims if the unique identifier was incorrect (Germany). On the other hand, the Estonian legislation contains a reserve, according to which non-liability applies, unless otherwise stated by law.

However, the Czech legislation partially conforms for not specifying non-liability where the unique identifier is incorrect.

In relation to the third subparagraph of Article 74(2), the Hungarian legislation also refers to users' commissions, fees and other payment obligations, as charges for recovery of the funds. The Cypriot legislation also requires reasonable charges in keeping with the actual cost to the payment service provider of recovering the funds, in line with general principle laid down on charges in the Directive.

Additional information

Article 74(3) of the Directive states that if payment service users provide additional information to that required under Articles 37(1)(a) or 42(2)(b), the payment service providers are liable only for the execution of payment transactions, in ac-

cordance with the unique identifier provided by the payment service users.

All the Member States properly implement the Directive provision, with the exception of Denmark, for which no corresponding provision was located. Some legislation is more concise, from which some elements are inferred, such as in the Czech legislation.

2.4.25 Non-execution or defective execution (Article 75)

Article 75 of Directive 2007/64/EC provides for the liability of the payer and the payee's payment service providers for the incorrect execution of a payment order, where either the payers or the payees initiated the payment order.

Liability of the payer's payment service providers

Article 75(1) of the Directive sets out the liability of the payer's payment service providers, where a payment order is initiated by payers. The liability is without prejudice to Article 58, Article 74(2) and (3) and Article 78. They are liable to the payers for the correct execution of the payment transactions. However, they should not be liable where they can prove to the payers and, where relevant, to the payee's payment service providers that the latter received the amount of the payment transaction in accordance with Article 69(1). In this case, the payee's payment service providers shall be liable to the payees for the correct execution of the payment transaction (Article 75(1), first subparagraph).

As a consequence of the payer's payment service provider liability, they shall refund without undue delay, to the payers, the amount resulting from the non-executed or defective payment transaction. They also have the obligation, where applicable, to restore the debited payment account to the state in which it would have been in the absence of the defective payment transaction (Article 75(1), second subparagraph). They shall also immediately place the amount at the payee's disposal, including, where applicable, credit the corresponding amount to the payee's payment account (Article 75(1), third subparagraph). In addition, they shall also, on the payer's request, make immediate efforts to trace the payment transaction initiated by the payers and notify them of the outcome (Article 75(1), fourth subparagraph).

All the Member States properly implement Article 75(1) of the Directive provision, with the exception of Denmark, for which no provision relating to the second subparagraph of the Directive provision could be located. In this regard, the extent to which Article 75 is properly addressed by Denmark is unclear. In addition, Germany partially conforms in relation to the fourth subparagraph of Article 75(1). Most Member States opted to use similar or close wording to that of the Directive provision.

The Austrian and Danish legislation is more concise and provides that the burden of proof rests upon the payee's payment service providers after receipt of the amount. Differences rest with the approach. The Danish legislation also mentions the losses resulting from incorrect transactions in relation to the payer's payment service providers' liability.

Regarding the refund under the second subparagraph of Article 75(1), the Czech legislation further provides that the payers notify the payment service providers that they would prefer a refund or a restoration, rather than the execution of the payment transaction. The Estonian legislation does not mention crediting the amount to the payee's account, which is nevertheless inferred. However, the implementation of this requirement into Danish legislation has been assessed by way of implementation of the main rules on the credit value date and availability.

On the tracing of transactions under the fourth subparagraph of Article 75(1), national legislation tends to be more specific. Firstly, Danish legislation is more stringent than the Directive and requires that providers shall always make efforts to that end, which is to the benefit of the payers. Secondly, Bulgarian legislation also emphasises due diligence when tracing the transactions, whilst reasonable efforts are emphasised in the Czech and Slovak legislation. The Hungarian legislation also requires considering the circumstances, whilst Slovenian legislation defines the term. On the other hand, the Austrian legislation is less specific and does not explicitly refer to the tracing of the payment transaction, which is implied from the payer's payment service providers' liability. Nevertheless, the German legislation, which is not as specific on liability and the requirement for immediate traceability, partially conforms.

Liability of the payee's payment service providers

Article 75(2) of the Directive sets out liability upon the payee's payment service providers where a payment order is initiated by or through payees. Their liability is without prejudice to Article 58, Article 74(2) and (3), and Article 78. They are liable to payees for the correct transmission of the payment order to the payer's payment service providers in accordance with Article 69(3). They shall immediately re-transmit the payment order to the payer's payment service providers (Article 75(2), first subparagraph).

Consequently, the payee's payment service providers are liable to the payees for handling the payment transaction in accordance with Article 73. They shall ensure that the payees immediately dispose of the amount of the payment transaction after it has been credited to their account (Article 75(2), second subparagraph). Where they are not liable under the first and second subparagraphs, the payer's payment service providers are liable to the payers. The latter shall then, 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 in the absence of the defective payment transaction (Article 75(2), third subparagraph). The payee's payment service providers shall, on request, make immediate efforts to trace the payment transaction and notify the payees of the outcome (Article 75(2), fourth subparagraph).

All the Member States properly implement the Directive provision, with the exception of the Czech Republic, Denmark and Germany, which raise issues of conformity. Most of the Member States transposed the provision in a similar manner when compared to the Directive provision.

On the re-transmission laid down in the first subparagraph of Article 75(2), the Estonian and Latvian legislation subjects the re-transmission of the payment order to the user's request.

Consequently, they are less stringent than the Directive provision. On the other hand, the Finnish and Lithuanian legislation is streamlined and does not refer to the re-transmission, which is implied. The Danish legislation nevertheless partially conforms, for not explicitly addressing the obligation to re-transmit the payment order.

On the immediate disposal under the second subparagraph of Article 75(2), some legislation follows a streamlined approach, whilst still complying with the Directive provision. The Estonian and Finnish legislation does not refer to the immediate crediting of the payee's account. The Swedish legislation only refers to the equivalent of Article 73. The Finnish legislation also specifies cases where payees do not have a payment account with the payment service providers. However, the implementation of this requirement into Danish legislation has also been assessed on the basis of the main rules on the credit value date and availability.

