



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

CENTRAL BANK OF MALTA

DIRECTIVE NO 1

in terms of the

CENTRAL BANK OF MALTA ACT
(CAP. 204)

THE PROVISION AND USE OF PAYMENT SERVICES

Ref: CBM/01

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THE PROVISION AND USE OF PAYMENT SERVICES

Issued on 30 October 2009

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INTRODUCTION

1. In terms of article 34A(1) of the Central Bank of Malta Act (*Cap.204*) (hereinafter referred to as “the Act”), the Central Bank of Malta (hereinafter referred to as “the Bank”) has been empowered to make directives in respect of, *inter alia*, the provision and use of payments services. For the purposes of this Directive, terms used in this Directive shall have the same meaning as is assigned to them under the Act.
2. (1) This Directive lays down rules concerning transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.

(2) The rules for the provision of payment services apply to the following service providers:
 - (a) credit institutions licensed under the Banking Act (*Cap. 371*), or their equivalent under the laws of a Member State or an EEA State, and includes branches of credit institutions which have their head offices outside Malta;
 - (b) electronic money institutions as defined in the Banking Act (*Cap. 371*), or their equivalent under the laws of a Member State or an EEA State;
 - (c) institutions that provide postal payment services in accordance with the Postal Services Act (*Cap. 254*);
 - (d) payment institutions as defined in the Second Schedule of the Financial Institutions Act (*Cap.376*) , or their equivalent under the laws of a Member State or an EEA State;
 - (e) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
 - (f) Member States or their regional or local authorities when not acting in their capacity as public authorities.
3. The Directive is modelled on the requisites of the EU Directive 2007/64/EC on payment services in the internal market.

SCOPE AND APPLICATION

4. This Directive applies to payment services provided by a payment service provider or its agent in Malta for which:
 - (a) either both the payment service provider of the payer and the payee are located in Malta; or one of which is located in Malta and the other is in the EEA;
 - (b) one of the payment service providers of the payer or the payee is located outside the EEA and the other is located in Malta;
 - (c) in the case of a sole payment service provider, the provider must be located in Malta:

Provided that in respect of subparagraph (b), paragraphs 27(2), 30(2), 31, 37, 40, 41, 45 to 49, 52 to 56 shall not apply to the payment service provider located in Malta.

5. This Directive shall apply to payment services made in euro or in the currency of a Member State outside the euro area effected through single payment transactions, framework contracts and payment transactions. The Directive shall apply to micro enterprises in the same way as to consumers without prejudice to paragraph 29 of this Directive.
6. This Directive shall not apply to the following:
 - (a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
 - (b) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
 - (c) professional physical transport of banknotes and coins, including their collection, processing and delivery;
 - (d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
 - (e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
 - (f) money exchange business, that is to say, cash-to-cash operations, where the funds are not held on a payment account;
 - (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
 - (i) cheques, drafts, bills of exchange and promissory notes within the meaning of the Commercial Code (*Cap. 13*);
 - (ii) paper-based vouchers;
 - (iii) paper-based traveller's cheques; or
 - (iv) paper-based postal money orders as defined by the Universal Postal Union;
 - (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to paragraph 56 of this Directive;
 - (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
 - (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services;
 - (k) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either

within a limited network of service providers or for a limited range of goods or services;

- (l) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;
- (n) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group; or
- (o) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed activities of payment institutions in the Second Schedule of the Financial Institutions Act (*Cap. 376*).

7. This Directive shall be without prejudice to the Consumer Credit Regulations (*LN 84 of 2005 as subsequently amended*). This Directive shall also be without prejudice to other relevant Community or national legislation regarding conditions for granting credit to consumers not harmonised by this Directive that are in conformity with Community law.

8. Definitions

In this Directive, unless the context otherwise requires:

‘agent’ means a natural or legal person which acts on behalf of a payment institution in providing payment services;

‘authentication’ means a procedure which allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features;

‘branch’ means a place of business not having a legal personality and being other than the head office which is a part of a financial institution, and which carries out directly some or all of the transactions inherent in the business of a financial institution; all the places of business set up in Malta by an institution with a head office in another Member State shall be regarded as a single branch;

‘business day’ means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

‘consumer’ means a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his trade, business or profession;

‘direct debit’ means a payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent given, to the payee, to the payee’s payment service provider or to the payer’s own payment service provider;

