

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

2005/0245(COD)

5.7.2006

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council
on payment services in the internal market and amending Directives 97/7/EC,
2000/12/EC and 2002/65/EC
(COM(2005)0603 – C6-0411/2005 – 2005/0245(COD))

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PA_Leg

EXPLANATORY STATEMENT

In general, we are in favour of the objective of the proposal on payment services in the internal market. By eliminating the legal obstacles and creating a level playing field, the competition on the payment service market could increase into the benefit of the consumers. However, the proposal needs to be adapted or clarified on some points, in order to guarantee a sufficient protection of the consumer. Therefore, my report for advice will be concentrated on the following main issues:

Title I: Subject & Scope:

For reasons of clarification and internal coherence, some definitions need to be improved. All the definitions need also to be gathered in one art. , art. 4.

For consumer protection reasons, it's necessary to preserve the statute of a payment institution to legal persons, and not to natural persons.

In our opinion, the scope of the proposal is too ambitious: by applying the proposal to payment services made in any currency and where at least one of the payment service providers is located in the Community, the proposal risks to go too far. Given the territorial limits of the application of an European directive, I propose to limit the scope to payment services where both the payment service providers are situated in the EU. Further on, it seems more appropriate to limit the scope to Euro and EU currency instead of all currencies.

The exclusion of the scope from the mobile operators doesn't seem the most appropriate solution.

The exclusion of application of title III and IV on payment services where the amount of the transaction exceeds 50000 does not seem, for consumer protection reasons, the best option. The 50000 euros limit and the exclusion of the application of title III and IV should be restricted to payment made by SME.

Title II: Payment institutions:

Although convinced of the need to increase competition on the payment service market on the one hand, and the differences between banks and payment institutions on the other hand, this might only be possible if there is a sufficient level playing field. Therefore, for consumer protection reasons and for the confidence in the financial system, the payment institutions need a stronger regulative framework. In these respect, I propose the following main adaptations:

- to impose minimum capital requirement (art. 4 a new).
- a restriction of payment institutions' activities (no more guaranteeing the execution of payment transactions and no more operating of payment systems).
- a separate booking system and protection of the consumers by ring fencing the funds in case of a payment institution is broke.
- record keeping for at least 5 years.
- stronger supervision regime on the granting and the maintenance of an authorisation (art. 6

& 9)

- limiting the possibility of outsourcing the payment institutions activities.
- restrict the derogation regime laid down in art. 21.

Title III. Transparency of conditions for payment services:

This title goes in the right direction. However, for consumer protection reasons, and for reasons of clarification, some modifications are needed. For consumer protection reasons, some additional information should be given to the consumer at the moment the conditions of a payment transactions are communicated as well as at after the acceptance of the transaction. This concerns single payment transactions and framework contracts as well.

Therefore, **art. 26 and 31** on the communication of conditions should be amended by adding

- information enabling the consumer to consult tariffs,
- the conditions and the period of time under which the payer has a right to refund, the right of the payer to revoke a payment,
- information concerning the liability for execution, including the liability and conditions regarding unauthorised payment transactions.

The period to terminate a payment contract should be extended to two months instead of one month.

Finally, the definition on micro payments (**art. 38**) should be adapted by decreasing from 50 euros to 10 euros, given the number of payments made by consumers below of 50 euros.

Title IV. Rights and obligations in relation to the provision and use of payment services:

From a consumer protection point of view, it seems appropriate to restrict the payment service providers possibility to block the user's payment verification instrument. (**art. 43 par. 2**).

In case of a loss, a theft, or misappropriation of the payment verification instrument, the consumer should also be able, without undue delay of becoming aware of this event, to notify this by phone. (**art. 46**).

The payment service provider must bear the risk of sending any electronic funds transfer instrument to the holder, or of sending any means allowing its use (pin number , for example). (**art. 47 par. 3**).

A clear definition or description of 'serious negligence' is needed in case of a disputed authorisation. Nevertheless, the user will not incur any liability if there has been no physical presentation of the payment instrument and electronic identification.

We don't share the opinion of a need of presumption of negligence: the mere fact that a third person was able to use the instrument, cannot prove that the holder of the instrument has been negligent. It's up to the issuer to provide elements that prove the absence or the existence of extreme negligence or fraud of the holder. The contrary would make the limitation of liability to 150 euros, the main feature of the system, purely fictions.

Member States should be allowed to adopt dispositions limiting further the liability of the user in case of a liability for losses in respect of unauthorised payment transactions. We don't find

it appropriate that the user will automatically be liable for all the transactions taking place before the notification of the loss or theft.

We are in favour of the possibility to **refund and revoke a transaction**. Only the period in which this should happen, needs some modification. We also fully support the rule laid down in art. 57 stating the explicit prohibition to make any deduction from the amount transferred. In case of a violation of this principle, a specific sanction should be imposed.

Concerning the **execution time**, we fully agree with the proposal made by the Commission, but have some doubts on the technical feasibility. Therefore, some adaptations are considerable. However, given their importance for the consumer, we do not agree to exclude micro payment from the scope of the articles concerning the execution time. In order to avoid that the payment providers will try to recuperate the supplementary costs of the reforms on the users, we would propose the following adaptations:

- **art. 60 par. 1:** the amount should be credited to **the payee's payment service provider** at the latest at the end of the first working day following the point in time of acceptance instead of **to the payee's payment account**.
- if the transaction is initiated by the payer and includes a currency conversion towards a currency which is not a currency of the EU member states, the parties may agree explicitly on a period no longer than three days.

We believe the division of the liability in art. 67 in case of a non-execution or a defective execution of a payment transaction goes in the right direction. However, for consumer protection reasons, it is advisable to delete the sentence in art. 70 stating that the payment service provider will not be liable in case of force majeure.

Finally, we are not convinced of the added value of art. 78 as formulated in the proposal: in our opinion and dependant of the adoption of some crucial amendments, we believe member states should maintain the competence to go further than the dispositions of this proposal in order to protect consumer interest. In this respect, this proposal should be a minimum.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
RECITAL 21 A (new)

¹ OJ C ... /Not yet published in OJ.

(21a) In the case of unauthorised use of verification instruments, the following behaviour should inter alia be considered as gross negligence: the fact that the holder noted his personal identification number or any other code in an easily recognisable form, and particularly on the electronic funds transfer instrument or on an object or document kept or carried by the holder with the instrument, as well as the fact that the holder did not notify the issuer that the instrument had been lost or stolen as soon as he became aware of that fact. To assess the payment service user's negligence, account should be taken of all the actual circumstances. The production by the issuer of the relevant records and the use of the payment instrument with the code known only to the holder, should not be considered sufficient evidence of the latter's negligence. Clauses and conditions, or the combination of clauses and conditions, in the contract for the provision and use of the electronic funds transfer instrument, whose effect would be to increase the burden of proof on the consumer or reduce the burden of proof on the issuer, should be considered null and void.