On refunds, the Estonian and Swedish legislation does not provide that the refund shall be made 'without undue delay'. It is however noted, that the payment service provider of the payer is obliged to execute a payment order from the payer and that any breach of this duty makes the payment service provider of the payer eligible to compensation. However, under the Danish legislation, the main rule on refunds for payment transactions initiated by or through payees applies here. No such a similar provision was identified in the German legislation either, although general rules on compensation may be applicable. In addition, the Czech legislation does not implement the second sentence of this subparagraph and is thus observed as partially conform.

On the tracing of payment transactions, the same remarks as mentioned above are also applicable here.

Liability for charges and interests

Article 75(3) of the Directive stipulates that the payment service providers are liable to their respective payment service users for any charges for which they are responsible, as well as for any interest to which payment service users are subject to as a consequence of the non-execution or defective execution of the payment transaction.

All the Member States comply with the Directive provision. However, no such provision could be located within the Danish legislation.

Differences mainly rest with the way charges and interests are dealt with in national legislation. The German legislation provides that any interest and charges, namely those the service provider invoiced to the user shall be compensated by the service provider. The Latvian legislation only refers to the compensation of charges. On the other hand, the Romanian legislation refers to all losses entailed.

2.4.26 Additional financial compensation (Article 76)

Article 76 of Directive 2007/64/EC provides for the possibility of further financial compensation. Such additional financial compensation is determined in accordance with the law applicable to contracts concluded between payers and their payment service providers.

In relation to Articles 60(2) and 77(2), the majority of Member States, with the exception of Denmark, France, Germany, Sweden and the United Kingdom (Gibraltar), have transposed the Directive provision.

Member States adopted a general provision pursuant to Article 76, as well as specific provisions pursuant to Articles 60(2) and 77(2), such as, Belgium and Lithuania, although the content of all these provisions is similar in principle. In this regard, France did not adopt such a general provision, although it provides for such a possibility exclusively in relation to Articles 60(2) and 77(2).

Some of them refer to legislation on damages as the law applicable to contracts on such matters (the Czech Republic, Estonia, the Netherlands, Slovakia), or to any other legislation (Hungary), or to general provisions (Austria).

Other Member States adopt a more specific approach in relation to the implementation of Article 60(1), such as the Lithuanian legislation, providing for more favourable terms, Belgian legislation specifying the meaning of further financial compensation, and Portuguese legislation specifying the related interests. For these Member States, further financial compensation is also generally addressed in the light of Article 76 of the Directive.

For these above mentioned Member States, which did not transpose the provision, the absence of such a provision does not however exclude the possibility either. This is the reason why France and the United Kingdom (England, Scotland, Wales and Northern Ireland) are regarded as conform.

2.4.27 Right of recourse (Article 77)

Article 77 of Directive 2007/64/EC provides for the right of recourse regarding respective liabilities, as well as financial compensation.

Payment service providers' liability

Article 77(1) of the Directive concerns the share of liabilities between payment service providers. Payment service providers' liability may be attributable to another payment service provider or to an intermediary. In such a case, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under Article 75.

All the Member States properly implement the Directive provision. The implementation shows various approaches. While the Slovak legislation refers only to intermediaries and not explicitly to other payment service providers, which is implied, the Austrian legislation does not mention the intermediaries.

The Czech legislation excludes compensation from one-leg transactions and from transactions in a currency other than that of the Member State's currency.

Additional financial compensation

Article 77(2) of the Directive provides for the possibility of further financial compensation in accordance with agreements between payment service providers and/or intermediaries and in accordance with the law applicable to the agreement concluded between them.

The Danish, German, Hungarian, Swedish and the United Kingdom legislation, does not contain a corresponding provision and implementation is not deemed necessary by virtue of reference to contractual law in principle. For all other Member States, even though the wording of Article 77(2) slightly differs from that of Articles 60(2) and 76, similar comments on the national implementing provisions can be formulated.

2.4.28 No liability (Article 78)

According to Article 78 of Directive 2007/64/EC, abnormal and unforeseeable circumstances are such circumstances that exclude liability under Chapters 2 and 3 of Title IV. These circumstances, which are beyond the control of the party pleading for their application, have unavoidable consequences despite efforts to the contrary and they also apply where payment service providers are bound by other legal obligations covered by national or Community legislation.

All the Member States, with the exception of the Czech Republic, Denmark and Portugal, correctly implement the Directive provision, despite differences in their approach. However, cases of '*force majeure*' are defined in all the legislation. Some Member States closely follow the Directive provision's wording, whilst others provide for additional details on the meaning and underlying consequences of such circumstances.

The Czech legislation partially conforms, since payment service users and providers may agree to exclude '*force majeure*' and consequently compensation may be excluded. The Danish legislation is also considered as partially conform, due to the omission of the payment service providers' obligations. On the contrary, Portuguese legislation partially conforms, since these obligations are only limited to those in relation to the prevention of money laundering and terrorist financing and are thus limited in their application.

2.4.29 Data protection (Article 79)

Article 79 of Directive 2007/64/EC provides that the processing of personal data by payment systems and payment service providers shall be permitted, when this is necessary to safeguard the prevention, investigation and detection of payment fraud. Such processing is carried out in accordance with Directive 95/46/EC.

Most of the Member States comply with Article 79, with the exception of Estonia.

Not all the national legislation explicitly reflects the content of the Directive provision. Nevertheless, the requirements relating to the necessity of data processing under the Directive provision are implied. These requirements differ from one Member State to another, such as the exchange of information without prior consent (Bulgaria, the Czech Republic and Spain), the confidential nature of such information (Slovenia), underlying professional secrecy requirements (Finland), the possibility to collect information, as provided for in framework contracts and claims (Hungary). More detail on specific data (Denmark and Slovakia) as well as their use and restrictions (Denmark) are provided. Denmark and Hungary refer to enforcement of claims in their legislation. Both the Austrian

and Swedish legislation relates the processing of data to record keeping.

Belgium, Denmark and Portugal additionally provide, in their legislation, for the possibility to specify the terms of the processing of data through secondary legislation.

