

Consultation on transposition of Directive 2007/64/EC on payment services in the internal market

July 2009

Directive 2007/64/EC (the 'Payment Services Directive') was adopted on 13 November 2007. The Directive must be transposed into the national law of EU Member States before 1 November 2009. The full text of the PSD can be found at:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_319/l_31920071205en00010036.pdf

In Ireland, the Department of Finance has responsibility for the transposition of Payment Services Directive.

The Department has already consulted on its approach to transposition on two occasions. In February 2008, the Department consulted on the approach to be taken to with respect to the various national discretions contained in the Directive. In August 2008, the Department consulted on its initial draft of transposing regulations.

The Directive will be given effect in Irish law through regulations to be made by the Minister for Finance under the European Communities Acts 1972 to 2007.

The Department is now inviting comments on the text of the draft transposing regulations, entitled European Communities (Payment Services) Regulations 2009. The text of the draft Regulations is set out in Annex 1 to this paper. To guide respondents on the transposition of individual articles of the Directive, a concordance table is included at Annex 2.

It is envisaged that the Regulations will be made in good time to enable prospective payment institutions to become authorised or registered in accordance with the Directive by 1 November 2009. The Financial Regulator will be the competent authority for the purposes of the Directive and it has recently issued a press notice inviting prospective applicants to contact it. This is available at <http://www.financialregulator.ie/Pages/home.aspx>.

Micro-Enterprises

The Department is inviting specific comments in relation to the proposed inclusion of micro-enterprises in the scope of the transposing regulations in line with Articles 30(2) and 51(3). A separate note setting out relevant issues for consideration, together with specific consultation questions, is at Annex 3.

Responses to the consultation

Responses are welcome up to **20 July 2009** and should be sent to the following: frank.maughan@finance.gov.ie or micheal.taggart@finance.gov.ie.

Submissions received may be subject to publication under the Freedom of Information Acts.

**Annex 1 – Draft European Communities (Payment Services)
Regulations 2009**

Part 1 Preliminary

1. Citation.
2. Commencement
3. Interpretation
4. Bank to be competent authority.
5. Application of these Regulations.
6. Payment transactions, etc., to which these Regulations do not apply.
7. Relationship with Consumer Credit Act 1995.

Part 2 Payment Service Providers

Chapter 1 Right to Provide Payment Services

8. Persons that may provide payment services.
9. The Register.

Chapter 2 Authorisation of Payment Institutions

10. Applications for authorisation.
11. Initial capital.
12. Own funds.
13. Calculation of amount of own funds.
14. Calculation of own funds—Method A.
15. Calculation of own funds—Method B.
16. Calculation of own funds—Method C.
17. Calculation of own funds—scaling factor k .
18. Refusal to grant authorisation.
19. Conditions for granting of authorisation.
20. Bank may require adjustments to applicant's business plan.
21. Communication of the decision.

Chapter 3 Conditions of Authorisation

22. Requirements of this Chapter to be conditions of authorisation.

23. Maintenance of own funds.
24. Safeguarding of users' funds.
25. Maintenance of authorisation.
26. Accounting and audit.
27. Activities in which a payment institution may engage.
28. Use of agents.
29. Establishment of branch in the State by payment institution authorised in another Member State.
30. Outsourcing of functions.
31. Liability.
32. Record-keeping.
33. Obligation to give notice of intention to commence providing payment services in another Member State.

Chapter 4 Withdrawal of authorisation

34. Withdrawal of authorisation.

Chapter 5 Small Payment Institutions

35. Small payment institutions—waiver of application of certain provisions of Chapter 2.
36. Requirement to apply for authorisation in certain circumstances.
37. Withdrawal of waiver.

Part 3 Transparency of Conditions and Information Requirements for Payment Services

Chapter 1 General Rules

38. Scope of this Part.
39. Application of this Part.
40. Operation of other legislative provisions.
41. Charges for information.

Chapter 2 Single Payment Transactions

42. Single payment transactions.

43. General information to be supplied in advance.
44. Information and conditions.
45. Information for payer after receipt of payment order.
46. Information for payee after execution of payment transaction.
47. Information requirements for low-value payment instruments and electronic money.

Chapter 3 Framework Contracts

48. Scope of this Chapter.
49. General information to be supplied in advance.
50. Information to be provided.
51. Access to information and conditions of framework contracts.
52. Changes in conditions of framework contracts.
53. Termination.
54. Information before execution of individual payment transactions.
55. Information for the payer on individual payment transactions.
56. Information for the payee on individual payment transactions.
57. Information requirements for low-value payment instruments and electronic money.

Chapter 4 Common Provisions

58. Currency and currency conversion.
59. Information on additional charges or reductions.
60. Manner in which information to be given.

Part 4 Rights and Obligations in Relation to the Provision and Use of Payment Services

Chapter 1 Common Provisions

61. Scope.
62. Application of this Part.
63. Charges applicable.

64. Right of payment service provider and user to agree on application of certain provisions of these Regulations.

Chapter 2 Authorisation of Payment Transactions

65. Consent and withdrawal of consent.

66. Limits of the use of payment instruments.

67. Obligations of payment service users in relation to payment instruments.

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

69. Rectification of unauthorised, etc., payment transactions dependent on notice.

70. Evidence on authentication and execution of payment transactions.

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

72. Payer's liability for certain unauthorised payment transactions.

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

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

75. No liability in certain circumstances.

76. Other compensation not prevented.

Chapter 3 Execution of payment transactions

77. Receipt of payment orders.

78. Refusal of payment orders.

79. Irrevocability of payment orders.

80. Amounts transferred and amounts received.

81. Execution time and value date.

82. Payment transactions to payment account.

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

84. Cash placed on a payment account.

- 85. Value date and availability of funds.
- 86. Incorrect unique identifiers.
- 87. Non-execution or defective execution.
- 88. Right of recourse.
- 89. No liability in certain circumstances.
- 90. Other compensation not prevented.

Chapter 4 Data Protection

- 91. Processing of personal data.

Part 5 Powers and Duties of the Bank

Chapter 1 Supervisory Powers and Duties

- 92. Bank as competent authority.
- 93. Supervision.
- 94. Bank's power to give directions.
- 95. Exchange of information.

Chapter 2 Powers of Authorised Officers

- 96. Interpretation (Chapter 2).
- 97. Power to appoint authorised officers.
- 98. Powers of authorised officers.
- 99. Warrants.

Chapter 3 Out-of-Court Complaint and Redress Procedures

- 100. Out-of-court redress.

Chapter 4 Appeals

- 101. Appealable decisions.

Part 6 Offences

- 102. Penalties.

Part 7 Transitional

- 103. Payment service providers active before 25 December 2007.

104. Payment service providers active before 25 December 2007 included in consolidated supervision of another undertaking.

105. Small payment service providers active before 25 December 2007.

Part 8 Amendment and Revocation of Other Legislation

106. Amendment of European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001.

107. Amendments of European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

107. Amendment of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992.

109. Amendments of Central Bank Act 1942.

110. Revocation of European Communities (Cross-Border Credit Transfers) Regulations 1999.

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC¹, hereby make the following Regulations:

PART 1

PRELIMINARY

Citation.