Justification

The amendment is based on amendment 63 of the draftswoman and should be taken as a recital explaining Article 46.

Amendment 2 ARTICLE 2, PARAGRAPH 1

1. This Directive shall apply only to ***business activities, listed in the Annex, consisting in the execution of payment transactions on behalf of a natural or legal person, hereinafter “payment services”,*** where ***at least one of*** the payment service providers ***is*** located in the Community.

However, for payment services where the amount of the transaction exceeds EUR 50 000, Titles III and IV shall not apply.

1. This Directive shall apply only to ***payment services as defined in Article 4,*** where the payment service providers ***are*** located in the Community.

However, for payment services where the amount of the transaction exceeds EUR 50 000, Titles III and IV shall not apply, ***in***

so far as the payment service is executed on behalf of a SME. The EUR 50 000 limit shall not apply in the case of payment services executed on behalf of consumers.

For the purposes of this Directive, a payment transaction shall consist in the act, initiated by the payer or by the payee, of depositing, withdrawing or transferring funds from a payer to a payee, irrespective of any underlying obligations between the payment service users.

Justification

For reasons of internal coherence, it's preferable to define all the concepts in article 4. Further on, it's more appropriate to limit the geographical scope of the directive to the community instead of an extension to third countries

Amendment 3 ARTICLE 2, PARAGRAPH 2

2. *Save where otherwise provided*, this Directive shall apply to payment services made in *any currency*.

2. This Directive shall apply to payment services made in *Member States' currencies*.

Amendment 4 ARTICLE 3, POINT (I)

(i) services that can be used to acquire goods or services *only within a limited network of affiliated service providers and* are based on instruments like vouchers and cards in so far as such instruments are not redeemable;

(i) services that can be used to acquire goods or services *which* are based on instruments like vouchers and cards in so far as such instruments are not redeemable;

Justification

It is desirable to clarify this provision so as to distinguish between, on the one hand, vouchers which are not redeemable, such as meal vouchers, and locally limited networks of business people.

Cards and other debit instruments should be included in the scope of the Directive, as such cards must meet the same legal, technical or security requirements as other means of payment.

Amendment 5 ARTICLE 3, POINT (J)

(j) payment transactions executed by means of a mobile telephone or any other digital or IT device, where all the following conditions are met: *deleted*

(i) the service provider operating the telecommunication or IT system or network is closely involved in the development of the digital goods or electronic communication services provided;

(ii) the goods and services cannot be delivered in the absence of the service provider;

(iii) there is no alternative option for remuneration

Justification

In order to anticipate on future payment systems, and to avoid difficulties in drawing the borderline between service included and services excluded from the scope, it's preferable to delete this exemption.

Amendment 6
ARTICLE 4, POINT 1 (I)

(i) if the payment institution is a natural person, the Member State where the head office of the payment service provider is situated; *deleted*

Amendment 7
ARTICLE 4, POINT 4

(4) "payer" means a natural or legal person who *has the right of disposal of funds and who allows them to be transferred to a payee;*

(4) "payer" means a natural or legal person who *as an account-holder permits the transfer of money from an account or, if no account exists, a natural or legal person who issues the instruction for a money transfer;*

Justification

The amendment serves to clarify that 'payer' means the contracting partner of the service provider. The proposed approach makes no sense in relation to the rights and obligations of the payer as regulated in Title III, since these always presuppose a contract between the payer and the service provider.

Amendment 8
ARTICLE 4, POINT 9

(9) "availability of funds" means that the funds on a payment account may be used by the payment service user without fees being charged; ***deleted***

Amendment 9
ARTICLE 4, POINT 11 A (new)

(11a) "banking day" means a day when the payment service provider of the payer involved in the payment transaction and the payment service provider of the payee involved in it are ordinarily open for business with customers;

Justification

The definition of 'banking day' is intended for purposes of clarification.

Amendment 10
ARTICLE 4, POINT 19 A (new)

(19a) "payment services" means the business activities listed in the Annex consisting in the execution of payment transactions on behalf of a natural or legal person where the payment service providers are located in the Community;

Amendment 11
ARTICLE 4, POINT 19 B (new)

(19b) "execution time" means the point in time between the acceptance of a payment order by a payment service provider and the point in time when the amount to be paid pursuant to the payment order is made available to the payee;

Amendment 12
ARTICLE 4, POINT 19 C (new)

(19c) "micro payments" means a contract concerning payments not exceeding EUR

10.

Justification

Given the broad obligations to fulfil and the risks to cover by a payment institution, it doesn't seem appropriate, for consumer protection reasons, to allow natural persons to establish a payment institution. For reasons of coherence with existing European legislations, the added definitions are taken directly from art. 2 of directive 2001/24/EC of the EP and the Council of 4 April on the reorganisation and the winding up of credit institutions.

Amendment 13

ARTICLE 5, POINT (H)

(h) where the applicant is a legal person, the identity of the ***natural persons who are its representatives***, its majority shareholders ***and who act as directors*** as well as evidence that those persons are of good repute and have appropriate knowledge and ability to perform payment services;

(h) where the applicant is a legal person, the identity of the ***directors, persons responsible for the management of the payment institution*** and its majority shareholders as well as evidence that those persons are of good repute and have appropriate knowledge and ability to perform payment services;

Justification

These modifications together with amendments on art. 10 should make it possible to create a level playing field and organise a real supervision on payment institution They are also justified for reasons of coherency with art. 4

Amendment 14

ARTICLE 5 A (new), PARAGRAPH 1

Article 5a

Initial capital requirements

1. Payment institutions shall hold capital, as defined in Article 57(a) and (b) of 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 institutions¹, as follows:

(a) where the payment institution carries on only those activities mentioned in point 7 of the Annex and where these are carried out within the time limits laid down in the first sentence of Article 60(1) or more swiftly, its capital shall at no time be less than EUR 50

000;

(b) where the payment institution carries on the activity mentioned in point (a) above and/or:

(i) the activities mentioned in point 1 of the Annex, but where these are not carried out within the time limits laid down in the first sentence of Article 60(1), and/or

(ii) any of the activities mentioned in points 5 and/or 8 and/or 9 of the Annex, and/or

(iii) where any of the ancillary services mentioned in Article 10(1)(b) and (c) are offered,

its capital shall at no time be less than EUR 125 000;

(c) where the payment institution carries on any of the activities mentioned in points (a) or (b) above and/or any of the activities in paragraphs 1 to 3 of the Annex, its capital shall at no time be less than EUR 730 000.

¹ OJ L 177, 30.6.2006, p. 1.

Justification

It necessary to link the amount of initial capital held by a payment institution to the nature of the risks to which it is exposed. These risks are analogous to some of the risks faced by investment firms and therefore capital levels based on the recently reviewed Capital Adequacy Directive shall be proposed. In conjunction with the client funds protection envisaged in paragraph 10 a and b below these proposals represent a fair balance between the desire to introduce more competition to the payments market, and the need to protect consumers funds.