Some legislation refers to the national measure(s) implementing Directive 95/46/EC, such as Belgium, Cyprus, Greece, Finland, Italy, Portugal, Sweden and Slovenia, amongst others. On the other hand, French legislation on data processing is applicable to the legislation on payment services.

The Estonian legislation does not conform with Article 79. To be applicable, the Estonian legislation on data protection should be mentioned in the legislation on payment services.

2.4.30 Complaints (Article 80)

Article 80 of Directive 2007/64/EC lays down a general rule on complaints and related procedures, including information to users on out-of-court and redress procedures.

Procedures to submit complaints

Article 80(1) of the Directive requires procedures allowing payment service users and other interested parties, including consumer associations, to submit complaints to the national authorities with regard to the payment service providers' alleged infringements of the national legislation implementing Directive 2007/64/EC.

Except for cases of literal or almost literal transposition, the transposition varies from one Member State to another and the requirements laid down in the Directive provision are mainly implied, showing that procedures and authorities are set up to receive complaints. However, no explicit provision was located for Finland and the Netherlands. Luxembourg partially conforms.

Competence to receive complaints is related to the supervision of the compliance with the legislation on payment services. An authority – in principle the national authority – is responsible for dealing with such complaints. In turn, complaints related to consumers may be dealt with by the relevant authority. Sanctioning is one of the tasks of the national authorities in cases of breach of the rules (Cyprus, the Czech Republic, Estonia, France, Hungary, Ireland, Latvia, Malta, Slovenia, Sweden and the United Kingdom (England, Scotland, Wales and Northern Ireland)), which may include administrative penalties (Austria and Bulgaria). Nevertheless, such provisions setting out the duties and responsibilities of the national authorities were also already present before the transposition of the Directive, such as in the Netherlands.

Belgium, the Czech Republic, France, Germany, Lithuania, Malta, Romania, Slovenia and Sweden transposed Article 80(1) in a more detailed manner, either in a single provision or in a disseminated way. Such legislation provides for various aspects, such as the entities entitled to complain (Germany and Lithuania), the available procedures including out-of-court complaints (Belgium and Lithuania), the underlying competences (Romania), the way to lodge complaints (Lithuania), or generally the duties of the national authorities (France). The Romanian legislation sets out detailed rules with regard to the

different aspects of the competences. The Italian and Portuguese legislation refers to the reservation of the right to bring proceedings before the court in the context of Article 80(1) and not of Article 80(2).

There is usually no explicit mention to the payment service users, the other interested parties and the consumers associations, except in Belgian, Bulgarian, Cypriot, Greek, Luxembourg, Maltese, Portuguese, Romanian, Slovak and the UK (Gibraltar) legislation.

Payment service providers' liabilities for infringements (Cyprus), including their agents and branches (Austria, Bulgaria and Ireland) are also addressed. Both the Latvian and Romanian legislation distinguishes between natural and legal persons in the context of Article 80(1).

However, Luxembourg partially conforms due to a narrower scope than the Directive provision and the exclusion of certain payment service providers from complaints.

Information on the out-of-court complaint and redress procedures

Article 80(2) of the Directive lays down that national authorities shall inform complainants about out-of-court complaint and redress procedures in accordance with Article 83, where it is appropriate and without prejudice to the right to bring proceedings before a court in accordance with national procedural law.

Most of the Member States comply with the Directive provision, with the exception of Denmark, Estonia, Finland, Ireland, the Netherlands and Sweden for which no provision was located.

Austria, Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Hungary, Italy, Luxembourg, Malta, Portugal, Slovenia and the United Kingdom set out clear rules in this respect.

Additionally, the Portuguese authority only informs about the out-of-court complaint and redress procedures whenever it cannot solve a matter, or the matter does not fall within its competences. Belgium transposed Article 80(2) in an indirect manner, showing that the out-of-court and redress procedures are at the disposal of the complainants through information resting upon payment service providers.

Austria and Hungary require their national authorities to indicate, in the reply, the addresses of the arbitration body. On the other hand, such information is provided by payment service providers in accordance with Article 42 of the Directive.

For the above mentioned Member States, for which no provision could be located, as stated for the Netherlands and Sweden, the need for transposition is counterbalanced by other general legislation, in which such requirements are laid down.

2.4.31 Penalties (Article 81)

Article 81 of Directive 2007/64/EC lays down rules on penalties with the view to imposing penalties for infringements of the national provisions adopted pursuant to the Directive.

Effective, proportionate and dissuasive penalties

Article 81(1) of the Directive requires rules on penalties with a view to addressing and punishing infringements of national legislation on payment services. All measures necessary to ensure that these penalties are implemented shall also be ensured. Such penalties shall be effective, proportionate and dissuasive.

Most of the Member States transposed Article 81(1), sometimes in a somewhat disseminated way, through provisions laying down sanctions and penalties in cases of infringements. In the Latvian legislation, penalties are dealt with in other relevant legislation. National legislation also provides for rules that cannot be derogated from and whose breaches lead to fines and/or criminal penalties. It may also provide for certain types of actions. These provisions are either precise or general. The Dutch and Swedish legislation lays down a general provision requiring actions to be taken to remedy a situation (Sweden) or administrative penalties (the Netherlands).

However, there are no such references to the effectiveness, proportionality and dissuasiveness of the penalties, with the exception of the Portuguese legislation. Legislation is mostly concrete in relation to the penalties and defines various sanctions according to the nature of the infringements. Only the Hungarian and Luxembourg legislation refers to the principle of proportionality whilst the Lithuanian legislation refers to the principle of justice and reasonableness. The Romanian legislation also specifies subsequent amendments to the rules on penalties.

Notification

Article 81(2) of the Directive requires that Member States notify the Commission of the rules adopted referred to in Article 81(1) and of the national authorities referred to in Article 82 by 1 November 2009. Notification shall be done without delay in case there are any subsequent amendments.