1.-These Regulations may be cited as the European Communities (Payment Services) Regulations 2009.

Commencement.

2.-(1) Part 1 and Part 2 (except for Chapter 1) come into operation on the day after the making of these Regulations is notified in *Iris Oifigiúil*.

(2) The remainder of these Regulations come into operation on 1 November 2009.

Interpretation.

3.-(1) In these Regulations—

“the Bank” means the Central Bank and Financial Services Authority of Ireland;

“competent authority”, in relation to any other Member State means the body or bodies charged by law in the Member State with the supervision of payment institutions;

“court” means the High Court;

“electronic money” has the same meaning as in the European Communities (Electronic Money) Regulations 2002 (S.I. No. 221 of 2002);

“Member State” means a Member State of the European Communities and includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992² (as adjusted by the Protocol signed at Brussels on 17 March 1993³), as amended from time to time;

¹ Official Journal L 319, 05/12/2007 pp. 1–36.

² OJ. L 1, 3 January 1994, p. 3.

³ OJ. L 1, 3 January 1994, p. 572.

“micro enterprise” has the meaning given by Commission Recommendation 2003/361/EC of 6 May 2003⁴ concerning the definition of micro, small and medium-sized enterprises;

“money-laundering” means:

- (a) the conversion or transfer of property, knowing that the property is derived from criminal activity or from an act of participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the activity to evade the legal consequences of his or her action,
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from an act of participation in criminal activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that the property was derived from criminal activity or from an act of participation in criminal activity, or
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the subparagraphs (a) to (c),

even if the activities that generated the property were carried out outside the State;

“payment account” means an account held in the name of one or more payment service users that is used for the execution of payment transactions where the holder of the account is entitled to place, transfer or withdraw funds without any restrictions;

“payment service” means each business activity listed in the Schedule;

“Payment Services Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC¹;

“the Register” means the Register maintained by the Bank under Regulation 9;

“registered” means entered in the Register;

“terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences mentioned or referred to in Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism⁵.

⁴ OJ L 124, 20 May 2003, p. 36–41.

⁵ OJ L 164, 22.6.2002, p. 3–7

(2) Unless the contrary intention appears, a word or expression used in these Regulations and also in the Payment Services Directive has in these Regulations the same meaning as it has in that Directive.

Bank to be competent authority.

4.-(1) The Bank is the competent authority in the State for the purposes of the Payment Services Directive.

(2) Paragraph (1) does not imply that the Bank is required to supervise any business activity of a payment institution other than the provision of payment services and the activities mentioned in Regulation 27(1)(a).

Application of these Regulations.

5.-These Regulations apply to the provision of payment services—

- (a) in the State, or
- (b) partly in the State and partly in another Member State.

Payment transactions, etc., to which these Regulations do not apply.

6.-These Regulations do not apply to—

- (a) payment transactions made exclusively in cash directly by the payer to the payee;
- (b) payment transactions from a payer to a 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) the business of physical transport (including collection, processing and delivery) of banknotes and coins,
- (d) non-professional cash collection and delivery within the framework of a non-profit or charitable activity,
- (e) the provision of cash back at the point of sale (that is, the service of providing, on request by a payer just before the execution of a payment transaction, cash to the payer by a payee as part of a payment transaction in connection with the purchase of goods or services,
- (f) money exchange business (that is, cash-to-cash operations, where the funds concerned are not held on a payment account),
- (g) payment transactions based on any of the following kinds of document drawn on a payment service provider with a view to placing funds at the disposal of a payee:
 - (i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
 - (ii) paper cheques similar to those referred to in sub-subparagraph (i) governed by the laws of Member States not party to that

- Convention, including paper cheques within the scope of the Bills of Exchange Act 1882 (45 & 46 Vict. c. 61);
- (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
 - (iv) paper-based drafts similar to those referred to in sub-subparagraph (iii) governed by the laws of Member States not party to that Convention;
 - (v) paper-based vouchers;
 - (vi) paper-based traveller's cheques;
 - (vii) paper-based postal money orders (as defined by the Universal Postal Union),
- (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses or central banks and other participants in the system, and payment service providers,
 - (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 subparagraph (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 that support the provision of payment services without entering into possession of the funds to be transferred (including processing and storage of data, trust and privacy protection services, data and entity authentication, the provision of information technology, communications networks, and the 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 a 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, if 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 to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers that are not parties to a framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services.

Relationship with Consumer Credit Act 1995.

7.-Nothing in these Regulations affects the operation of the Consumer Credit Act 1995 (No. 24 of 1995).

PART 2

PAYMENT SERVICE PROVIDERS

CHAPTER 1—RIGHT TO PROVIDE PAYMENT SERVICES

Persons that may provide payment services.

- 8.-(1) A person shall not provide a payment service unless the person is—
- (a) a credit institution within the meaning 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 institutions (including a branch, within the meaning of Article 4(3) of that Directive, located in a Member State of a credit institution having its head office in or, in accordance with Article 38 of that Directive, elsewhere than in a Member State),
 - (b) an electronic money institution (within the meaning of the European Communities (Electronic Money) Regulations 2002 (S.I. No. 221 of 2002)),
 - (c) An Post in its capacity as a provider of banking and giro services, or the postal authority of another Member State in its capacity as the provider of a giro service,
 - (d) the Bank, the European Central Bank, or the central bank of another Member State, that is not acting in its capacity as a monetary authority,
 - (e) a Member State, or a regional or local authority of a Member State, that is not acting in its capacity as a public authority,
 - (f) a credit union (within the meaning of the Credit Union Act 1997 (No. 15 of 1997)),
 - (g) a payment institution authorised under Chapter 2 or Regulation 103 whose authorisation has not been revoked,

- (h) a person that has been registered after qualifying as a small payment institution under Regulation 35,
- (i) a person for the time being permitted under Part 7 to provide the payment service, or
- (j) a payment institution authorised as such in another Member State pursuant to a law giving effect to the Payment Services Directive.

(2) A payment institution authorised under Chapter 2 or Regulation 103 to provide a payment service shall not provide, in the State or in another Member State, a payment service that is not covered by its authorisation.

(3) A payment institution authorised by the law of another Member State to provide a payment service shall not provide, in the State, a payment service that is not covered by its authorisation.

(4) A person referred to in paragraph (1)(h) shall not provide a payment service other than one it is registered to provide.

(5) A person referred to in paragraph (1)(i) shall not provide a payment service other than one it is permitted under Part 7 to provide.

(6) A person who contravenes any of paragraphs (1) to (5) commits an offence and is liable—

- (a) on summary conviction, to a fine of up to €5,000 or imprisonment for up to 6 months, or both, or
- (b) on conviction on indictment, to a fine of up to €500,000 or imprisonment for up to 3 years, or both.

The Register.

9.-(1) The Bank shall maintain a public register (in this Act called “the Register”) of—

- (a) payment institutions and their agents and branches,
- (b) credit unions,
- (c) persons who have been registered after qualifying as a small payment institution under Regulation 35, and their agents and branches, and
- (d) institutions that are entitled under Part 7 to provide payment services.