Amendment 15 ARTICLE 5 A (new), PARAGRAPH 2

2. Notwithstanding the minimum capital requirements set out above, competent authorities shall be satisfied that the payment institution holds sufficient capital to support all its business activities at all times.

Justification

All payments institutions should be financially sound at all times.

Amendment 16
ARTICLE 5 A (new), PARAGRAPH 3

3. Payment institutions shall inform the competent authorities without delay if their capital falls below the amounts required by paragraph 1. In such circumstances the competent authorities shall without delay take steps to ensure the effectiveness of the arrangements described in Articles 10a and 10b and shall establish, together with the payment institution, a plan for the recapitalisation of the payment institution.

Justification

Where payments institutions suffer financial difficulties it is vital that Member States competent authorities take any legal steps necessary to ensure that funds held on behalf of customers are fully secured for the benefit of those customers.

Amendment 17
ARTICLE 6, PARAGRAPH 1

Authorisation shall be granted if the information and evidence accompanying the application complies with all the requirements laid down in ***Article 5***.

Authorisation shall be granted if the information and evidence accompanying the application complies with all the requirements laid down in ***Articles 5 and 5a***.

Justification

The requirements concerning capital must be complied with.

Amendment 18
ARTICLE 6, PARAGRAPH 2

The application for authorisation shall not be examined in the light of requirements other than those laid down in Article 5. ~~*deleted*~~

Justification

This amendment makes it possible to create a level playing field and to organise a real supervision on payment institution. Reference to the freedom to provide services and establishment are laid down in the Treaty, and therefore, no need to be repeated in this article.

Amendment 19
ARTICLE 8, PARAGRAPH 2

The register shall ***be updated on a regular basis***. It shall be publicly available for consultation ***and*** accessible online.

The register shall ***contain information on the services and the activities laid down in Article 10 for which the payment institution is authorised or registered***. It shall be publicly available for consultation, accessible online ***and shall be updated on a regular basis***.

Justification

This supervision measure is justified for consumer protection reasons and in order to create a level playing field.

Amendment 20
ARTICLE 9

Where any change affects the accuracy of information and evidence provided under Article 5, the payment institution shall without undue delay inform the competent authority of its home Member State accordingly.

Where any change affects the accuracy of information and evidence provided under ***Article 4a and*** Article 5, the payment institution shall without undue delay inform the competent authority of its home Member State accordingly.

Justification

As being one of the requirements for an authorisation, any change in the capital requirement should be mentioned without any delay.

Amendment 21
ARTICLE 10, PARAGRAPH 1

1. Payment institutions shall be entitled to engage in the following activities:
(a) the provision of payment services;

(b) the provision of operational and related ancillary services ***such as the guaranteeing execution of payment transactions, foreign exchange services, safekeeping activities, and storage and processing of data;***

1. Payment institutions shall be entitled to engage in the following activities:
(a) the provision of payment services ***as provided for in the Annex;***
(b) the provision of operational and related ancillary services, ***insofar as these are necessary in order to provide payment services as referred to at (a);***

(c) the accessing **and operation** of payment systems for the purposes of transferring, clearing and settling funds, including any instruments and procedures relating to the systems.

(c) the accessing of payment systems for the purposes of transferring, clearing and settling funds, including any instruments and procedures relating to the systems.

Payment institutions may not perform any deposit transactions, offer any credit services or stand surety.

Justification

In order to foster consumer confidence in the financial system, it is necessary to restrict the fields of activity of payment institutions to those listed in the annex. In addition, the amendment serves the purpose of clarification, in order to prevent evasion.

Amendment 22
ARTICLE 10, PARAGRAPH 2 A (new)

2a. A payment institution shall:

(a) segregate and account for separately in its books funds received from payment service users, accepted for a payment transaction, from other funds accepted for activities other than payment services;

(b) keep the funds of a payment service user under an account name which clearly identifies the payment service user.

No funds of a payment service user may be commingled with the funds of a payment service provider or any other payment service user or any other person other than the payment service user on whose behalf the funds are held.

The funds of a payment service user shall be insulated from any third party action against the payment institution.

Justification

In order to maintain consumer confidentiality in the financial system and to avoid reputation problems for the whole sector, it's necessary that appropriate measures are imposed, notably by limiting the activities of PI to these cited in the annex (specialisation principle of the PI), by limiting its investments, and by protecting the funds they receive from payment service users. Consideration 9 should also be read in this sense.

Amendment 23
ARTICLE 10, PARAGRAPH 2 B (new)

2b. In the event that one or more reorganisation measures or winding-up proceedings are opened against a payment institution, the relevant administrative or judicial authorities, or the relevant administrator or liquidator, as the case may be, shall promptly return the funds of all payment service users to such payment service users in priority to all other claims against that payment institution.

In the event that one or more reorganisation measures or winding-up proceedings are opened against a payment institution and insufficient funds are available for remittance of all the funds due to payment service users, the relevant administrative or judicial authorities, or the relevant administrator or liquidator, as the case may be, shall promptly distribute to payment service users the funds of such payment service users on a pro rata basis according to their claims and in priority to all other claims against that payment institution.

Justification

In order to maintain consumer confidentiality in the financial system and to avoid reputation problems for the whole sector, it's necessary that appropriate measures are imposed, notably by limiting the activities of PI to these cited in the annex (specialisation principle of the PI), by limiting its investments, and by protecting the funds they receive from payment service users. Consideration 9 should also be read in this sense.

Amendment 24
ARTICLE 10, PARAGRAPH 3

3. The business activities of authorised payment institutions shall be non-exclusive and shall not be restricted to payment services, having regard to the applicable national and Community law. ***deleted***

Justification

For reasons of legal security, it 's preferable to limit the Payment institutions activities.

Amendment 25
ARTICLE 12, PARAGRAPH 2

2. Member States shall require that payment institutions remain fully liable for any acts of their managers, employees, or any tied agent *or* subsidiary, pursuant to this Directive.

2. Member States shall require that payment institutions remain fully liable for any acts of their managers, employees, or any tied agent, subsidiary *or outsourced entity*, pursuant to this Directive.

Justification

Payment institutions should be also liable for their outsourced activities.

Amendment 26
ARTICLE 13

Member States shall require payment institutions to keep records of all services and transactions for a *reasonable time*, but not more than five years.

Member States shall require payment institutions to keep records of all services and transactions for a *period of at least one year*, but not more than five years.

Justification

It is desirable to clarify the term 'reasonable time'.

Amendment 27
ARTICLE 16, PARAGRAPH 2, INTRODUCTORY PART

In order to check compliance with this Title, the competent authorities *may* take *only* the following steps:

In order to check compliance with this Title, the competent authorities *should* take *at least* the following steps, *in particular*:

Justification

For consumer protection reasons and their confidence in the financial system, an appropriate control on PI is necessary.