As mentioned above, data as to the date of the notification of the information required under this provision was not communicated as the purpose of this conformity assessment is related to substance rather than to procedure. Dates of entry into force of the national legislation may be an indicator such as observed for the United Kingdom as a potential case of partial conformity; although not sufficient. Information nevertheless conforms with that available on the Commission's website.

2.4.32 Competent authorities (Article 82)

Article 82 of Directive 2007/64/EC lays down the rule on the necessary competence of national authorities in dealing with complaints procedures and penalties.

Necessary measures

According to Article 82(1) of the Directive, the administration of the administrative procedure surrounding the complaints and penalties in Articles 80(1) and 81(1) by the national author-

ities shall be guaranteed, and all necessary measures to that end shall be taken.

Many of the Member States chose their central banks as the national authority. Others provide authority upon State bodies, such as consumer agencies and federal services. The number of national authorities differs also. For example, Cyprus and Finland have two and Malta and Romania have three different authorities. The United Kingdom has a general authority, but for Gibraltar there is a separate body.

The implementation of the Directive provision is not explicit in most cases. This also relates to the implementation of Articles 80 and 81, as well as to the scope of legislation in relation to the competences of national authorities. There was no such provision located for Austria and Estonia. Denmark and Sweden did not transpose the provision but compliance is inferred.

Infringements

According to Article 82(2) of the Directive, for cases of infringements or suspected infringements of the national legislation adopted pursuant to Titles III and IV, the national authorities are those of the home Member State of the payment service provider, except when they are operating abroad under the right of establishment. In this case, the national authorities are those of the host Member State.

All the Member States conform with Article 82(2), with the exception of Denmark and Estonia, for which no provision could be located. Moreover, the extent to which the Austrian legislation implements the Directive provision is unclear. The Maltese legislation partially conforms due to the unclear distinction between infringements or suspected infringements falling under the competence of the home Member State and those falling under the competence of the host Member State.

2.4.33 Out-of-court redress (Article 83)

Article 83 of Directive 2007/64/EC requires adequate and effective out-of-court complaint and redress procedures for the settlement of disputes, including for those of a cross-border nature.

Adequate and effective out-of-court complaint and redress procedures

Article 83(1) of the Directive requires that out-of-court complaint and redress procedures are put into place and are adequate and effective for the settlement of disputes arising between payment service users and their providers for disputes concerning rights and obligations arising under provisions implementing the Directive. Existing bodies may be used to that end where appropriate.

All the Member States established such procedures and related bodies are competent to act in such matters.

As for the national authorities, these are either set up for the purpose of settling disputes within the framework of the legislation on payment services (the Czech Republic, France and Hungary), or they are existing authorities. They are arbitration bodies (the Czech Republic, France, Hungary, Ireland and the United Kingdom (England, Scotland, Wales and Northern Ireland)), national authorities (Luxembourg) and/or consumer ones (Belgium, Estonia, Finland, Greece and Sweden). There is

either a single body (the Czech Republic, France, Hungary, Luxembourg) or at least two, to deal with disputes related to consumers on the one hand, and any other disputes on the other hand (Denmark, Finland, Greece and Romania).

Some legislation also provides for further detail on the procedure (Austria, Belgium, Bulgaria, Romania and Slovenia). Belgian and Estonian legislation sets out two procedures one of which is addressed to consumers. In Luxembourg an amicable settlement procedure is set up and is provided in Romania mediation. Under Bulgarian legislation, the payment service providers shall also adopt internal rules and procedures for solving disputes.

In Germany, out-of-court complaint and redress procedures fall under legislation other than that on payment services. On the other hand, no such provision could be located in Danish legislation, although it is inferred by way of information provided on such procedures under Article 42(7)(b).

Cross-border disputes

Article 83(2) stipulates that in the case of cross-border disputes, those bodies shall cooperate actively in resolving such disputes.

This provision is correctly implemented by the majority of the Member States. However, no similar provision could be located in Danish, Dutch, French, German, Latvian and Swedish legislation. Conformity is presumed on the basis of other relevant legislation such as observed for Germany and Sweden. Finland partially conforms as far as the extent of cooperation is unclear in the legislation, including that on disputes.

Some legislation provides for further detail with regard to the respective cooperation on the procedure, such as Luxembourg, whilst the Portuguese authority is required to be part of FIN-NET network, hence favouring cooperation.

2.5 Final provisions

Title VI concerns the final provisions of the Directive. There are only two Articles assessed in this Title, Article 86 and Article 88. Article 86 concerns the full harmonisation aspect and Article 88 explains the transitional provisions.

2.5.1 Full harmonisation (Article 86)

Article 86 of Directive 2007/64/EC sets out requirements underlying the implementation of the rules laid down in the Directive, which is a full harmonisation Directive.

Full harmonisation

According to Article 86(1) of the Directive, as a rule Member States shall not maintain or introduce provisions other than those laid down in the Directive insofar as this Directive contains harmonised provisions. This is without prejudice to the following discretionary provisions: Article 30(2), Article 33, Article 34(2), Article 45(6), Article 47(3), Article 48(3), Article 51(2), Article 52(3), Article 53(2), Article 61(3), and Articles 72 and 88.

The approach followed to assess Article 86(1) focused on additional requirements that may contravene the requirement for full harmonisation. However, to ensure full effectiveness of the Directive in the light of its objective and spirit, Member States introduced additional elements and requirements in their legislation. These are mostly regarded as extra detail in order to supplement the enforcement of the objective and provisions of the Directive and thus are seen as not going beyond harmonisation, provided they are not unreasonable. For example, Member States have supplemented rules on payment institutions (e.g. dissolution, bankruptcy) or specified procedures such as those on notification and information (e.g. time-limits and documents). For instance, where time-limits set out in national legislation are regarded as impairing full harmonisation, they raised issues of conformity such as in the case of Luxembourg, Portugal and the United Kingdom (England, Scotland, Wales and Northern Ireland) regarding Article 11 and the time-limit to notify the decision on granting authorisation such as mentioned in Section 2.2.7.