(2) The Register shall specify the payment services for which a payment institution is authorised or for which a person referred to in paragraph (1)(c) has been registered.

(3) Payment institutions, credit unions, persons referred to in paragraph (1)(c) and persons referred to in paragraph (1)(d) shall be listed in the Register separately

(4) The Bank shall make the Register publicly available for consultation and accessible online, and shall keep the Register up to date.

CHAPTER 2—AUTHORISATION OF PAYMENT INSTITUTIONS

Applications for authorisation.

10.-(1) The Bank may grant an authorisation to operate as a payment institution.

(2) An application for authorisation as a payment institution shall be in the form directed by the Bank and shall contain or be accompanied by—

- (a) a programme of operations, setting out in particular the type of payment services envisaged,
- (b) a business plan including a forecast budget calculation for the first three financial years that demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly,
- (c) evidence that the applicant holds initial capital in accordance with Regulation 11,
- (d) in the case of an applicant to which Regulation 24(2) applies, a description of the measures taken, in accordance with Regulation 24, for protecting payment service users' funds,
- (e) a description of the applicant's governance arrangements and internal control mechanisms (including its administrative, risk-management and accounting procedures) that demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate,
- (f) a description of the internal control mechanisms that the applicant has established to comply with its obligations in relation to money-laundering and terrorist financing and its obligations under Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds,
- (g) a description of the applicant's structural organisation, including, if applicable, a description of the intended use of agents and branches and a description of any outsourcing arrangements, and of its participation in a national or international payment system,
- (h) the name of each person holding in the applicant, directly or indirectly, a qualifying holding (within the meaning of Regulation 2 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), the size of each such holding, and evidence of each such person's suitability taking into account the need to ensure the sound and prudent management of a payment institution,
- (i) the name of each director or other person responsible for the management of the applicant and, where relevant, each person responsible for the management of the proposed payment services

activities of the applicant, and evidence that each such person is of good repute and possesses appropriate knowledge and experience to perform payment services as determined by the home Member State of the payment institution,

- (j) the name of the person who will carry out for the applicant the functions of audit required by the Companies Acts,
- (k) the applicant's legal status and memorandum and articles of association or other constitutional documents, and
- (l) the address of the applicant's head office.

(3) The applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services.

(4) The Bank may request from an applicant, by notice in writing, any further information that it requires for the purposes of considering the application.

(5) If the Bank makes a request for further information under paragraph (4), the Bank is not obliged to consider the application until the applicant concerned provides the information so requested.

Initial capital.

11.-(1) The Bank shall not authorise an applicant as a payment institution unless the applicant holds initial capital of at least—

- (a) where the payment institution provides only the payment service listed in point 6 of the Schedule, €20,000,
- (b) where the payment institution provides the payment service listed in point 7 of the Schedule, €50,000, and
- (c) where the payment institution provides a payment service listed in any one or more of points 1 to 5 of the Schedule, €125,000.

(2) For the purposes of calculating a payment institution's initial capital, only the elements of its own funds described in subparagraphs (a) and (b) of Regulation 3(1) of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) shall be taken into account.

Own funds.

12.-(1) The Bank shall not authorise an applicant as a payment institution unless the applicant holds own funds of at least—

- (a) the higher of—
 - (i) the amount required by virtue of Regulation 11 as its initial capital, and

- (ii) the amount calculated by whichever of Methods A, B and C the Bank directs the institution, under Regulation 13(1), to use, or
- (b) if the Bank gives a direction under paragraph (3), the amount required by virtue of Regulation 11 as the payment institution's initial capital.

(2) Methods A, B and C are set out in Regulations 14, 15 and 16 respectively.

(3) The Bank may direct an applicant, on a case by case basis, that the institution need not make any calculation by Method A, B or C if the payment institution is included in the consolidated supervision of a parent credit institution and meets the following conditions:

- (a) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent credit institution;
- (b) either the parent credit institution satisfies the Bank regarding the prudent management of the payment institution and has declared, with the consent of the Bank, that it guarantees the commitments entered into by the payment institution, or the risks in the payment institution are of negligible interest;
- (c) the risk-evaluation, measurement and control procedures of the parent credit institution cover the payment institution;
- (d) the parent credit institution holds more than 50% of the voting rights attaching to shares in the capital of the payment institution, or has the right to appoint or remove a majority of the members of the management body of the payment institution.

(4) On the basis of an evaluation of the risk-management processes, risk-loss database and internal control mechanisms of a payment institution, the Bank may require an applicant to hold an amount of own funds that is up to 20% higher than, or permit it to hold an amount of own funds that is up to 20% lower than, the amount that results from the application of the method directed by the Bank under Regulation 13(1).

Calculation of amount of own funds.

13.-(1) Subject to Regulation 12(3), the Bank shall direct an applicant in writing to employ Method A, Method B or Method C to calculate the amount of own funds that the applicant must hold.

(2) Regardless of the method that an applicant is to use in calculating own funds, in doing so, the applicant may take into account only components referred to in Regulations 3, 7, 8, 9 and 11 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).

(3) Regardless of the method that an applicant is to use in calculating own funds, in doing so—

- (a) where the applicant belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking, the applicant shall not take into account elements that also form part of a calculation of own funds for another member of the group, and
- (b) where the applicant carries out activities other than providing payment services, it shall not, in calculating own funds, take into account elements that are properly attributable to any of those other activities.

Calculation of own funds—Method A.

14.-For Method A, the amount is at least 10% of the applicant's fixed overheads for the preceding year. The Bank may vary that percentage for an applicant for a particular year in the event of a material change in the applicant's business since the previous year. If at the date of the calculation an applicant has not completed a full year's business the amount is 10% of the corresponding fixed overheads as projected in its business plan unless the Bank has required an adjustment to that business plan in accordance with Regulation 20.

Calculation of own funds—Method B.

15.-(1) For Method B, the amount is that calculated by the formula—

$$SE \times k$$

where—

- (a) *SE* is—
 - (i) for *PV* up to €5 million, 4.0% of *PV*,
 - (ii) for *PV* between €5 million and €10 million, €200,000 plus 2.5% of (*PV* – €5 million),
 - (iii) for *PV* between €10 million and €100 million, €325,000 plus 1% of (*PV* – €10 million),
 - (iv) for *PV* between €100 million and €250 million, €1,225,000 plus 0.5% of (*PV* – €100 million), and
 - (v) for *PV* over €250 million, €1,975,000 plus 0.25% of (*PV* – €250 million),

(where *PV* is one-twelfth of the total amount of payment transactions executed by the applicant in the previous year), and
- (b) *k* has the meaning given by Regulation 17.

(2) For the purpose of calculating *SE* for an applicant, a step in any of sub-paragraphs (i) to (iv) in paragraph (1)(a) includes its upper limit but not its lower limit.

Calculation of own funds—Method C.

16.-(1) For Method C the amount is the higher of—

- (a) the amount calculated by the formula—

$$RI \times MF \times k,$$

or

- (b) 80% of the annual average of *RI* over the previous 3 financial years.