‘durable medium’ means any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

‘EEA State’ means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May, 1992 as amended by the Protocol signed at Brussels on 17th March, 1993 and as amended from time to time;

‘European Union’ means the European Union referred to in the Treaty;

‘framework contract’ means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

‘funds’ means banknotes and coins, scriptural money and electronic money as defined in the Banking Act (*Cap. 371*);

‘group’ means companies having a common holding company and shall include the holding company itself;

‘holding company’ or ‘parent company’ has the same meaning as is assigned to the term ‘parent company’ in the Companies Act (*Cap. 386*);

‘means of distance communication’ refers to any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;

‘Member State’ means a state which is a member of the European Union;

‘micro-enterprise’ means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined paragraph 3 of the Business Promotion Regulations (*LN 135 of 2001 as subsequently amended*);

‘payee’ means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;

‘payer’ means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;

‘payment account’ means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

‘payment institution’ shall have the meaning assigned to it in the Second Schedule of the Financial Institutions Act (*Cap. 376*);

‘payment instrument’ means any personalised device(s) and/ or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;

‘payment order’ means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

‘payment service provider’ means undertakings referred to in paragraph 2(2) of this Directive;

‘payment service user’ means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

‘payment service’ means any business activity listed in the First Schedule of the Financial Institutions Act (*Cap. 376*);

‘payment system’ means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;

‘payment transaction’ means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

‘reference exchange rate’ means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

‘reference interest rate’ means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;

‘unique identifier’ means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously the other payment service user and/or his payment account for a payment transaction;

‘value date’ means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS FOR PAYMENT SERVICES

General Rules

9. Application

Paragraphs 10 to 28 shall apply to single payment transactions, framework contracts and payment transactions covered by them. The parties thereto may agree that it shall not apply in whole or in part when the payment service user is not a consumer.

10. Charges for information

- (a) The payment service provider shall not charge the payment service user for providing information under this Directive.
- (b) The payment service provider and the payment service user may agree on charges for additional or more frequent information, or transmission by means of communication

other than those specified in the framework contract, provided at the payment service user's request.

- (c) Where the payment service provider may impose charges for information in accordance with paragraph (b), they shall be appropriate and in line with the payment service provider's actual costs.

11. Burden of proof on information requirements

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

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

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

- (a) by way of derogation from paragraphs 19, 20 and 24, the payment service provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an indication of where any other information and conditions specified in paragraph 19 are made available in an easily accessible manner;

- (b) it may be agreed that, by way of derogation from paragraph 22, the payment service provider shall not be required to propose changes in the conditions of the framework contract in the same way as provided for in paragraph 19(1);

- (c) it may be agreed that, by way of derogation from paragraphs 25 and 26, after the execution of a payment transaction:

- (i) the payment service provider shall provide or make available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction, any charges and/or, in the case of several payment transactions of the same kind made to the same payee, information on the total amount and charges for those payment transactions;

- (ii) the payment service provider shall not be required to provide or make available information referred to in point (i) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it.

However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.

Single Payment Transactions

13. Single payment transactions

1. Paragraphs 13 to 17 shall apply to single payment transactions not covered by a framework contract.
2. When a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider shall not be obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider or which will be given to him according to that framework contract.

14. Prior general information

1. The payment service provider shall provide to the payment service user, before he is bound by any single payment service contract or offer, in an easily accessible manner, the information and conditions specified in paragraph 15. At the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium. The information and conditions shall be given in a clear and comprehensible form in English and/or Maltese.
2. If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph (1) above, the payment service provider shall fulfil its obligations under that paragraph immediately after the execution of the payment transaction.
3. The obligations under paragraph (1) above may also be discharged by supplying a copy of the draft single payment service contract or the draft payment order including the information and conditions specified in paragraph 15.

15. Information and conditions

1. The following information and conditions shall be provided or made available to the payment service user:
 - (a) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
 - (b) the maximum execution time for the payment service to be provided;
 - (c) all charges payable by the payment service user to his payment service provider and, where applicable, the breakdown of the amounts of any charges;
 - (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction.
2. Where applicable, any other relevant information and conditions specified in paragraph 19 shall be made available to the payment service user in an easily accessible manner.

16. Information for the payer after receipt of the payment order

Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in paragraph 14(1), the following information:

- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency used in the payment order;
- (c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of such charges;
- (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with paragraph 15(1)(d), and the amount of the payment transaction after that currency conversion; and
- (e) the date of receipt of the payment order.