Amendment 28
ARTICLE 16, PARAGRAPH 2, POINT (E)

(e) to suspend or withdraw authorisation in

(e) to suspend or withdraw authorisation in

cases where the conditions for authorisation in accordance with Article 5 are no longer fulfilled.

cases where the conditions for authorisation in accordance with Article 5, **the provisions of Article 4a (capital requirements) and/or the provisions of Article 10a are not or** are no longer fulfilled.

Justification

For consumer protection reasons and their confidence in the financial system, an appropriate control on PI is necessary.

Amendment 29 ARTICLE 21, PARAGRAPH 1

1. By way of derogation from point (d) of the first paragraph of Article 1, **Member States may, on a case by case basis**, allow **natural or** legal persons to be entered in the register established under Article 8, without application of the procedure set out in Section 1, where **both the following conditions are satisfied**:

1. **Member States may**, by way of derogation from point (d) of the first paragraph of Article 1, **in exceptional and individual cases**, allow legal persons to be entered in the register established under Article 8, without application of the procedure set out in Section 1, where the total business activities of the person concerned, including any tied agent or subsidiary for which it assumes full responsibility, generates a total amount of funds outstanding which were accepted for the provision of payment services and which does not exceed **a monthly average of EUR 150 000**.

(a) the total business activities of the person concerned, including any tied agent or subsidiary for which it assumes full responsibility, generates a total amount of funds outstanding which were accepted for the provision of payment services and which does not exceed **EUR 5 million on average over a month and EUR 6 million at any given point in time**.

(b) **such registration is considered to be in the public interest for either of the following reasons**

(i) **the person concerned plays a vital role in financial intermediation, providing access to payment services for underprivileged social groups, in particular where the provision by other providers of**

the services in question is unlikely or would take a long time;

(ii) it is necessary for the effective implementation of money laundering rules or mechanisms to prevent terrorist financing.

Justification

For consumer protection reasons and in order to guarantee the financial stability, it's appropriate to restrict the derogation conditions of this article. Consideration 11 should also be read in this sense.

Amendment 30
ARTICLE 21, PARAGRAPH 3

3. The persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the condition specified in **point (a) of** paragraph 1.

3. The persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the condition specified in paragraph 1.

Justification

For consumer protection reasons and in order to guarantee the financial stability, it's appropriate to restrict the derogation conditions of this article.

Amendment 31
ARTICLE 21, PARAGRAPH 3 A (new)

3a. This waiver shall not be applied in respect of provisions as laid down in Directive 2005/60/EC or national anti-money-laundering provisions.

Justification

For consumer protection reasons and in order to guarantee the financial stability, it's appropriate to restrict the derogation conditions of this article.

Amendment 32
ARTICLE 23, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall ensure that rules on

1. Member States shall ensure that rules on

access to and operation of payment systems shall be objective and proportionate and shall not inhibit access more than is necessary to safeguard against *specific* risks and to protect the financial safety of the payment system.

access to and operation of payment systems shall be objective and proportionate and shall not inhibit access more than is necessary to safeguard against risks and to protect the financial safety of the payment system.

However, in assessing the admission of a payment institution, solvency requirements may be imposed.

Justification

In the light of the aim of safeguarding financial stability, it's not opportune to force payment systems to accept payment institutions. Payment systems should have the freedom and authority to impose more stringent admittance requirements, like solvency requirements.

Amendment 33

ARTICLE 23, PARAGRAPH 1, POINT (C)

(c) any restriction on the basis of institutional status.

deleted

Justification

In the light of the aim of safeguarding financial stability, it's not opportune to force payment systems to accept payment institutions. Payment systems should have the freedom and authority to impose more stringent admittance requirements, like solvency requirements.

Amendment 34

ARTICLE 25, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall require that the payment service provider is to ***communicate*** to the payment service user on paper or on another durable medium available and accessible to him the conditions in accordance with Article 26.

1. Member States shall require that the payment service provider is to ***make available*** to the payment service user on paper or on another durable medium available and accessible to him the conditions in accordance with Article 26.

Justification

The insertion of the words 'make available' accords with Article 3 of Directive 97/5/EC and Article 4 of Regulation 2560/2001 and should apply to the whole of Title III.

Amendment 35

ARTICLE 26, PARAGRAPH 1, SUBPARAGRAPH 1, POINT (A) (II)

(ii) the execution time for the payment service to be provided;

(ii) the execution time (**banking business days**) **within the institution itself** for the payment service to be provided;

Justification

The information requirements should be limited to what is necessary and essential for the consumer. The clarity of the provisions is of particular importance here. The consumer can always request any additional information which is needed in individual cases.

The deletion of the last sentence of paragraph 1 follows automatically from the restriction of the scope.

Amendment 36

ARTICLE 26, PARAGRAPH 1, SUBPARAGRAPH 1, POINT (A) (VI A) (new)

(via) information enabling the consumer to consult tariffs;

Amendment 37

ARTICLE 26, PARAGRAPH 1, SUBPARAGRAPH 1, POINT (A) (VI B) (new)

(vib) the right of the payer to revoke a payment;

Justification

The conditions should make clear how the payer can revoke a payment.

Amendment 38

ARTICLE 26, PARAGRAPH 1, SUBPARAGRAPH 1, POINT (C)

(c) all charges payable by the payment service user to the payment service provider **and, where applicable, the exchange rate applied to the payment transaction;**

(c) all charges payable by the payment service user to the payment service provider;

Justification

The information requirements should be limited to what is necessary and essential for the consumer. The clarity of the provisions is of particular importance here. The consumer can always request any additional information which is needed in individual cases.

The deletion of the last sentence of paragraph 1 follows automatically from the restriction of the scope.

Amendment 39
ARTICLE 26, PARAGRAPH 1, SUBPARAGRAPH 1, POINT (E)

(e) an indication of the redress and complaint procedures available to the payment service user in accordance with Chapter 4 of Title IV and the method of accessing them; ***deleted***

Justification

The information requirements should be limited to what is necessary and essential for the consumer. The clarity of the provisions is of particular importance here. The consumer can always request any additional information which is needed in individual cases.

The deletion of the last sentence of paragraph 1 follows automatically from the restriction of the scope.

Amendment 40
ARTICLE 27, POINT (A)

(a) a reference enabling the payment service user to identify the payment transaction and, where appropriate, the information relating to the payee;

(a) a reference enabling the payment service user to identify the payment transaction and, where appropriate, the information relating to the payee, ***insofar as this information has not already been supplied to the payer in advance and no express provision is made for this;***

Justification

The obligations to supply information to the payer after acceptance of the payment order which are provided for in Article 27 should be rejected as excessive. Where an account exists (provided for by a 'framework contract' as referred to in Article 29 et seq.), the necessary information will appear in a bank statement. To supply all the data would overload the bank statement and thus detract from transparency.

If on the other hand a cash deposit were made without the payer's holding an account, the information referred to here would have to be recorded in a document delivered separately from the transfer form, which would give rise to a significant amount of red tape.