When new rights or obligations are laid down, then issues concerning conformity may be raised where they go beyond the Directive. In this regard Member States' conformity with Article 86(1) has been assessed in the light of those specific provisions that were detected as going beyond the Directive and as impairing its objective to a higher extent than others. This has been especially observed for Austria in relation to Articles 47(3) and 48(3), Cyprus in relation to Article 61(2), the Czech Republic in relation to the third subparagraph of Article 65(1) and to Article 78, Finland in relation to Article 3(a), Hungary in relation to Article 4, such as points (5), (7) or (16), Ireland in relation to point (d) of the second subparagraph of Article 21(1), Luxembourg in relation to Article 11, Portugal in relation to Article 11 and the United Kingdom (England, Scotland, Wales and Northern Ireland)) in relation to Article 11 and point (b) of the third subparagraph of Article 17(7).

Nevertheless, any other cases raising issues of conformity, constitute potential cases of failure to satisfy Article 86(1). These are explained throughout the report. Last but not least,

compliance with Article 86(1) is primarily addressed through the scope of national legislation when implementing of Article 2 and Member States, which went beyond and favoured a one-leg approach.

Fulfilment

According to Article 86(2) of the Directive, the Commission is informed on the use of options by Member States, including any changes, and then makes the information public on a website or other easily accessible means. A table is released on the Commission's website to that end.

Regarding the options referred to in Article 86(1), the Member States must inform the Commission of their usage and any subsequent changes therein. The majority of the Member States have provided a list of their options. Nevertheless, a few issues are identified for Cyprus, Finland, Hungary, Italy, Portugal and the Netherlands in relation to the table available on the Commission's website.

The cases concerning partial conformity reflect discrepancies within the actual options chosen by the Member State as a result of the assessment and those listed in this transposition table. Information on the use, or not, of the options set out in Articles 2(3), 26(4) and 88(4) by Cyprus is not mentioned in the transposition table. Hungary, Portugal and the Netherlands also find a conclusion of partial conformity, based on the same reasoning. For instance, the use of Articles 47(3) and 48(3) by Hungary may appear restrictive regarding the implementation of both provisions, although conformity was concluded. In this regard, the extent to which Member States have leeway when they apply options may also be a ground for narrowing the objective and spirit of the Directive. Hungary also appears to implement Article 52(3), whilst public information rather refers to its non-use. One should also note that Finland appears to implement Article 33 and Greece implements Articles 47(3) and 48(3) as opposed to the information available in the table.

Apart from the above cases, all Member States' lists correspond to the transposition table published. In this regard, the table also includes other optional provisions that are not referred to in Article 86(1) and corresponding information as to their use by Member States. These are Articles 2(3), 7(3), 9(2) to (4), 22(3), 26(1) and (4), 51(3), 53(3), 88(3) and (4). Among these, no provisions were located as to the use of Article 7(3) by Italy, Article 9(2) by Bulgaria and Hungary, Article 22(3) by the United Kingdom (England, Scotland, Wales and Northern Ireland), Article 53(3) by Spain, Article 88(3) by Hungary, the Netherlands, Portugal and Romania and Article 88(4) by Greece and the Netherlands. Alternatively, Italy appears to make use of Article 53(3), Slovenia Article 88(3) and Estonia Article 88(4).

Non derogation

In addition, in Article 86(3) of the Directive, Member States shall ensure that payment service providers do not derogate from their duties which would result in a loss to payment service users, except where explicitly provided for (Article 86(3), first subparagraph). However, in contrast, they are free to provide advantageous provisions in favour of payment service users (Article 86(3), second subparagraph).

Most Member States conform with Article 86(3), whether by a literal transposition or by inference, due to the fact that this is

a negative obligation. A few Member States adopted a general provision similar to that of the Directive such as Denmark, Germany, Greece, the Netherlands, Slovakia, Slovenia and the United Kingdom (Gibraltar). In Austria and the Czech Republic, the legislation is more specific, whilst referring to the contracts. Compliance is presumed for the other Member States, which did not adopt a similar provision. The Directive, if properly implemented, lays down guarantees to ensure that payment service providers do not derogate from their obligations as a result of its scope, explicit possibilities for derogations provided by law, liability and supervision of the national authorities to ensure compliance. Therefore, such provisions similar to that of the Directive provision are not necessary as far as the Member States satisfy their obligation to correctly transpose the Directive. Moreover, practice is also crucial to assess the level of compliance.

The second subparagraph of Article 86(3) lays down the possibility to provide more favourable terms to users. A similar provision has been introduced by Greece, Lithuania, Romania, Slovakia and the United Kingdom (Gibraltar) in their legislation. The implementation of Article 45(6) can be an element in favour of users such as shown for Belgium, Portugal and Spain. The same may be inferred for those Member States, which do not introduce such provisions in their laws. The implementation of Article 44(2) is another element in favour as well. In other words, the assessment of the implementation of such a provision also depends on practice. Such as mentioned for Germany, a basic rule is the private autonomy of the parties. Hence, where terms are phrased to the detriment of the users the obligations arising from the legislation on payment services are breached. On the contrary, in Sweden, the option seems chosen as no hindering provisions stating otherwise were found.

2.5.2 Transitional provision (Article 88)

Article 88 of Directive 2007/64/EC sets out transitional rules regarding the implementation of the Directive requirements by the Member States, and more specifically, regarding the authorisation requirement.

Transitional provision for legal persons

Article 88(1) of the Directive requires that Member States allow legal persons who have commenced the activities of payment institutions before 25 December 2007, to continue those activities within the Member State concerned until 30 April 2011, without authorisation under Article 10. Such persons who were not granted authorisation by that date, shall not be allowed to provide payment services, in accordance with Article 29.

The majority of the Member States properly implement the Directive provision, with the exception of the United Kingdom (England, Scotland, Wales and Northern Ireland), which partially transposes Article 88(1). No such provision could be located under Dutch and Latvian legislation.