- (2) In paragraph (1)—

- (a) *RI* is the sum of the following:

- (i) the interest income of the applicant concerned;
- (ii) its interest expenses;
- (iii) commissions and fees it receives;
- (iv) its other operating income, and

- (b) *MF* is—

- (i) for *RI* up to €2.5 million, 10% of *RI*,
- (ii) for *RI* between €2.5 million and €5 million, €250,000 plus 8% of (*RI* – €2.5 million),
- (iii) for *RI* between €5 million and €25 million, €450,000 plus 6% of (*RI* – €5 million),
- (iv) for *RI* between €25 million and €50 million, €1,650,000 plus 3% of (*RI* – €25 million), and
- (v) for *RI* above €50 million, €2,400,000 plus 1.5% of (*RI* – €50 million), and

- (c) *k* has the meaning given by Regulation 17.

- (3) For the purposes of a calculation using method C—

- (a) in calculating *RI*—

- (i) each element mentioned in paragraph (2)(a) shall be included with its proper positive or negative sign,
- (ii) income from extraordinary or irregular items may not be used,
- (iii) expenditure on the outsourcing of services rendered by third parties may be used to reduce *RI* if the expenditure is incurred from an undertaking subject to supervision under these Regulations,
- (iv) *RI* is to be calculated over the previous financial year on the basis of the twelve-monthly observation at the end of the previous financial year, and
- (v) if audited figures are not available, business estimates may be used, and

- (b) a step in any of sub-subparagraphs (i) to (iv) in paragraph (2)(b) includes its upper limit but not its lower limit.

Calculation of own funds—scaling factor k .

17.-The scaling factor k to be used in Methods B and C is:

- (a) in the case of an applicant that provides only the payment service listed in point 6 of the Schedule, 0.5,
- (b) in the case of an applicant that provides the payment service listed in point 7 of the Schedule, 0.8, and
- (c) in the case of an applicant that provides a payment service listed in any one or more of points 1 to 5 of the Schedule, 1.

Refusal to grant authorisation.

18.-(1) If the Bank proposes to refuse to grant authorisation as a payment institution it shall give the applicant concerned written notice of its intention to refuse, setting out a statement of the reasons for the proposed refusal and specifying a period (not less than 21 calendar days) within which the applicant may make written submissions in relation to the proposed refusal.

(2) In making its decision on an application referred to in paragraph (1), the Bank shall take into account any submissions made by the applicant.

Conditions for granting of authorisation.

19.-(1) The Bank shall grant an authorisation only to a legal person established in the State.

(2) The Bank shall grant an authorisation if the information and evidence accompanying the application complies with all the requirements of Regulation 10 and if the Bank's overall assessment, having scrutinised the application, is favourable. Before granting an authorisation, the Bank may consult other relevant public authorities.

(3) The Bank shall grant an authorisation only to a legal person that has its head office and its registered office in the State.

(4) The Bank shall grant an authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, the payment institution has robust governance arrangements for its payment services business, including—

- (a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
- (b) effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and
- (c) adequate internal control mechanisms, including sound administrative and accounting procedures.

Those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.

(5) Where a payment institution provides any payment service and is also engaged in other business activities, the Bank may require the payment institution to establish a separate entity for the payment services business if the non-payment services activities of the payment institution impair or are likely to impair either the financial soundness of the payment institution or the ability of the Bank to monitor the payment institution's compliance with its obligations under these Regulations.

(6) The Bank shall refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of a payment institution, it is not satisfied as to the suitability of any shareholder or member that has a qualifying holding.

(7) Where close links exist between a payment institution and another person, the Bank shall grant an authorisation only if those links do not prevent the effective exercise of its supervisory functions.

(8) The Bank shall grant an authorisation only if the laws, regulations or administrative provisions of a third country that govern a person with whom the payment institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of its supervisory functions.

(9) For the purposes of paragraphs (7) and (8) "close links" exist between two or more persons if—

- (a) they are linked by—
 - (i) participation in ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or
 - (ii) a control relationship (that is, the relationship between a parent undertaking and a subsidiary, or a similar relationship between a person and an undertaking), or
- (b) they are permanently linked to the same third person by a control relationship.

Bank may require adjustments to applicant's business plan.

20.-The Bank may, as a condition of granting an authorisation to an applicant, require the applicant to make a specified adjustment to the business plan submitted with its application. If the Bank requires such an adjustment to a business plan, references in these Regulations to the business plan are taken to be references to the plan as adjusted.

Communication of the decision.

21.-Within three months of the receipt of an application (or, if the application is incomplete, of all the information required for the decision), the Bank shall inform the applicant concerned whether the authorisation has been granted or refused. The Bank shall give reasons if it refuses to grant the authorisation.

CHAPTER 3—CONDITIONS OF AUTHORISATION

Requirements of this Chapter to be conditions of authorisation.

22.-It is a condition of the authorisation of a payment institution that the institution complies at all times with the requirements of Regulations 23 to 33.

Maintenance of own funds.

23.-(1) It is a condition of the authorisation of a payment institution that the maintains its own funds at—

- (a) the higher of—
 - (i) the amount required by virtue of Regulation 11 as its initial capital, or
 - (ii) the amount calculated by whichever of Methods A, B and C the Bank directs the institution, under paragraph (2), to use, or
- (b) if the Bank gives the payment institution a direction under paragraph (5), the amount required by virtue of Regulation 11 as its initial capital.

(2) Subject to paragraph (5), the Bank shall direct a payment institution in writing to employ Method A, Method B or Method C to calculate the amount of own funds that the payment institution must hold.

(3) The Bank may—

- (a) direct a payment institution under paragraph (2) to employ a method of calculation other than the method it directed a payment institution to employ for the purposes of its application for authorisation, and
- (b) direct a payment institution under paragraph (2) to employ a method of calculation other than the method specified in such a direction previously given.

(4) Methods A, B and C are set out in Regulations 14, 15 and 16 respectively.

(5) The Bank may direct a payment institution, on a case by case basis, that the institution need not make any calculation by Method A, B or C if the payment institution is included in the consolidated supervision of a parent credit institution and meets the following conditions:

- (a) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent credit institution;

- (b) either the parent credit institution satisfies the Bank regarding the prudent management of the payment institution and has declared, with the consent of the Bank, that it guarantees the commitments entered into by the payment institution, or the risks in the payment institution are of negligible interest;
- (c) the risk-evaluation, measurement and control procedures of the parent credit institution cover the payment institution;
- (d) the parent credit institution holds more than 50% of the voting rights attaching to shares in the capital of the payment institution, or has the right to appoint or remove a majority of the members of the management body of the payment institution.

(6) For the purposes of calculating the amount of own funds that a payment institution is required to hold, references in Regulations 13 to 17 to an applicant are to be read as references to the payment institution concerned.

(7) Where a payment institution is required to calculate own funds by means of Method C, it shall not allow its own funds to fall below 80% of the average of the previous 3 years for **RI** (within the meaning given by Regulation 16(2)).

(8) On the basis of an evaluation of the risk-management processes, risk-loss database and internal control mechanisms of a payment institution, the Bank may require the payment institution to hold an amount of own funds that is up to 20% higher than, or permit it to hold an amount of own funds that is up to 20% lower than, the amount that results from the application of the method directed by the Bank under paragraph (2).