Amendment 41
ARTICLE 27, POINT (A A) (new)

(aa) the date of the transaction;

Justification

For reasons of internal coherence, reference should be made to art. 54 concerning the acceptance of a payment order. Further on, it's necessary for the consumers to know the exact date of transaction and the exact amount expressed in the currency of the transaction.

Amendment 42
ARTICLE 27, POINT (B)

(b) the amount of the payment transaction and of any commission fees and charges applied to the payment transaction that the payer had to pay to his payment service provider;

(b) the amount of the payment transaction ***expressed in the currency of the transaction*** and ***the amount*** of any commission fees and charges applied to the payment transaction that the payer had to pay to his payment service provider;

Justification

For reasons of internal coherence, reference should be made to art. 54 concerning the acceptance of a payment order. Further on, it's necessary for the consumers to know the exact date of transaction and the exact amount expressed in the currency of the transaction.

Amendment 43
ARTICLE 28, INTRODUCTORY PART

Subsequent to making funds received for the payee available to him, the payment service provider shall make available to the payee, in the same way as provided for in Articles 25(1) and 26(2), at least the following information:

Subsequent to making funds received for the payee available to him, the payment service provider ***of the payee*** shall make available to ***him***, in the same way as provided for in Articles 25(1) and 26(2), at least the following information:

Justification

The amendment clarifies the point that in this case 'payment service provider' means the payment service provider of the payee. The requirement should not on any account apply to the payment service provider of the payer.

Amendment 44
ARTICLE 30

1. Member States shall require that in good time before the payment service user is bound by any framework contract or the offer, the payment service provider is to communicate to the payment service user on paper or on another durable medium,

Before the payment service user is bound by any framework contract or the offer, the payment service provider is to communicate to the payment service user on paper or on another durable medium, available and accessible to the payment service user, the

available and accessible to the payment service user, the conditions in accordance with Article 31.

conditions in accordance with Article 31.

2. If the 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, the payment service provider shall fulfil his obligations under that paragraph as soon as reasonably possible after the conclusion of the contract.

Justification

The payment service provider should also communicate the conditions, even if the contract has been concluded at the request of the payment service user using a means of distance communication which

Amendment 45

ARTICLE 31, PARAGRAPH 1, POINT (B) (II)

(ii) **the execution time and** the relevant maximum execution time for the payment services **to be provided**;

(ii) the relevant maximum execution time **(banking business days)** for the payment services **requested by the payer**;

Justification

Where payments involve more than one institution, it is not possible for a service provider to state with absolute certainty the actual execution time, as this can only be conclusively ascertained after the payment has been executed. Instead, the obligation to provide information should be confined to an indication of the statutory or contractual maximum execution times, as already provided for in the EU transfer directive, 97/5/EC, and EU Regulation 2560/2001 on cross-border payments in euros.

Amendment 46

ARTICLE 31, PARAGRAPH 1, POINT(C)

(c) spending ceilings **envisaged for** specific payment services in accordance with Article 43(1);

(c) **the possibility of** spending ceilings **which is provided for in the case of** specific payment services in accordance with Article 43(1);

Justification

In the precontractual sphere, a decision on spending ceilings and hence a credit decision

cannot be taken in the abstract, as it is an individual discretionary ceiling. Therefore it is only possible to provide information about the 'possibility of spending ceilings'.

Amendment 47

ARTICLE 33, PARAGRAPH 1, SUBPARAGRAPH 1

1. Any change in the contractual conditions communicated to the payment service user pursuant to Article 31(1) shall be proposed by the payment service provider in the *same* way *as* provided for in *Articles 30(1) and 31(2)* and not less than one month before the date of its proposed application.

1. Any change in the contractual conditions communicated to the payment service user pursuant to Article 31(1) *which affects the payment service user* shall be *made available to him* by the payment service provider in the way provided for in *the contract* and not less than one month before the date of its proposed application.

Justification

Linguistic simplification. See also justification for amendment to Article 25.

Amendment 48

ARTICLE 34, PARAGRAPH 1

1. The termination of a framework contract which has been concluded for a period of 12 months or more or for an indefinite period shall be free of charges for the payment service user.

1. The termination *by the payment service user* of a framework contract which has been concluded for a period of 12 months or more or for an indefinite period shall be free of charges for the payment service user *once 12 months have elapsed and subject to a period of notice not exceeding one month.*

Fees for payment services charged on a regular basis shall be payable only proportionally up to the termination of the contract. If such fees are paid in advance, they shall be reimbursed proportionally.

Fees for payment services charged on a regular basis shall be payable only proportionally up to the termination of the contract *by the payment service user*. If such fees are paid in advance, they shall be reimbursed proportionally.

Justification

More precise formulation.

Amendment 49

ARTICLE 34, PARAGRAPH 2

2. Save where the payment service provider and the payment service user have explicitly agreed on a period of notice for

deleted

the termination of a framework contract, framework contracts may be terminated immediately.

The period of notice may not exceed one month.

Amendment 50
ARTICLE 35, PARAGRAPH 2

In cases covered by Article 58(2), a bona fide estimate of any deductions shall be provided in advance. *deleted*

Justification

The deletion follows from the limitation of the scope of the Directive.

Amendment 51
ARTICLE 36, PARAGRAPH 1, INTRODUCTORY PART AND POINT (A)

1. Subsequent to the execution of a payment transaction, the payment service provider shall **provide** the payer **with** at least the following information:

(a) a reference enabling the payment service user to identify each payment transaction and, where appropriate, the information relating to the payee;

1. Subsequent to the execution of a payment transaction, the payment service provider shall **make available to** the payer at least the following information:

(a) a reference enabling the payment service user to identify each payment transaction and, where appropriate, the information relating to the payee, ***insofar as this information has not already been supplied to the payer in advance and no express provision is made for this;***

Justification

Paragraph 1(a) constitutes a considerable barrier to domestic payment transactions and would make it impossible to continue to use cash in-payment forms (payment instruction forms completed by the payee in advance and used by the payer to issue the instruction) in the way in which they are used at present. For the entry in the records and the image transfer, only the data from the coding line are used. Such data fields as 'payee' are irrelevant for the purpose of processing the debit. Thus the information called for here is not available.

Otherwise, see justification concerning Article 36, paragraph 2.

Amendment 52
ARTICLE 37, PARAGRAPH 1, SUBPARAGRAPH 1, INTRODUCTORY PART

1. Subsequent to making the funds received for the payee available to the latter, the

1. Subsequent to making the funds received for the payee available to the latter, the

payment service provider shall **provide** the payee, in the same way as provided for in Articles 30(1) and 31(2), **with at least** the following information:

payment service provider shall **make available to** the payee, in the same way as provided for in Articles 30(1) and 31(2), the following information:

Justification

For the purpose of communicating information about the payment made, the currently widespread practice - which is also increasingly demanded by users - of making the information available to the payment service user, for example on request via the statement-of-account printer of the service provider or through on-line banking, should suffice. This is also, from the customer's point of view, the cheapest way of providing the information.