17. Information for the payee after execution

Immediately after the execution of the payment transaction, the payee's payment service provider shall provide or make available to the payee, in the same way as provided for in paragraph 14(1), the following information:

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

Framework contracts

18. Application to payment transactions covered by a framework contract

Paragraphs 19 to 25 shall apply to payment transactions covered by a framework contract.

19. Prior general information

1. The payment service provider shall provide in good time the payment service user on paper or on another durable medium with the information and conditions specified in paragraph 20. The information and conditions shall be given in a clear and comprehensible form in English and/or Maltese.

2. If the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider

to comply with paragraph 20(1), the payment service provider shall fulfil its obligations under that paragraph immediately after the conclusion of the framework contract.

3. The obligations under paragraph 1 above may also be discharged by supplying a copy of the draft framework contract including the information and conditions specified in paragraph 20.

20. Information and conditions

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

1. on the payment service provider:
 - (a) the name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the Member State where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider; and
 - (b) the particulars of the relevant supervisory authorities and of the register maintained by the Malta Financial Services Authority as provided in article 8D of the Financial Institutions Act (*Cap. 376*) or of any other relevant public register of authorisation of the payment service provider and the registration number, or equivalent means of identification in that register;
2. on use of the payment service:
 - (a) a description of the main characteristics of the payment service to be provided;
 - (b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
 - (c) the form of and procedure for giving consent to execute a payment transaction and withdrawal of such consent in accordance with paragraphs 32 and 44;
 - (d) a reference to the point in time of receipt of a payment order as defined in paragraph 42 and the cut-off time, if any, established by the payment service provider;
 - (e) the maximum execution time for the payment services to be provided; and
 - (f) whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with paragraph 33(1);
3. on charges, interest and exchange rates:
 - (a) all charges payable by the payment service user to the payment service provider and, where applicable, the breakdown of the amounts of any charges;
 - (b) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate; and
 - (c) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with paragraph 22 (2);
4. on communication:
 - (a) where applicable, the means of communication, including the technical requirements for the payment service user's equipment, agreed between the parties for the transmission of information or notifications under this Directive;
 - (b) the manner in and frequency with which information under this Directive is to be provided or made available;

- (c) the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken; and
 - (d) the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with paragraph 21;
5. on safeguards and corrective measures:
- (a) where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of paragraph 34(1)(b);
 - (b) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with paragraph 33;
 - (c) the liability of the payer in accordance with paragraph 39, including information on the relevant amount;
 - (d) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction in accordance with paragraph 36 as well as the payment service provider's liability for unauthorised payment transactions in accordance with paragraph 38;
 - (e) the liability of the payment service provider for the execution of payment transactions in accordance with paragraph 52; and
 - (f) the conditions for refund in accordance with paragraph 40 and 41;
6. on changes in and termination of framework contract:
- (a) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with paragraph 22, unless he notifies the payment service provider that he does not accept them before the date of their proposed date of entry into force;
 - (b) the duration of the contract; and
 - (c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with paragraph 22(1) and paragraph 23;
7. on redress:
- (a) any contractual clause on the law applicable to the framework contract and/or the competent courts; and
 - (b) the out-of-court complaint and redress procedures available to the payment service user in accordance with paragraphs 58 to 61.

21. Accessibility of information and conditions of the framework contract

At any time during the contractual relationship the payment service user shall have a right to receive, on request, the contractual terms of the framework contract as well as the information and conditions specified in paragraph 20 on paper or on another durable medium.

22. Changes in conditions of the framework contract

1. Any changes in the framework contract as well as the information and conditions specified in paragraph 20, shall be proposed by the payment service provider in the same way as provided for in paragraph 19(1) and no later than two months before their proposed date of application. Where applicable in accordance with point (6)(a) of paragraph 20, the payment service provider shall inform the payment service user that he is to be deemed to have accepted these changes if he does not notify the payment service provider that he does not accept them before the proposed date of their entry into force. In this case, the payment service provider

shall also specify that the payment service user has the right to terminate the framework contract immediately and without charge before the date of the proposed application of the changes.

2. Changes in the interest or exchange rates may be applied immediately and without notice, provided that such a right is agreed upon in the framework contract and that the changes are based on the reference interest or exchange rates agreed on in accordance with paragraph 20(3)(b) and (c). The payment service user shall be informed of any change in the interest rate at the earliest opportunity in the same way as provided for in paragraph 19(1), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available. However, changes in interest or exchange rates which are more favourable to the payment service users, may be applied without notice.