Safeguarding of users' funds.

24.-(1) In this Regulation “users’ funds” means funds that have been received by a payment institution from payment service users or through another payment service provider for the execution of payment transactions.

(2) A payment institution that is engaged in a business activity referred to in Regulation 27(1)(c) shall safeguard users’ funds in either of the following ways:

- (a) users’ funds—
 - (i) shall not be mixed at any time with the funds of any person other than the payment service users on whose behalf the funds are held, and
 - (ii) if still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day after the day of receipt, shall be deposited in a separate account in a credit institution or invested in assets accepted by the Bank as secure, liquid and low-risk;
- (b) users’ funds shall be insured by an insurance company, or guaranteed by a credit institution, that does not belong to the same group as the

payment institution, payable in the event that the payment institution is unable to meet its financial obligations, for an amount equal to that which would have been segregated if the method set out in subparagraph (a) had been used.

(3) Users' funds held in an account or invested in accordance with paragraph (2)(a)(ii)—

- (a) are not available for the payment of debts of the payment institution, and
- (b) are not liable to be attached or taken in execution to satisfy a judgment against the payment institution.

(4) Where a payment institution is required to safeguard users' funds and part of those funds is to be used for future payment transactions with the remainder to be used for non-payment services, the payment institution shall also protect the part of the funds to be used for future payment transactions in accordance with that paragraph. Where that part is variable or not known in advance, the payment institution may safeguard a representative part likely to be used for payment services if such a representative part can be reasonably estimated on the basis of historical data to the satisfaction of the Bank.

(5) The Bank may require a payment institution that is not engaged in other business activities referred to in Regulation 27(1)(c) to comply with the requirements of paragraph (2).

(6) The Bank may limit the application to a payment institution of a requirement under this Regulation to users' funds of payment service users each of whom has deposited more than €600 with the institution.

Maintenance of authorisation.

25.-Where any change affects the accuracy of information and evidence provided by a payment institution in its application for authorisation in accordance with Regulation 10, the payment institution shall without undue delay inform the Bank in writing accordingly.

Accounting and audit.

26.-(1) For supervisory purposes, a payment institution shall provide separate accounting information for payment services and other activities, and shall provide an auditor's report in relation to all such accounting information.

(2) The obligations of an auditor of the holder of a licence under section 47 of the Central Bank Act 1989 (No. 16 of 1989) shall be taken to apply to the auditor of a payment institution. For that application—

- (a) references in that section to the holder of a licence shall be taken to be references to a payment service provider,
- (b) a reference in that section to depositors shall be taken to be a reference to payment service users, and

- (c) references in that section to the Central Bank Acts 1942 to 1989 shall be taken to be references to these Regulations.

Activities in which a payment institution may engage.

27.-(1) Apart from the provision of payment services a payment institution may engage in the following activities:

- (a) the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;
- (b) the operation of payment systems;
- (c) business activities other than the provision of payment services.

(2) When a payment institution engages in the provision of one or more payment services, it may hold only payment accounts used exclusively for payment transactions. The receipt of funds by a payment institution from a payment service user with a view to the provision of a payment service does not constitute—

- (a) the taking of a deposit or other repayable funds, or
- (b) electronic money.

(3) A payment institution may grant credit related to a payment service referred to in point 4, 5 or 7 of the Schedule only if the following conditions are met:

- (a) the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;
- (b) notwithstanding any law in relation to providing credit by means of credit cards, the credit shall be repaid within a short period that is not to be longer than twelve months;
- (c) credit shall not be granted from funds received or held for the purpose of executing a payment transaction; and
- (d) the own funds of the payment institution shall at all times and to the satisfaction of the Bank be appropriate in view of the overall amount of credit granted.

(4) A payment institution shall not engage in the business of taking deposits or other repayable funds.

Use of agents.

28.-(1) If a payment institution intends to provide a payment service through an agent it shall, at least 1 month before the agent commences to provide the service, notify the Bank in writing of the following:

- (a) the name and address of the agent;

- (b) a description of the internal control mechanisms that will be used by the agent to comply with the institution's obligations in relation to money laundering and terrorist financing; and
- (c) the names of directors and persons responsible for the management of the agent that they are fit and proper persons.

(2) When the Bank receives the information required by paragraph (1) it may list the agent in the Register.

(3) Before listing the agent in the Register, the Bank may, if it considers that the information provided to it is incorrect, take action to verify the information.

(4) If, after taking action to verify the information, the Bank is not satisfied that the information provided to it pursuant to paragraph (1) is correct, it may refuse to list the agent in the Register.

(5) If a payment institution wishes to provide payment services in another Member State by engaging an agent, before the Bank registers the agent, the Bank shall inform the competent authorities of the host Member State of its intention to register the agent and shall take their opinion into account.

(6) A payment institution shall ensure that any agent acting on its behalf informs payment service users that it is acting on behalf of the payment institution.

Establishment of branch in the State by payment institution authorised in another Member State.

29.-(1) If a payment institution authorised in another Member State wishes to engage an agent or establish a branch in the State, and the Bank has reasonable grounds to suspect that, in connection with the intended engagement of the agent or establishment of the branch—

- (a) money laundering or terrorist financing is taking place, has taken place or has been attempted, or
- (b) the engagement of the agent or establishment of the branch could increase the risk of money laundering or terrorist financing,

it shall so inform the competent authorities of the payment institution's home Member State.

(2) If a payment institution authorised in the State wishes to engage an agent or establish a branch in another Member State, and the competent authorities of that Member State inform the Bank that those competent authorities have reasonable grounds to suspect that, in connection with the intended engagement of the agent or establishment of the branch—

- (a) money laundering or terrorist financing is taking place, has taken place or has been attempted, or

- (b) the engagement of the agent or establishment of the branch could increase the risk of money laundering or terrorist financing,

the Bank may refuse to register the agent or branch.

Outsourcing of functions.

30.-(1) For the purposes of this Regulation, an operational function is important if a defect or failure in its performance would materially impair—

- (a) the continuing compliance of the payment institution concerned with the requirements of its authorisation or its other obligations under these Regulations,
- (b) its financial performance, or
- (c) the soundness or continuity of its payment services.

(2) If a payment institution intends to outsource an operational function of the provision of payment services, it shall notify the Bank in writing accordingly at least 30 days before the outsourcing is to commence.

(3) The Bank may direct a payment institution not to outsource an important operational function if the Bank is of the opinion that the outsourcing would:

- (a) result in the delegation by senior management of its responsibility,
- (b) alter the relationship and obligations of the payment institution towards its payment service users under these Regulations,
- (c) undermine the conditions with which the payment institution is to comply in order to be authorised and remain so,
- (d) remove or modify any other condition of the payment institution's authorisation.
- (e) materially impair the quality of the payment institution's internal control, or
- (f) materially impair the ability of the Bank to monitor the payment institution's compliance with its obligations under these Regulations.

Liability.

31.-(1) If a payment institution relies on a third party for the performance of an operational function, the payment institution shall take reasonable steps to ensure that the third party complies with the requirements of these Regulations so far as those requirements are capable of application to the third party.

(2) A payment institution remains fully liable for any acts of its employees, or any agent, branch or entity to which activities are outsourced.