Amendment 53

ARTICLE 37, PARAGRAPH 1, SUBPARAGRAPH 1, POINT (D)

(d) the amount of any commission, fees and charges applied to the payment transaction payable by the payee to his payment service provider for receiving the payment;

(d) the amount of any commission, fees and charges applied to the payment transaction payable by the payee to his payment service provider **or to any intermediary** for receiving the payment;

Justification

Not only the provider, but every intermediary should give the relevant information to the payee after receipt of the funds

Amendment 54

ARTICLE 37, PARAGRAPH 2

2. It may be a condition of a framework contract that the information referred to in paragraph 1 is to be **provided** on a regular basis, with a specified frequency. In any case, this information shall be **supplied** in the same way as provided for in Articles 30(1) and 31(2).

2. It may be a condition of a framework contract that the information referred to in paragraph 1 is to be **made available** on a regular basis, with a specified frequency. In any case, this information shall be **made available** in the same way as provided for in Articles 30(1) and 31(2).

Justification

See the justification for the amendment to paragraph 1.

Amendment 55

ARTICLE 38, PARAGRAPH 1

1. By way of derogation from Articles 29 to 33, in the case of a **contract concerning**

1. By way of derogation from Articles 29 to 33, in the case of a **micro payment** the

payments where no individual payment can exceed EUR 50, the payment service provider shall communicate to the payment service user in the manner provided for in Articles 30(1) and 31(2) only the main characteristics of the payment service to be provided, the way in which it can be used and all charges applicable.

payment service provider shall communicate to the payment service user in the manner provided for in Articles 30(1) and 31(2) only the main characteristics of the payment service to be provided, the way in which it can be used and all charges applicable.

Justification

For consumer protection reasons, it is more appropriate to decrease the 50 to 10 euros limit, given the number of payments made by consumers below of 50 euros.

Amendment 56
ARTICLE 39

Article 39

deleted

Transaction currency and currency conversion

1. Payments shall be made in the currency implicitly or explicitly agreed by the parties.

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

The payer shall explicitly agree to the service on that basis.

Justification

The provisions of Article 39 concerning the relationship between the payer and the payee lie outside the scope defined in Article 2.

Amendment 57
ARTICLE 41, PARAGRAPH 2

Consent shall consist in an explicit authorisation for the payment service provider to effect a payment transaction or a

Consent shall consist in an explicit **or implicit** authorisation for the payment service provider to effect a payment

series of transactions.

transaction or a series of transactions.

Justification

To make the payer's consent dependent on 'explicit' authorisation would be too restrictive. Consent could only be granted by means of action by the user. In accordance with the general principles of civil law, consent is also deemed to be granted where a payment is approved by means of an action which implies consent or by means of a pre-agreed approval fiction.

Amendment 58
ARTICLE 41, PARAGRAPH 3

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

In the absence of such consent, ***or in the event that such consent is validly withdrawn***, a payment transaction shall be considered to be unauthorised.

Justification

To put the article clear and to guarantee a sufficient protection to the consumer.

Amendment 59
ARTICLE 43, PARAGRAPH 2, SUBPARAGRAPH 1

2. If agreed in the framework contract, the payment service provider may reserve the right to block the use of a payment verification instrument even within the agreed spending ceiling provided that, in its view, the spending pattern gives rise to the suspicion ***of fraudulent use***.

2. If agreed in the framework contract, the payment service provider may reserve the right to block the use of a payment verification instrument even within the agreed spending ceiling provided that, in its view, the spending pattern gives rise to the suspicion ***that the payment verification instrument has been or could be used fraudulently***.

Justification

The amendments to the first sentence improve the linguistic formulation. The deletion of the second sentence is necessary because it is not clear what 'efforts' means. Moreover, the condition that an instrument may be blocked only after the user has been contacted is particularly counterproductive in case of fraud.

Amendment 60
ARTICLE 45, PARAGRAPH 1

1. On becoming aware of any unauthorised transaction, errors or other irregularity in the payments made from his account and

1. On becoming aware of any unauthorised transaction, errors or other irregularity in the payments made from his account and

contained in the information received in accordance with Article 36, the payer shall notify his payment service provider thereof without undue delay.

contained in the information received in accordance with Article 36, the payer shall notify his payment service provider thereof without undue delay **and at all events within one year of the debit entry's being made.**

Justification

On grounds of legal certainty for the service provider and user, it is necessary to supplement the provision with an end date, so that it is possible to say when a payment transaction is definitive. A one-year time limit also corresponds to the period for which records are to be kept pursuant to Article 44.

Amendment 61 ARTICLE 45, PARAGRAPH 2

2. In the case of a series of transactions, **authorisation may be withdrawn and** any subsequent payment transaction shall be considered as unauthorised **without prejudice to Article 56.**

2. If an authorisation is granted for a series of transactions, **it may be countermanded for the future with the effect that, without prejudice to Article 56,** any subsequent payment transaction shall be considered as unauthorised.

Justification

Clarification.

Amendment 62 ARTICLE 46

The payment service user shall meet the following obligations:

The payment service user shall meet the following obligations:

(- a) immediately after receiving a payment verification instrument, to - in particular - take all reasonable measures to protect the security features against access by unauthorised persons;

(-aa) to ensure, in particular, that the payment verification instrument and the personalised security features associated with it are not accessible to any other person;

(a) to use a payment verification instrument in accordance with the terms governing the issuing and use of the instrument;

(a) to use a payment verification instrument in accordance with the terms governing the issuing and use of the instrument;

(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 verification instrument or of its unauthorised use.

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

(b) to notify, ***e.g. by phone***, 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 verification instrument or of its unauthorised use.

Justification

Intended to make it clear that a payment service user must take measures in his sphere to prevent misuse of payment verification instruments and the associated personalised security features. This will also serve to protect payment transaction systems as a whole by reducing the costs of covering risks. As the phone is often the fastest way to notify lost or theft, and therefore the best way to prevent further transactions.

Amendment 63
ARTICLE 47, PARAGRAPH 1, POINT (C)

(c) to ensure that ***appropriate means are available*** at all times ***to enable*** the payment service user ***to*** make a notification pursuant to Article 46(b).

(c) to ensure that at all times the payment service user ***can*** make a notification pursuant to Article 46(b).

Justification

Clarifies the German version.

Amendment 64
ARTICLE 47, PARAGRAPH 1, POINT (C A) (new)

(ca) to prevent all use of the payment verification instrument, once the notification under Article 46(b) has been made.

Amendment 65
ARTICLE 48, PARAGRAPH 3

3. For the purposes of rebutting the presumption referred to in paragraph 2, the use of a payment verification instrument recorded by the payment service provider **shall not, of itself, be** sufficient to establish either that the payment was authorised by the payment service user or that the payment service user acted fraudulently or with gross negligence with regard to his obligations under Article 46.

3. For the purposes of rebutting the presumption referred to in paragraph 2, **it shall be evaluated whether or not** the use of a payment verification instrument recorded by the payment service provider **is** sufficient to establish either that the payment was authorised by the payment service user or that the payment service user acted fraudulently or with gross negligence with regard to his obligations under Article 46.