With the exception of Belgium, Cyprus, Denmark, Finland, Greece, Lithuania, Slovakia, Slovenia and Sweden, which follow the Directive wording and thus cover any legal persons, all other Member States have determined the legal persons that are the addressees of these requirements. The scope of per-

sons covered may be broad, such as persons who are not individuals (Ireland), entities (Romania), or undertakings (Germany). Others limit the scope, restricting the transitional period to certain institutions, such as financial institutions in the Maltese legislation, or credit institutions in the Austrian legislation, or currency exchange companies in Portugal and Spain. On the other hand, there is no legal person in France, which needs to be authorised to provide payment services without formal authorisation until 30 April 2011. Until 1 November 2009, only credit institutions were allowed to provide payment services.

Article 88 sets out several time limits. The reasoning of Article 88(1), stating that the legal persons that commenced providing activities before 25 December 2007 (as the date of entry into force of the Directive), may continue those activities until 30 April 2011 without authorisation, is followed by almost all the Member States, although their legislation entered into force after that date. Alternatively, the reference date is the one of the entry into force of the legislation concerned, such as the Belgian legislation and, such as implied, the Maltese and the Bulgarian legislation. The Austrian legislation sets the date as 25 December 2009.

National legislation is also more specific. Legal persons in Belgium and Romania are required to apply for authorisation by a certain deadline before 30 April 2011. Finland is more stringent on the deadline of 31 March 2011, rather than 30 April 2011, as laid down in the Directive provision. The United Kingdom (England, Scotland, Wales and Northern Ireland), partially conforms for setting a deadline of 1 May 2011.

Territorial scope, prohibition to provide payment services after 30 April 2011, or reference to Directive 2005/60/EC, are elements that are not systematically repeated, without affecting the scope of the legislation concerned.

Exemption to the authorisation requirement

Article 88(2) of the Directive provides an exemption to the authorisation requirement (Article 10) that shall be granted to financial institutions following certain characteristics. In order to avoid being submitted to an authorisation requirement, those institutions must prove that they fulfil certain requirements and must notify the national authorities accordingly. Article 88(2) ends with an optional provision, stating that Member States may allow their national authorities to exempt those financial institutions from the requirements under Article 5.

Apart from Malta, which partially conforms with Article 88(2), most of the Member States properly implement that provision. No such provision could be located in Bulgarian, Czech, Danish, Dutch, Estonian, Latvian, Lithuanian, Luxembourg and Romanian legislation. The implementation is either clear, especially for those Member States who opted to follow the Directive wording, or more vague for others.

The Maltese provision does not refer to the conditions of point (e) of the first subparagraph of Article 24(1) of Directive 2006/48/EC. In addition, it does not make reference to the dates set in the Directive provision. Therefore, Malta only partially transposed Article 88(2).

As for the commencement of the activities before 25 December 2007 and the notification by 25 December 2009, Belgium,

Cyprus, Germany, Greece, Ireland, Slovenia, Spain, Sweden and the United Kingdom refer in their legislation explicitly to the date of 25 December 2007. France only refers to credit institutions that chose to be a payment institution, before 25 December 2009, and Hungary and Sweden sets 31 December 2009 and 25 September 2010 as the deadlines respectively. The other Member States do not mention it in their national provisions, especially where it is not applicable such as in Luxembourg. The same can be concluded for reference to the inclusion of certain information in the notification and to the registration of the institutions.

Option for automatic authorisation

Article 88(3) of the Directive sets out an option, laying down that Member States may provide that legal persons referred to in Article 88(1) shall be automatically granted authorisation and entered into the register, if the national authorities already have evidence that Articles 5 and 10 are complied with.

It is generally not stated in the national legislation that the authorisation is automatic. However, this can be inferred most of the time by the fact that the authorisation is granted merely if the national authorities have evidence that the legal persons fulfil the requirements.

Austria, Bulgaria, Cyprus, Estonia, Finland, Germany, Greece, Ireland, Italy, Luxembourg, Slovenia, Spain, Sweden and the United Kingdom, chose to adopt the option set out in Article 88(3) and transposed it in a conform manner. Although notified by the following Member States, no corresponding provisions could be located in the Dutch, Hungarian, Romanian and Portuguese legislation. On the contrary, Slovenia, as referred to above, appears to have implemented the option.

The Directive provision's requirements are clearly transposed in the legislation of Finland, Italy, Luxembourg, Sweden and the United Kingdom (Gibraltar), and almost literally transposed in the Greek provision. Spain transposed Article 88(2) in an indirect form.

Option regarding natural or legal persons under the waiver of Article 26

Article 88(4) of the Directive sets out the option laying down the same provision as paragraph (1), *mutatis mutandis*, for natural or legal persons who are eligible for a waiver under Article 26 for a transitional period no longer than 3 years, without being waived in accordance with Article 26 and entered into the register.

The Czech Republic, Denmark, Estonia, Ireland, Lithuania, Luxembourg, Slovenia, Sweden and United Kingdom adopted the option and transposed it properly in their respective legislation. Luxembourg applied an almost literal transposition of Article 88(4). Although notified by the following Member States, no corresponding provisions could be located in the Dutch and Greek legislation. On the contrary, Estonia, as referred to above, appears to have implemented the option. Belgium reserves the right to use the option.

The three year term and related deadline, running as of from 25 December 2007, led to a contradiction followed by diverging practices as mentioned above. Ireland, Lithuania and the United Kingdom (England, Scotland, Wales and Northern Ireland) strictly implement the deadline, which is set to 25 De-

cember 2010, even though their legislation entered into force in 2009. The Luxembourg one is set to 26 December 2010 and the Danish one is set to the same month and year. On the contrary, other Member States have set an intermediary deadline, being less than three years from the entry into force of their legislation, sometimes corresponding to the deadline set in Article 88(1), for example, the Czech Republic (30 April 2011), Finland (31 October 2012), Sweden and Slovenia (30 April 2011).

Sweden partially conforms due to a lack of preciseness in the legislation leading to uncertainties.