Record-keeping.

32.-A payment institution shall keep all appropriate records for the purpose of this Part for at least five years.

Obligation to give notice of intention to commence providing payment services in another Member State.

33.-(1) A payment institution intending to commence providing payment services in another Member State shall so notify the Bank in writing at least one month before the date that it proposes to commence providing payment services in the other Member State.

(2) Within one month of receiving the notification referred to in paragraph (1), the Bank shall inform the competent authorities of the host Member State of—

- (a) the name and address of the payment institution,
- (b) the names of the individuals to be responsible for the management of the branch,
- (c) its organisational structure, and
- (d) the kind of payment services it intends to provide in the host Member State.

(3) The Bank shall cooperate with the competent authorities of the host Member State.

(4) The Bank shall notify the competent authorities of the host Member State whenever it intends to carry out an on-site inspection in the territory of the latter. However, if it so wishes, the Bank may delegate to the competent authorities of the host Member State the task of carrying out on-site inspections of the institution concerned.

(5) The Bank shall provide the competent authorities of the host Member State with all essential and relevant information, in particular information about infringements or suspected infringements by an agent, a branch or an entity to which activities are outsourced. The Bank shall communicate all relevant information upon request, and all essential information on its own initiative.

(6) Paragraphs (1) to (4) do not affect any obligation of the Bank to supervise or monitor a payment institution's compliance with the requirements of any law in relation to money-laundering or terrorist financing.

CHAPTER 4—WITHDRAWAL OF AUTHORISATION

Withdrawal of authorisation.

34.-(1) The Bank may withdraw an authorisation issued to a payment institution—

- (a) if the institution—
 - (i) does not engage in the business of providing payment services in accordance with the authorisation within 12 months, expressly renounces the authorisation or ceases to engage in that business for more than six months,

- (ii) obtained the authorisation through false statements or any other irregular means,
- (iii) no longer fulfils the conditions for granting the authorisation, or
- (iv) would constitute a threat to the stability of the payment system by continuing its payment services business, or

(b) for any other reason provided by law.

(2) Before withdrawing an authorisation, the Bank shall—

- (a) give written notice of the proposed withdrawal to the institution concerned, setting out a summary of the relevant evidence and the reasons for the proposal and specifying a reasonable period (not less than 21 calendar days) within which the institution may make written representations concerning the proposal, and
- (b) consider any representations made by the institution within the specified period.

(3) The Bank shall notify the payment institution concerned in writing of the withdrawal of an authorisation, setting out the reasons for the withdrawal.

(4) The Bank shall give public notice of the withdrawal of an authorisation.

(5) If the Bank withdraws an authorisation it shall remove from the Register the entries in relation to the payment institution concerned and any agent of it.

CHAPTER 5—SMALL PAYMENT INSTITUTIONS

Small payment institutions—waiver of application of certain provisions of Chapter 2.

35.-(1) A person qualifies as a small payment institution for the purposes of these Regulations if—

- (a) the average amount of payment transactions executed by the person and any agent for which it bears full responsibility during the previous 12 months, or
- (b) the average amount of payment transactions likely to be executed by the person within the next 12 months, assessed on the projected total amount of payment transactions in its business plan,

is not more than €3 million per month.

(2) The Bank may waive the application to a person of all or part of the procedure and conditions set out in Chapters 2 and 3, and may register the person as a small payment institution, if—

- (a) the person satisfies the Bank that the person qualifies as a small payment institution,

- (b) none of the individuals responsible for the management or operation of the person's business has been convicted of any offence relating to money laundering or terrorist financing or any other financial crime,
- (c) if the person is a body corporate, it has its head office in the State, and
- (d) if the person is an individual, he or she has his or her place of residence in the State.

(3) A person registered as a small payment institution under paragraph (2) shall be taken to be a payment institution for the purposes of these Regulations except that—

- (a) its registration as a payment institution is valid only in the State, and
- (b) it is not entitled to provide payment services in any other Member State.

(4) The Bank may direct that a person registered as a small payment institution may engage only in a specific payment service or a specific activity referred to in subparagraph (a), (b) or (c) of Regulation 27(1).

(5) A person registered as a small payment institution in accordance with paragraph (2) shall notify the Bank of any change that may affect whether it continues to qualify as a small payment institution.

Requirement to apply for authorisation in certain circumstances.

36.-(1) If a person registered as a small payment institution in accordance with Regulation 35 no longer qualifies as a small payment institution, or (in the case of a person subject to a direction under paragraph 35(4)) proposes to engage in a business activity other than the one specified in the relevant direction, the person shall apply for authorisation under Chapter 2 within 30 calendar days.

(2) If a person to whom paragraph (1) applies applies for authorisation in accordance with that paragraph, within the period of 30 calendar days mentioned in that paragraph, it may continue providing payment services until the Bank notifies it of its decision on the application. If such a person fails to apply for authorisation in accordance with that paragraph, it shall cease to provide payment services at the end of that period of 30 calendar days.

Withdrawal of waiver.

37.-(1) The Bank may withdraw a waiver granted to a person under regulation 35(2)—

- (a) if the person—
 - (i) does not begin to engage in the business of providing payment services in accordance with the waiver within 12 months, expressly renounces the waiver or ceases to engage in that business for more than 6 months,
 - (ii) obtained the waiver through false statements or any other irregular means,

- (iii) no longer qualifies as a small payment institution, or
 - (iv) would constitute a threat to the stability of the payment system by continuing its payment services business, or
 - (b) for any other reason provided by law.
- (2) Before withdrawing a waiver, the Bank shall—
 - (a) give written notice of the proposed withdrawal to the person concerned, setting out a summary of the relevant evidence and the reasons for the proposal and specifying a reasonable period (not less than 21 calendar days) within which the person may make written representations concerning the proposal, and
 - (b) consider any representations made by the person within the specified period.
- (3) The Bank shall notify the person concerned in writing of the withdrawal of a waiver, setting out the reasons for the withdrawal.
- (4) The Bank shall give public notice of the withdrawal of a waiver.
- (5) If the Bank withdraws a waiver it shall remove from the Register the entries in relation to the person concerned.

PART 3

TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS FOR PAYMENT SERVICES

CHAPTER 1—GENERAL RULES

Scope of this Part.

38.-(1) This Part applies to single payment transactions, framework contracts and payment transactions covered by them. The parties to a payment transaction or framework contract may agree that this Part does not, or particular provisions of it do not, apply to the transaction or contract if the payment service user is not a consumer.

- (2) This Part applies to a micro enterprise in the same way as to a consumer.

Application of this Part.

39.-(1) This Part applies in relation to a payment only if the payer's payment service provider and the payee's payment service provider are both located in Member States, or the only payment service provider in the payment transaction is located in a Member State.

- (2) This Part applies to payment services regardless of whether the payment is denominated in euro or any other currency of a Member State.

Operation of other legislative provisions.

40.-(1) Subject to paragraph (2), nothing in this Part affects the operation of any other law giving effect to an Act of the European Communities that imposes additional requirements in relation to the giving of information.