Amendment 66
ARTICLE 49, PARAGRAPH 1

Member States shall ensure that, in the case of an unauthorised payment transaction, the payment service provider refunds to the payment service user forthwith the amount of the unauthorised payment transaction or, where applicable, restores the payment account that had been debited with that amount to the situation that would have existed if the unauthorised payment transaction had not taken place.

Member States shall ensure that, in the case of an unauthorised payment transaction, the payment service provider refunds to the payment service user forthwith the amount of the unauthorised payment transaction or, where applicable, restores the payment account that had been debited with that amount to the situation that would have existed if the unauthorised payment transaction had not taken place. ***This entitlement to a refund from the payment service provider shall lapse one year after the unauthorised debit to the account.***

Justification

The amendment serves to insert a time limit in Article 49, as the payment service provider does not usually have any information about the contractual relationship between the payment service user and the third party who has prompted the debit.

Amendment 67
ARTICLE 50, PARAGRAPH 1, SUBPARAGRAPH 1

1. The payment service user shall bear the loss, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment verification instrument and occurring before he has fulfilled his obligation to notify his payment service provider under Article 46(b).

1. The payment service user shall bear the loss, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment verification instrument and occurring before he has fulfilled his obligation to notify his payment service provider under Article 46(b), ***provided that he has not acted with fraudulent intent or displayed gross negligence, particularly by neglecting his duties of care pursuant to Article 46.***

Justification

The amendment clarifies the point that the limitation on liability applies only in cases in which the user has not acted with fraudulent intent or displayed gross negligence.

Amendment 68
ARTICLE 50, PARAGRAPH 1, SUBPARAGRAPH 2

Member States may reduce that maximum amount further ***provided that such reduction does not apply to payment service providers authorised in other Member States.***

Member States may reduce that maximum amount further.

Justification

For consumer protection reasons, it's more appropriate to delete the restriction in art. 50 par. 1.

Amendment 69
ARTICLE 51, PARAGRAPH 2, SUBPARAGRAPH 2

Article 50(3) shall apply to electronic money in so far as the payment service provider is technically in a position to freeze or prevent further spending of the electronic money stored on an electronic device.

deleted

Justification

Paragraph 2(2) should be deleted. The electronic money referred to here should be regarded as equivalent to cash and should therefore not be regulated by this instrument.

Amendment 70
ARTICLE 52, PARAGRAPH 1, INTRODUCTORY PART

Member States shall ensure that a payer ***acting in good faith*** is entitled to a refund of an authorised payment transaction which has already been executed, if the following conditions are met:

Member States shall ensure that a payer is entitled to a refund of an authorised payment transaction which ***has arisen from instructions from the payee and*** has already been executed, if the following conditions are met:

Justification

The concept of 'acting in good faith' used in Article 52 should be deleted, as acts with fraudulent intent are in any case excluded. Otherwise this formulation would have to be included in every legislative instrument. Moreover, the refund clause is appropriate only for

pull transactions, i.e. those where the payment is initiated by the payee and therefore cannot be monitored by the payer at the time of the payment. It is only in this case that the payer requires protection.

Amendment 71

ARTICLE 54, PARAGRAPH 1, SUBPARAGRAPH 1, POINTS (I) AND (II)

(i) the payment service provider has received the payment order;

(ii) the payment service provider has completed authentication of the order, including a possible check on the availability of funds;

(i) the payment service provider ***of the payer*** has received the payment order;

(ii) the payment service provider ***of the payer*** has completed authentication of the order, including a possible check on the availability of funds;

Justification

Article 54(1) requires clarification as regards which person points (i) and (ii) refer to.

Amendment 72

ARTICLE 57, PARAGRAPH 2

In the case of other payment transactions, the payer and the payee may, ***by mutual agreement, vary those requirements.***

In the case of other payment transactions, the payer and the payee may ***conclude with their payment service providers agreements which differ.***

Justification

It is only between the actual contracting parties that it is possible for differing agreements to be concluded. In this case, the parties concerned are the payer and the payee, on the one hand, and their respective payment service providers on the other.

Amendment 73

ARTICLE 58, PARAGRAPH 2

2. Member States shall, in either of the following situations, require the payment service provider to give a bona fide estimate of any deductions to be envisaged for the payment transaction:

(a) where the payment service providers of both the payer and the payee are located in the Community, but the payment transaction is denominated, in whole or in part, in a currency other than that of a Member State;

deleted

(b) where the payment service provider of either the payer or the payee is not located in the Community.

Justification

The deletion follows automatically from the limitation of the scope of the Directive in Article 2.

Amendment 74
ARTICLE 59, PARAGRAPH 2

It shall not apply to payment transactions which are considered to be micro payments. ***deleted***

Justification

There is no reason to execute micro payments not as fast as other payments.

Amendment 75
ARTICLE 60, PARAGRAPH 1

1. Member States shall require the payer's payment service provider to ensure that, after the point in time of acceptance, the amount ordered is credited to the payee's payment account at the latest at the end of the first working day following the point in time of acceptance. ***However, up to 1 January 2010, a payer and his payment service provider may agree on a period no longer than three days.***

1. ***With effect from 1 January 2012,*** Member States shall require the payer's payment service provider to ensure that, after the point in time of acceptance, the amount ordered is credited to the payee's payment account at the latest at the end of the first working day following the point in time of acceptance.

Justification

This amendment retains the standard execution time of d+1 proposed by the Commission, but this execution time should be compulsory only from 1 January 2012.

However, in order to allow the customer greater choice and not a priori to exclude from the market small economic operators who do not have their own direct access to a payment transaction system, a differing individual agreement should remain possible.

Amendment 76
ARTICLE 61, PARAGRAPH 1

1. For a payment transaction initiated by or

1. For a payment transaction initiated by or

through the payee, Member States shall require the payment service provider to ensure that, after the point of time of acceptance, the amount ordered is credited to the payee's payment account at the latest at the end of the first working day following the day on which the point in time of acceptance falls, unless otherwise explicitly agreed between the payee and his payment service provider.

through the payee, Member States shall require the **payer's** payment service provider to ensure that, after the point of time of acceptance, the amount ordered is credited to the payee's **payment service provider** payment account at the latest at the end of the first working day following the day on which the point in time of acceptance **by the payer's payment service provider** falls, unless otherwise explicitly agreed between the payee and his payment service provider.

Justification

For consumer protection reasons, a financial transaction should be executed as fast as technically possible.

Amendment 77
ARTICLE 63

In the case of a cash deposit by the payment service user ***into*** his own account, the payment service provider shall ensure that the amount is credited at the latest on the next working day after receipt of the funds.

Where a payment service user ***puts cash on*** his own account, the payment service provider shall ensure that the amount is credited at the latest on the next working day after receipt of the funds.

Justification

The reference to cash deposit implies that payment institutions could be deposit takers, which is not consistent with the stated intention that PI should not take deposits.