Annex: list of conformity issues

ARTICLES RAISING ISSUES OF PARTIAL CONFORMITY

Article 2

Ireland (Article 2(3)), Malta (Article 2(1)) and the United Kingdom (Article 2(3))

Article 3

Denmark (Article 3(j) and (n)), Finland (Article 3(a)), Germany (Article 3(f)), Hungary (Article 3(b) and (c)), Latvia (Article 3(j)) and Spain (Article 3(n))

Article 4

Bulgaria (Article 4, pt (5)), Czech Republic (Article 4, pts (3), (9), (19), (22) and (30)), Germany (Article 4, pt (11)), Hungary (Article 4, pts (5), (7), (16), (19), (22), and (30)), Latvia (Article 4, pts (4), (25) and (29)), the Netherlands (Article 4, pt (1)), Portugal (Article 4, pt (30)), Romania (Article 4, pts (7), (8), (10) and (29)) and the United Kingdom (Article 4, pts (1) and (2))

Article 5

Cyprus (Article 5, 1st para., pt (j)), Czech Republic (Article 5, 1st para., pt (g)), Germany (Article 5, 1st para., pt (j)), Hungary (Article 5, 1st para., pt (e)), Latvia (Article 5, 1st para., pts (h) and (k)), Portugal (Article 5, 1st para., pt (c)) and Spain (Article 5, 1st para., pts (b) and (f))

Article 7

Denmark (Article 7(2)) and Finland (Article 7(2))

Article 8

Denmark (Article 8(1), Method C, 2nd subpara., pt (a), 2nd subpara.), Finland (Article 8(1), Method B, intr. wording and Method C, 1st and 2nd subparas, pt (a), 2nd subpara.), Portugal (Article 8(1), Method C, 1st subpara. and Method C, 2nd subpara., pt (a), 1st subpara.), Romania (Article 8(1), Method A), Sweden (Article 8(1), Method C, 2nd subpara., pt (a), 2nd subpara.) and the United Kingdom (Article 8(1), Method C, 2nd subpara., pt (a))

Article 9

Czech Republic (Article 9(1)(c)), Finland (Article 9(2)), Germany (Article 9(1)(b)) and Latvia (Article 9(1), intr. wording)

Article 10

Germany (Article 10(2)), Latvia (Article 10(7)), Malta (Article 10(1)), Sweden (Article 10(5))

Article 11

Denmark, Estonia, Spain, Hungary, Italy, Luxembourg, Malta, Portugal and the United Kingdom

Article 12

Bulgaria (Article 12(2)) and the United Kingdom (Article 12(2))

Article 14

Luxembourg

Article 15

Latvia (Article 15 (1) and (4)), Malta (Article 15(4)) and Spain (Article 15(2))

Article 16

Czech Republic (Article 16(2) and Article 16(3), intr. wording) and Latvia (Article 16(2))

Article 17

Austria (Article 17(8)), Bulgaria (Article 17(1)(b)), Czech Republic (Article 17(8)), Germany (Article 17(8)) and Latvia (Article 17(1)(b))

Article 21

Ireland (Article 21(1), 1st and 2nd subparas, intr. wording and 21(1), 2nd subpara., pts (a) and (b)), Latvia (Article 21(1), 2nd subpara., pt (b); and Article 21(3)), the Netherlands (Article 21(1), 2nd subpara., pt (b)), Portugal (Article 21(1), 1st subpara. and 2nd subpara., intr. wording) and the United Kingdom (Article 21(1), 1st and 2nd subparas, intr. wording; 2nd subpara., pt (c); and Article 21(3))

Article 23

Sweden (Article 23(1)) and the United Kingdom (Article 23(2))

Article 24

Hungary (Article 24(2)(b))

Article 25

Ireland (Article 25(5)), Malta (Article 25(1)) and Sweden (Article 25(3))

Article 26

Czech Republic (Article 26(5)), Denmark (Article 26(2) and (5)), Finland (Article 26(1)(a)), Ireland (Article 26(1)(a) and Article 26(5)), Luxembourg (Article 26(5)) and the Netherlands (Article 26(2) and (5))

Article 27

Latvia and the United Kingdom

Article 28

Germany (Article 28(2)(b))

Article 44

Spain (Article 44(1), 1st subpara.)

Article 45

Germany (Article 45(2))

Article 47

Austria (Article 47(3)) and Spain (Article 47(3))

Article 48

Austria (Article 48(3)), Greece (Article 48(3)) and Spain (Article 48(3))

Article 49

Germany (Article 49(2), 1st subpara.)

Article 52

Spain (Article 52(2))

Article 53

Portugal (Article 53(3)) and Sweden (Article 53(1)(a))

Article 54

Portugal (Article 54(2))

Article 55

France (Article 55(2))

Article 57

Latvia (Article 57(1)(a))

Article 61

Cyprus (Article 61(2)), Ireland (Article 61(1) and (2)), Latvia (Article 61(3)), Portugal (Article 61(2) and (3)), Spain (Article 61(1)) and Sweden (Article 61(1), 4th subpara)

Article 62

Finland (Article 62(3)) and Sweden (Article 62(1), 4th subpara.)

Article 63

Latvia (Article 63(2), 1st subpara.)

Article 65

Czech Republic (Article 65(1), 3rd subpara.) and Denmark (Article 65(1), 3rd subpara.)

Article 67

Czech Republic (Article 67(3))

Article 68

Spain (Article 68(1)(c)), Portugal (Article 68(1)(c))

Article 74

Czech Republic (Article 74(2), 1st subpara.)

Article 75

Czech Republic (Article 75(2), 3rd subpara.), Denmark (Article 75(2), 1st subpara.) and Germany (Article 75(1), 4th subpara. and (2), 4th subpara.)