(2) If both this Part and the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853 of 2004) apply in relation to a payment transaction or framework contract, the requirements of Regulation 6 of those Regulations (to the extent that that Regulation requires the supply of the information specified in points (a) to (i), (p), (q) and (t) to (w) of Schedule 1 to those Regulations) are superseded by the requirements of—

- (a) in a case to which Chapter 2 applies, Regulations 43 and 44, or
- (b) in a case to which Chapter 3 applies, Regulations 49 and 50.

Charges for information.

41.-(1) A payment service provider shall not charge a payment service user for providing information in accordance with this Part.

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

(3) If a payment service provider imposes a charge for information in accordance with paragraph (2), the charge shall be appropriate and in line with the payment service provider's actual costs.

CHAPTER 2—SINGLE PAYMENT TRANSACTIONS

Single payment transactions.

42.-This Chapter applies to single payment transactions not covered by a framework contract.

General information to be supplied in advance.

43.-(1) Before a payment service user is bound by a single-payment service contract or offer, the payment service provider concerned shall make available to the payment service user the information specified in Regulation 44.

(2) If a single-payment service contract has been concluded at the request of a payment service user using a means of distance communication which does not enable the payment service provider concerned to comply with paragraph (1), the payment service provider shall comply with that paragraph immediately after the execution of the relevant payment transaction.

(3) A payment service provider may comply with paragraph (1) by supplying a copy of the relevant draft single payment service contract or the relevant draft payment order that includes the information specified in Regulation 44.

Information and conditions.

44.-(1) A payment service provider shall provide or make available to a payment service user the following information:

- (a) the information or unique identifier that must be provided by the user for a payment order to be properly executed;
- (b) the maximum execution time for the payment service to be provided;
- (c) the total charge payable by the user to the provider and, where the total charge can be broken down into components, a statement of those components;
- (d) if a currency conversion is involved, the actual or reference exchange rate to be applied to the payment transaction.

(2) A payment service provider shall also provide or make available to a payment service user any information specified in Regulation 50 that is relevant in the particular case.

Information for payer after receipt of payment order.

45.-Immediately after a payer's payment service provider receives a payment order, the provider shall provide or make available to the payer the following information:

- (a) a reference enabling the payer to identify the payment transaction concerned and, where required by any law relating to money-laundering or the prevention of terrorist financing or otherwise appropriate, information relating to the payee;
- (b) the amount of the payment in the currency to be used in the payment order;
- (c) the total charge payable by the user to the provider and, where the total charge can be broken down into components, a statement of those components;
- (d) if a currency conversion is involved, the exchange rate to be used in the transaction by the payer's payment service provider or a reference to it, if different from the rate notified in accordance with Regulation 44(1)(d), and the amount of the payment after that currency conversion; and
- (e) the date of receipt of the payment order.

Information for payee after execution of payment transaction.

46.-Immediately after the execution of a payment transaction, the payee's payment service provider shall provide or make available to the payee the following information:

- (a) a reference enabling the payee to identify the transaction and, where required by any law relating to money-laundering or the prevention of terrorist financing or otherwise appropriate, the payer and any information transferred with the transaction;
- (b) the amount of the payment in the currency in which the funds are at the payee's disposal;
- (c) the amount of the total charge for the transaction payable by the payee and, where the total charge can be broken down into components, a statement of those components;
- (d) where applicable, the exchange rate used in the transaction by the payee's payment service provider, and the amount of the payment before that currency conversion; and
- (e) the credit value date.

Information requirements for low-value payment instruments and electronic money.

47.-(1) In this Regulation "low-value payment instrument" means a payment instrument that—

- (a) is not prepaid, relates to payment transactions wholly within the State, and—
 - (i) concerns only one or more payment transactions none of which exceeds €30,
 - (ii) has a spending limit of €150, or
 - (iii) does not store more than €150 at any time,
- (b) is not prepaid, relates to payment transactions not wholly within the State, and—
 - (i) concerns only one or more payment transactions none of which exceeds €60,
 - (ii) has a spending limit of €300, or
 - (iii) does not store more than €300 at any time, or
- (c) is prepaid and—
 - (i) concerns only one or more payment transactions none of which exceeds €500,
 - (ii) has a spending limit of €500, or
 - (iii) does not store more than €500 at any time.

(2) In relation to a low-value payment instrument—

- (a) despite Regulations 43 and 44, the payment service provider need 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 make an informed decision and an indication of where the other information specified in Regulation 44 is easily accessible, and

- (b) the payment service provider and payer may agree that, despite Regulation 46, after the execution of the relevant payment transaction—
 - (i) the payment service provider need provide or make available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction and any charges, and
 - (ii) the payment service provider need not provide or make available information referred to in subparagraph (i) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically able to provide it, but the payment service provider shall provide the payer with a way of verifying the amount of funds stored.

CHAPTER 3—FRAMEWORK CONTRACTS

Scope of this Chapter.

48.-(1) This Chapter applies to payment transactions covered by a framework contract.

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

General information to be supplied in advance.

49.-(1) In good time before a payment service user is bound by a framework contract or offer, the payment service provider concerned shall provide the payment service user on paper or on another durable medium with the information specified in Regulation 50.

(2) If a framework contract has been concluded at the request of a payment service user using a means of distance communication that does not enable the payment service provider concerned to comply with paragraph (1), the payment service provider shall comply with that paragraph immediately after the conclusion of the contract.

(3) A payment service provider may comply with paragraph (1) by supplying a copy of a draft framework contract including the information specified in Regulation 50.

Information to be provided.

50.-A payment service provider shall provide a payment service user with the following information:

- (a) contact details of—
 - (i) in the case of a payment service provider that is registered in the State, the Bank and either the Register or any other public register of the authorisation of the payment service provider, or
 - (ii) in the case of a payment service provider that is registered in another Member State, the competent authorities and the register established in that Member State,including any relevant website addresses;
- (b) about the provider—
 - (i) the provider's name, the geographical address of its head office and, where applicable, the geographical address of its agent or branch in the State, and any other address, including electronic mail address, necessary for communication with the provider, and
 - (ii) the provider's registration number or other means of identification in the Register;
- (c) about using the payment service—
 - (i) a description of the main characteristics of the payment service to be provided,
 - (ii) the information or unique identifier that must be provided by the user for a payment order to be properly executed,
 - (iii) the form of, and procedure for, giving consent to the execution of a payment transaction and withdrawal of such consent,
 - (iv) a statement of the effect of Regulation 79,
 - (v) a reference to the time of receipt of a payment order (as determined in accordance with Regulation 77) and the cut-off time, if any, established by the provider,
 - (vi) the maximum execution time for the payment services to be provided, and
 - (vii) whether spending limits for the use of the payment instrument can be agreed;
- (d) about charges, interest and exchange rates—
 - (i) all charges payable by the user to the provider and, where each such charge can be broken down into components, a statement of those components,
 - (ii) 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