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

23. Termination

1. The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period may not exceed one month.

2. Termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months. In all other cases charges for the termination shall be appropriate and in line with costs.

3. If agreed in the framework contract, the payment service provider 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 paragraph 19(1).

4. Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.

5. The provisions of this paragraph are without prejudice to the laws and regulations governing the rights of the parties to declare the framework contract unenforceable or void.

24. Information before execution of individual payment transactions

In the case of an individual payment transaction under a framework contract initiated by the payer, a payment service provider shall, at the payer's request for this specific payment transaction, provide explicit information on the maximum execution time and the charges payable by the payer and, where applicable, a breakdown of the amounts of any charges.

25. Information for the payer on individual payment transactions

1. After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account, after the receipt of the payment order, the payer's payment service provider shall provide the payer without undue delay in the same way as laid down in paragraph 19(1) with the following information:

- (a) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payer;
- (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion; and
- (e) the debit value date or the date of receipt of the payment order.

2. A framework contract may include a condition that the information referred to in paragraph (1) above is to be provided or made available periodically at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged.

26. Information for the payee on individual payment transactions

1. After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee without undue delay in the same way as laid down in paragraph 19(1) with the following information:

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

2. A framework contract may include a condition that the information referred to in paragraph (1) above is to be provided or made available periodically at least once a month and in an agreed manner which allows the payee to store and reproduce information unchanged.

General provisions

27. Currency and currency conversion

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

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

28. Information on additional charges or reductions

1. Where, for the use of a given payment instrument, the payee requests a charge or offers a reduction, the payee shall inform the payer thereof prior to the initiation of the payment transaction.
2. Where, for the use of a given payment instrument, a payment service provider or a third party requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

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

Common provisions

29. Application to consumers and micro-enterprises

Where the payment service user is not a consumer, the parties may agree that paragraph 30 (1), the second subparagraph of paragraph 32 (2), and paragraphs 37, 39, 40, 41, 44 and 52 shall not apply in whole or in part; provided that for the purposes of paragraphs 40 and 41, micro-enterprises shall not be considered as consumers. The parties may also agree on a time period different from that laid down in paragraph 36.

30. Charges applicable

1. The payment service provider may not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Directive, unless otherwise specified in paragraphs 43(1), 44(5) and 51(2). Those charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.
2. Where a payment transaction does not involve any currency conversion, the payee shall pay the charges levied by his payment service provider, and the payer shall pay the charges levied by his payment service provider.

31. Derogation for low value payment instruments and electronic money

1. In the case of payment instruments which according to the framework contract, solely concern individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150 at any time payment service providers may agree with their payment service users that:
 - (a) paragraph 34(1)(b) and paragraphs 35(1)(c) and (d) as well as paragraphs 39(3) and (4) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
 - (b) paragraphs 37, 38 and paragraphs 39(1) and (2) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other

reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;

- (c) by way of derogation from paragraph 43(1), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- (d) by way of derogation from paragraph 44, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee;
- (e) by way of derogation from paragraph 47 and 48, other execution periods apply.

2. Paragraphs 39 and 40 shall apply also to electronic money as defined in the Banking Act (*Cap. 371*), except where the payer's payment service provider does not have the ability to freeze the payment account or block the payment instrument.

Authorisation of payment transactions

32. Consent and withdrawal of consent

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

2. Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider. In the absence of such consent, a payment transaction shall be considered to be unauthorised.

3. Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under paragraph 43. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.

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

33. Limits of the use of the payment instrument

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

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

3. In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless giving such

information would compromise objectively justified security reasons or is prohibited by other relevant Community or national legislation.

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

34. Obligations of the payment service user in relation to payment instruments

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

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

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

35. Obligations of the payment service provider in relation to payment instruments

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

- (a) to make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in paragraph 34;
- (b) to refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- (c) to ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to paragraph 34(1)(b) or request unblocking pursuant to paragraph 33(4); on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that he made such notification; and
- (d) to prevent all use of the payment instrument once notification pursuant to paragraph 34(1)(b) has been made.

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

36. Notification of unauthorised or incorrectly executed payment transactions

The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, including that under paragraph 52, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with this Directive.