Article 78

Czech Republic, Denmark and Portugal

Article 80

Luxembourg (Article 80(1))

Article 81

United Kingdom (Article 81(2))

Article 82

Malta (Article 82(2))

Article 83

Finland (Article 83(2))

Article 86

Austria (Article 86(1)), Cyprus (Article 86(1) and (2)), Czech Republic (Article 86(1)), Greece (Article 86(2)), Finland (Article

86(1)), Hungary (Article 86(1) and (2)), Ireland (Article 86(1)), Italy (Article 86(2)), Luxembourg (Article 86(1)), the Netherlands (Article 86(2)), Portugal (Article 86(1) and (2)) and the United Kingdom (Article 86(1))

Article 88

Malta (Article 88(2)), Sweden (Article 88(4)) and the United Kingdom (Article 88(1))

ARTICLES RAISING ISSUES OF NON-CONFORMITY

Article 1

Finland (Article 1(1)(b))

Article 4

Belgium (Article 4, pt (2)), Denmark (Article 4, pts (1), (2), (16) to (21), (24), (29) and (30)), Estonia (Article 4, pts (2), (15), (24), (26) and (28)), Finland (Article 4, pts (2), (7), (8), (19) and (29)), France (Article 4, pts (7), (8), (10), (12), (13), (15) to (20), (24), (28) and (30)), Germany (Article 4, pts (7) to (10), (12), (15), (25), (27) to (30)), Hungary (Article 4, pts (1) and (2)), Italy (Article 4, pts (1) and (2)), Latvia (Article 4, pts (1), (2) and (26)), Malta (Article 4, pts (1) and (2)), the Netherlands (Article 4, pts (2) and (30)) and Sweden (Article 4, pts (2), (19), (22), (24) and (25))

Article 12

Italy (Article 12 (3))

Article 17

Latvia (Article 17(4)) and the United Kingdom (Article 17(7), 3rd subpara., pt (b))

Article 52

Denmark (Article 52(3))

Article 53

Latvia (Article 53(1)) and Sweden (Article 53(1)(b))

Article 79

Estonia

PROVISIONS NOT LOCATED RAISING EXTRA ISSUES

Article 1

Bulgaria (Article 1(1)(f)) and Czech Republic (Article 1(1)(f))

Article 3

Denmark (Article 3(k)), Finland (Article 3(d), (f), (l) and (m)) and France (Article 3(a) to (f), (g), (h), (j) and 3(o))

Article 5

Czech (Article 5, 1st para., pt (j)), Finland (Article 5) and Sweden (Article 5, 1st para., pt (j))

Article 7

France (Article 7(2))

Article 8

Finland (Article 8(1), Method B, pts (a) to (e); Method C, 2nd subpara., pt (a), 1st subpara.; and Method C, 2nd subpara., pt (b); Article 8(2)) and Malta (Article 8)

Article 9

Bulgaria (Article 9(1)(c)), Denmark (Article 9(2), 1st sentence), Finland (Article 9(1)(b)) and Hungary (Article 9(2))

Article 10

Austria (Article 10(6)), Germany (Article 10(3) and (9)), Latvia (Article 10(2), (3) and (9)) and the Netherlands (Article 10(9))

Article 13

Latvia (Article 13, 2nd para)

Article 15

Finland (Article 15(3) and (4)), Germany (Article 15(1)) and Malta (Article 15(1))

Article 16

Czech Republic (Article 16(3)(c) and (d)), France (Article 16(1)(b)), Hungary (Article 16(2)) and the Netherlands (Article 16(1)(b))

Article 17

Cyprus (Article 17(3)), Denmark (Article 17(7), 3rd subpara., pt (d)), Estonia (Article 17(8)), Finland (Article 17(7), 3rd subpara., pts (a) to (d)), Italy (Article 17(7), 3rd subpara., pt (d)), Latvia (Article 17(3) and (8)) and Malta (Article 17(8))

Article 20

Germany (Article 20(5)), Malta (Article 20(5)) and the Netherlands (Article 20(5))

Article 21

Denmark (Article 21(1), 1st subpara. and 2nd subpara., intr. wording) and Germany (Article 21(1), 2nd subpara., pt (c))

Article 22

Germany (Article 22(3))

Article 23

Greece (Article 23), France (Article 23(2)), Latvia (Article 23(2)), Sweden (Article 23(2)) and Slovenia (Article 23(2))

Article 25

Hungary (Article 25(4))

Article 26

Belgium (Article 26(1)(a) and (b), Article 26(2) and (5))

Article 31

Austria (Article 31, 1st para.), Bulgaria (Article 31, 1st para.), Latvia (Article 31), Malta (Article 31, 2nd para.) the Netherlands (Article 31) and Sweden (Article 31, 1st para.)

Article 49

Denmark (Article 49(1)), France (Article 49(1) and Article 49(2), 2nd subpara.) and Germany (Article 49(2), 2nd subpara.)

Article 50

France (Article 50(2)) and Romania (Article 50(2))

Article 56

Germany (Article 56(1)(a))

Article 57

Hungary (Article 57(2)) and Sweden (Article 57(2))

Article 61

Denmark (Article 61(4))

Article 62

Finland (Article 62(1), 2nd subpara.)

Article 63

Sweden (Article 63(2), 2nd subpara.)

Article 68

Belgium (Article 68(1)(b)), Germany (Article 68(2)), Estonia (Article 68(1)(c)), France (Article 68(1)(b)), Ireland (Article 68(1)(b)) and Italy (Article 68(1)(b))

Article 74

Denmark (Article 74(2), 1st subpara. and Article 74(3))

Article 75

Denmark (Article 75(1), 2nd subpara. and Article 75(3)) and Germany (Article 75(2), 3rd subpara.)

Article 76

Denmark and Germany

Article 77

Hungary (Article 77(2))

Article 80

Denmark (Article 80(2)), Estonia (Article 80(2)), Finland (Article 80) and Ireland (Article 80(2))

Article 82

Austria (Article 82(2)), Denmark (Article 82(2)) and Estonia (Article 82(2))

Article 83

Denmark (Article 83(2)), Latvia (Article 83(2)) and the Netherlands (Article 83(2))

Article 86

Germany (Article 86(3), 2nd subpara.), Finland (Article 86(3)), France (Article 86(3), 1st subpara.), Latvia (Article 86(3)), Malta (Article 86(3), 2nd subpara.), the Netherlands (Article 86(3), 2nd subpara.) and Sweden (Article 86(3), 2nd subpara.)

Article 88

Bulgaria (Article 88(2)), Czech Republic (Article 88(2)), Denmark (Article 88(2)), Estonia (Article 88(2)), Latvia (Article 88(1) and (2)), Lithuania (Article 88(2)), Luxembourg (Article 88(2)), the Netherlands (Article 88(1) and (2)) and Romania (Article 88(2))