Amendment 78
ARTICLE 64

Article 64

deleted

National payment transactions

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

Justification

Bearing in mind that the execution time provided for is $d+1$, this provision seems excessive; moreover, it would be contrary to the objective of full harmonisation.

Amendment 79
ARTICLE 65, TITLE

Availability of funds on a payment account Availability of **incoming** funds on a payment account

Justification

In accordance with the limitation of the completion of the payment to the receipt of the payment by the institution receiving it, as proposed in Article 60, the provisions on crediting ought, in the interests of consistency, to apply to the crediting or payment of all amounts received to the payee. Overall, this would serve to differentiate correctly between the obligations of the payer's service provider and those of the payee's service provider (legal clarity).

Amendment 80
ARTICLE 65, PARAGRAPH 2

2. The payment service provider of the payer shall cease to make funds available to the payer as soon as those funds are debited from the payer's payment account. *deleted*

Justification

Paragraph 2 should be deleted, because the formulation serves no definable purpose beyond stating the obvious.

Amendment 81
ARTICLE 65, PARAGRAPH 3, SUBPARAGRAPH 2 A (new)

The party issuing an instruction may require a later value date than the date of entry.

Justification

A later value date would accord with the common practice of preventing overloading of the transfer system at the end of a quarter or of a year arising from payments due at a particular time.

Amendment 82
ARTICLE 65, PARAGRAPH 4

4. Paragraphs 1, 2 and 3 shall be without prejudice to debits effected on savings accounts covered by explicit agreements regarding the use of funds in savings *deleted*

arrangements.

Justification

As savings accounts are in any case not classified as payment accounts, there is no need for regulation, so that paragraph 4 can be deleted.

Amendment 83
ARTICLE 66, PARAGRAPH 1

1. If a payment order is executed in accordance with the unique identifier provided by the user, the payment order shall be deemed to be executed correctly with regard to the payee specified. Where the IBAN was specified as the unique identifier it should take precedence over the name of the payee, if it is provided additionally. ***However, the payment service provider should, where possible, verify the consistency of the former with the latter.***

1. If a payment order is executed in accordance with the unique identifier provided by the user, the payment order shall be deemed to be executed correctly with regard to the payee specified. Where the IBAN was specified as the unique identifier it should take precedence over the name of the payee, if it is provided additionally.

Justification

The last sentence of paragraph 1 should be deleted, particularly as what is meant by 'possible' is not defined.

Amendment 84
ARTICLE 67, PARAGRAPH 1

1. After the point in time of acceptance in accordance with Article 54(1), a payment service provider shall be ***strictly*** liable for the non-execution or defective execution of a payment transaction made in accordance with Section 1.

In addition, the payment service provider shall be ***strictly*** liable for any charges, and for any interest charged to the payment service user as a consequence of the non-execution or defective execution of the payment transaction.

1. After the point in time of acceptance in accordance with Article 54(1), a payment service provider shall be liable for the non-execution or defective execution of a payment transaction made in accordance with Section 1.

In addition, the payment service provider shall be liable for any charges, and for any interest charged to the payment service user as a consequence of the non-execution or defective execution of the payment transaction.

Justification

Strict liability - i.e. irrespective of fault - for non-execution or defective execution of a transaction would be contrary to principles of liability under civil law which apply in all

Member States. If the liability clause is intended to have the effect that, in the event of non-execution or defective execution of a transaction involving more than one service provider, the party ordering the payment can hold his payment service provider responsible even for errors by a service provider which the latter uses to execute the transaction, it is sufficient that the payment service provider should be liable for his own errors and those of operators whom he uses to assist performance (liability for the performance of agents).

Amendment 85
ARTICLE 67, PARAGRAPH 2

2. If the payment service user claims that a payment order has not been accurately executed, the payment service provider shall show, without prejudice to factual elements produced by the payment service user, that the payment order was accurately recorded, executed and entered in the accounts.

2. If the payment service user claims that a payment order has not been accurately executed, the payment service provider shall show, without prejudice to factual elements produced by the payment service user, that the payment order was accurately recorded, executed and entered in the accounts. ***If the payment order has been executed correctly, the payment service user shall bear the costs of showing this.***

Justification

The burden of proof on the service provider, for which paragraph 2 provides, can be accepted provided that the costs involved are borne by the user if the order is executed correctly.

Amendment 86
ARTICLE 76

Amendments and updating

Updating

In order to take account of technological and market developments in payment services and to ensure the uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 77(2), amend the list of activities in the Annex to this Directive, in accordance with Articles 2 to 4.

It may, in accordance with the procedure referred to in Article 77(2), update the amounts specified in Articles 2(1), 21(1)(a), 38 and 50(1) in order to take account of inflation and significant market developments.

The Commission may, in accordance with the procedure referred to in Article 77(2), update the amounts specified in Articles 2(1), 21(1)(a), 38 and 50(1) in order to take account of inflation and significant market developments.

Justification

Any amendment to the annex would result in a substantial alteration of the scope. Establishing the activities of payment institutions is a key element of the Directive. As these issues regarding its scope may have a considerable impact on the protection of the rights of consumers, such an amendment must not bypass the codecision procedure. As a rule, when new payment instruments are introduced, this does not happen at such short notice that the European legislator would be unable to respond by amending this Directive. This part of the article is therefore superfluous and should be deleted in its entirety. The second sentence should be supplemented accordingly.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 97/7/EC, 2000/12/EC and 2002/65/EC			
References	COM(2005)0603 – C6-0411/2005 – 2005/0245(COD)			
Committee responsible	ECON			
Opinion by Date announced in plenary	IMCO 17.1.2006			
Enhanced cooperation – date announced in plenary				
Drafts(wo)man Date appointed	Mia De Vits 21.2.2006			
Previous drafts(wo)man				
Discussed in committee	21.3.2006	19.4.2006	3.5.2006	19.6.2006
Date adopted	19.6.2006			
Result of final vote	+: 34 –: 0 0: 0			
Members present for the final vote	Charlotte Cederschiöld, Mia De Vits, Janelly Fourtou, Malcolm Harbour, Christopher Heaton-Harris, Anna Hedh, Edit Herczog, Pierre Jonckheer, Henrik Dam Kristensen, Lasse Lehtinen, Arlene McCarthy, Toine Manders, Manuel Medina Ortega, Zita Pleštinská, Giovanni Rivera, Heide Rühle, Leopold Józef Rutowicz, Andreas Schwab, Eva-Britt Svensson, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler			
Substitute(s) present for the final vote	André Brie, Ieke van den Burg, Giles Chichester, Joel Hasse Ferreira, Konstantinos Hatzidakis, Syed Kamall, Othmar Karas, Cecilia Malmström, Angelika Niebler, Alexander Stubb, Gary Titley, Stefano Zappalà			
Substitute(s) under Rule 178(2) present for the final vote	Reinhard Rack, Paul Rübig			
Comments (available in one language only)	...			