37. Evidence on authentication and execution of payment transactions

1. Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.
2. Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of his obligations under paragraph 34.

38. Payment service provider's liability for unauthorised payment transactions

1. Without prejudice to paragraph 36, in the case of an unauthorised payment transaction, the payer's payment service provider shall refund to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.
2. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his payment service provider.

39. Payer's liability for unauthorised payment transactions

1. By way of derogation from paragraph 38 the payer shall bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from the misappropriation of a payment instrument.
2. The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations under paragraph 35 with intent or gross negligence. In such cases, the maximum amount referred to in paragraph (1) above shall not apply.
3. The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification in accordance with paragraph 34(1)(b), except where he has acted fraudulently.
4. If the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under paragraph 35(1)(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he has acted fraudulently.

40. Refunds for payment transactions initiated by or through a payee

1. Payers shall be entitled to a refund from the payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, if the following conditions are met:

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

At the payment service provider's request, the payer shall provide factual elements relating to such conditions. The refund consists of the full amount of the executed payment transaction. For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in the first subparagraph are not met.

2. However, for the purposes of point (b) of the first subparagraph of paragraph 1 above, the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with paragraphs 15(1)(d) and 20(3)(b) was applied.

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

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

1. The payer may request the refund referred to in paragraph 40 of an authorised payment transaction initiated by or through a payee for a period of eight weeks from the date on which the funds were debited.

2. Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the bodies to which the payer may refer the matter in accordance with paragraph 58 and 59 if he does not accept the justification provided. The payment service provider's right under the first subparagraph to refuse the refund shall not apply in the case set out in the last sentence of paragraph 40(1).

Execution of payment transactions

42. Receipt of payment orders

1. The point in time of receipt shall be the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's payment service provider. If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day. The payment service provider may establish a cut-off time near the end of a business day

beyond which any payment order received shall be deemed to have been received on the following business day.

2. If the payment service user initiating a payment order and his payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal, the point in time of receipt for the purposes of paragraph 47 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

43. Refusal of payment orders

1. Where the payment service provider refuses to execute a payment order, the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user, unless prohibited by other relevant Community or national legislation. The payment service provider shall provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in paragraph 47. The framework contract may include a condition that the payment service provider may charge for such a notification if the refusal is objectively justified.

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

3. For the purposes of paragraphs 47 and 52 a payment order of which execution has been refused shall be deemed not to have been received.

44. Irrevocability of a payment order

1. The payment service user may not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise specified in this paragraph.

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

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

4. In the case referred to in paragraph 42(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.

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

45. Amounts transferred and amounts received

1. The payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers shall transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.
2. However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.
3. If any charges other than those referred to in paragraph 2 above are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. In cases where the payment transaction is initiated by or through the payee, his payment service provider shall ensure that the full amount of the payment transaction is received by the payee.

Execution time and value date

46. Application to specific payment transactions

1. Paragraphs 46 to 51 relating to execution time and value date shall apply to:
 - (a) payment transactions in euro;
 - (b) national payment transactions in the currency of the Member State outside the euro area concerned; and
 - (c) payment transactions involving only one currency conversion between the euro and the currency of a Member State outside the euro area, provided that the required currency conversion is carried out in the Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euro.
2. Paragraphs 46 to 51 shall apply to other payment transactions, unless otherwise agreed between the payment service user and his payment service provider, with the exception of paragraph 50, which is not at the disposal of the parties. However, when the payment service user and his payment service provider agree on a longer period than those laid down in paragraph 47, for intra-Community payment transactions such period shall not exceed four business days following the point in time of receipt in accordance with paragraph 42.

47. Payment transactions to a payment account

1. The payer's payment service provider shall ensure that, after the point in time of receipt in accordance with paragraph 42, the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day. Until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days. These periods may be extended by a further business day for paper initiated payment transactions.
2. The payment service provider of the payee shall value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with paragraph 50.

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

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

Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the period specified in paragraph 47.

49. Cash placed on a payment account

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

50. Value date and availability of funds

1. The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account. The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.

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

51. Incorrect unique identifiers

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

2. If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under paragraph 52 for non-execution or defective execution of the payment transaction. However the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction. If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

3. If the payment service user provides information additional to that specified in paragraphs 15(1)(a) or 20(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

52. Non-execution or defective execution

1. (a) Where a payment order is initiated by the payer, his payment service provider shall, without prejudice to paragraph 36, paragraphs 52(2) and (3), and paragraph 55, be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with paragraph 47(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.
(b) Where the payer's payment service provider is liable under the first subparagraph, he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.
(c) Where the payee's payment service provider is liable under the first subparagraph, he shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.
(d) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, his payment service provider shall regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.
2. (a) Where a payment order is initiated by or through the payee, his payment service provider shall, without prejudice to paragraph 36, paragraphs 52(2) and (3), and paragraph 55, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with paragraph 47(3). Where the payee's payment service provider is liable under this subparagraph, he shall immediately re-transmit the payment order in question to the payment service provider of the payer.
(b) In addition, the payment service provider of the payee shall, without prejudice to paragraph 36, paragraphs 52(2) and (3), and paragraph 55, be liable to the payee for handling the payment transaction in accordance with its obligations under paragraph 50.
(c) Where the payee's payment service provider is liable under this subparagraph, he shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account.
(d) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under the first and second subparagraphs, the payer's payment service provider shall be liable to the payer. Where the payer's payment service provider is so liable he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.
(e) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, his payment service provider shall, regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.
3. In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment

service user is subject as a consequence of non-execution or defective execution of the payment transaction.

53. Additional financial compensation

Any financial compensation additional to that provided for under paragraphs 51 to 55 may be determined in accordance with the law applicable to the contract concluded between the payment service user and his payment service provider.

54. Right of recourse

1. Where the liability of a payment service provider under paragraph 52 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under paragraph 52.

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

55. No liability

Liability under paragraphs 32 to 54 shall not apply in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by national or Community legislation.

56. Prohibition on restrictive rules on access to payment systems

(1) Rules or conditions governing access to, or participation in, a payment system by authorised payment institutions and small payment institutions:

(a) must be objective, proportionate and non-discriminatory; and

(b) must not prevent, restrict or inhibit access or participation more than is necessary to:

(i) safeguard against specific risks such as settlement risk, operational risk or business risk; or

(ii) protect the financial and operational stability of the payment system.

(2) Rules or conditions governing access to, or participation in, a payment system which, in respect of payment service providers, payment service users or other payment systems:

(a) impose unduly onerous or disproportionate requirements;

(b) restrict effective participation in other payment systems;

(c) discriminate (whether directly or indirectly) between (i) different authorised payment institutions, or (ii) different small payment institutions, in relation to the rights, obligations or entitlements of participants in the payment system; or

- (d) impose any restrictions on the basis that a person is not of a particular institutional status, for example, a credit institution or other financial institution regulated by the competent authority under the Malta Financial Services Authority Act (*Cap. 330*), are prohibited.

(3) Paragraphs (1) and (2) above shall not apply to:

- (a) payment systems designated under CBM Directive No 2 on Payment and Securities Settlement Systems;
- (b) payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities; or
- (c) payment systems where a sole payment service provider (whether as a single entity or as a group):
 - (i) acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of the system, and
 - (ii) licenses other payment service providers to participate in the system and the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.

Other provisions

57. Data protection

Payment systems and payment service providers shall process personal data when this is necessary to safeguard the prevention, investigation and detection of payment fraud. The processing of such personal data shall be carried out in accordance with the Data Protection Act (*Cap. 440*).

58. Complaints

1. Without prejudice to article 35 of the Central Bank of Malta Act (*Cap. 204*), any complaints, and, or any disputes in respect of rights and obligations arising under this Directive may be referred to the Consumer Complaints Manager established under article 20 of the Malta Financial Services Authority Act (*Cap. 330*).

2. The Consumer Complaints Manager shall regularly inform the Bank of all complaints received and their resolution, where such complaints relate to rights and obligations arising under this Directive or under the Regulation.

59. Penalties

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

60. Validity of Direct Debit Mandates

A payee authorisation to collect recurring direct debits (hereinafter referred to as the “direct debit mandate”), issued in Malta after 1 February 2014, shall be carried out in accordance with the technical requirements and obligations set out in Regulation 260/2012/EC of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for direct debit and credit transfers in euro and amending Regulation (EC) No. 924/2009.

A direct debit mandate issued in Malta prior to 1 February 2014 shall remain valid after the said date, provided the direct debit mandate allows for unconditional refunds and refunds backdated to the date of the refunded payment where such refunds have been provided for within the framework of the existing direct debit mandate.

61. Entry into effect

This Directive shall enter into force on 1 November 2009.