- (iii) if so agreed, a statement that changes in reference interest or exchange rate are applicable immediately and information requirements related to such changes,
- (e) about communication—
- (i) where necessary, the means of communication, including the technical requirements for the user's equipment, agreed between the parties for the transmission of information or notifications,
 - (ii) how, and how often information required by these Regulations is to be provided or made available,
 - (iii) the language or languages in which the framework contract will be concluded and of communication during the contractual relationship, and
 - (iv) a statement of the user's right to receive a copy of the terms of the contract and information,
- (f) about safeguards and corrective measures—
- (i) where a payment instrument is involved, a description of the steps that the user is to take in order to keep the payment instrument safe and how to notify the payment service provider on becoming aware of the loss, theft or misappropriation of the payment instrument or its use in an inappropriate way,
 - (ii) if so agreed, the conditions under which the payment service provider reserves the right to block a payment instrument,
 - (iii) the liability of the payer for any unauthorised payment transaction arising from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features of such an instrument safe, from the misappropriation of such an instrument, including information on the amount of that liability,
 - (iv) how and within what period the user is to notify the provider of any unauthorised or incorrectly executed payment transaction and the provider's liability for any unauthorised payment transaction,
 - (v) the liability of the payment service provider for the execution of payment transactions, and
 - (vi) the conditions for refund and how to request a refund;
- (g) about how to change or terminate the framework contract—
- (i) if agreed, a statement that the user will be taken to have accepted any change in the conditions, unless he or she notifies the provider that he or she does not accept it before the date of its proposed entry into force,
 - (ii) the duration of the contract, and

- (iii) the right of the payment service user to terminate the contract and any agreement relating to termination;
- (h) about redress—
 - (i) any contractual provision that specifies the law applicable to the contract or the court that has jurisdiction, and
 - (ii) the out-of-court complaint and redress procedures available to the payment service user.

Access to information and conditions of framework contracts.

51.-At any time during the contractual relationship a payment service user has the right to receive, on request, a statement of the terms of the framework contract and the information specified in Regulation 50 on paper or on another durable medium.

Changes in conditions of framework contracts.

52.-(1) Subject to paragraphs (3), (4) and (5), a payment service provider shall notify users of the payment service of any proposed change in a framework contract or in the information referred to in Regulation 50 at least two months before the proposed date of effect of the change.

(2) In the case of a framework contract that provides for the payment service user concerned to be taken to have accepted any change in the terms of the contract that has been notified to him or her, when the payment service provider concerned notifies the payment service user of a proposed change the payment service provider shall inform the payment service user that—

- (a) he or she is to be taken to have accepted the change if he or she does not notify the payment service provider that he or she does not accept it before the proposed date of its entry into force, and
- (b) he or she has the right to terminate the contract immediately and without charge before the proposed date of the application of the change.

(3) A payment service provider may apply a change in the interest rate or exchange rate applicable immediately and without notice, if so agreed upon in the framework contract and if the change is based on an agreed reference interest or exchange rate.

(4) A payment service provider may apply without notice a change in an interest rate or exchange rate that is more favourable to payment service users.

(5) A payment service provider shall notify the payment service user of any change in the interest rate at the earliest opportunity, unless the parties have agreed on how and how often that information is to be provided or made available.

(6) Any change in the interest or exchange rate used in payment transactions shall be implemented and calculated in a manner that does not discriminate against particular payment service users.

Termination.

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

(2) A payment service provider shall not impose a charge for the termination of a framework contract for a fixed period exceeding 12 months or for an indefinite period if the contract has been in effect for 12 months or longer. In all other cases any charge for the termination of a framework contract shall be appropriate and in line with the payment service provider's costs.

(3) If agreed in the relevant framework contract, a payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice.

(4) If a framework contract is terminated, the payment service provider concerned shall impose charges for payment services that are levied on a regular basis only proportionally up to the termination of the contract. If such charges are paid in advance, the payment service provider shall reimburse the payment service user concerned proportionally for any payment attributable to a time after the termination.

(5) Nothing in this Regulation affects the operation of any other law rendering a framework contract unenforceable or void.

Information before execution of individual payment transactions.

54.-If a payer requests a payment service provider to make an individual payment transaction under a framework contract, the payment service provider shall at the payer's request provide information on—

- (a) the maximum execution time for the transaction, and
- (b) the total charge payable for the transaction by the user to the provider and, where the total charge can be broken down into components, a statement of those components.

Information for the payer on individual payment transactions.

55.-(1) If a payer requests a payment service provider to make an individual payment transaction under a framework contract, after the amount of the 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 payment service provider shall provide the payer without undue delay with the following information:

- (a) a reference enabling the payer to identify the transaction and, where required by or under any law relating to money-laundering or the prevention of terrorist financing or otherwise appropriate, information relating to the payee;
- (b) the amount of the transaction in the currency in which the payer's payment account is debited or the currency used for the payment order;

- (c) the total charge payable for the transaction by the user to the provider and, where the total charge can be broken down into components, a statement of those components, or the interest payable by the payer, and
- (d) where a currency conversion is involved, the exchange rate used in the transaction by the payment service provider, and the amount of the payment 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 required by paragraph (1) is to be provided or made available periodically (at least once a month) and in an agreed manner that allows the payer to store the information and reproduce it unchanged.

Information for the payee on individual payment transactions.

56.-(1) After the execution of an individual payment transaction under a framework contract, the payee’s payment service provider shall provide the payee without undue delay with the following information:

- (a) a reference enabling the payee to identify the transaction and, where required by or under any law relating to money-laundering or the prevention of terrorist financing,, the payer, and any information transferred with the transaction;
- (b) the amount of the payment in the currency in which the payee’s payment account is credited;
- (c) the total charge payable for the transaction by the user to the provider and, where the total charge can be broken down into components, a statement of those components or the interest payable by the payer,
- (d) where a currency conversion is involved, the exchange rate used in the transaction by the payee’s payment service provider, and the amount of the payment 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) is to be provided or made available periodically (at least once a month) and in an agreed manner that allows the payee to store the information and reproduce it unchanged.

Information requirements for low-value payment instruments and electronic money.

57.-(1) In this Regulation “low-value payment instrument” means a payment instrument that, according to the relevant framework contract—

- (a) is not prepaid, relates to payment transactions wholly within the State, and—

- (i) concerns only one or more payment transactions none of which exceeds €30,
 - (ii) has a spending limit of €150, or
 - (iii) does not store more than €150 at any time,
- (b) is not prepaid, relates to payment transactions not wholly within the State, and—
 - (i) concerns only one or more payment transactions none of which exceeds €60,
 - (ii) has a spending limit of €300, or
 - (iii) does not store more than €300 at any time, or
- (c) is prepaid and—
 - (i) concerns only one or more payment transactions none of which exceeds €500,
 - (ii) has a spending limit of €500, or
 - (iii) does not store more than €500 at any time.

(2) In relation to a low-value payment instrument—

- (a) despite Regulations 49, 50 and 54, the payment service provider need 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 make an informed decision and an indication of where the other information specified in Regulation 50 is easily accessible,
- (b) the payment service provider and payer may agree that, despite Regulation 52, the payment service provider need not propose changes in the conditions of the framework contract in the way provided for in Regulation 49(1), and
- (c) the payment service provider and payer may agree that, despite Regulations 55 and 56, after the execution of a payment transaction—
 - (i) the payment service provider need provide or make available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction and any charges (or, in the case of several payment transactions of the same kind to the same payee, information on the total amount and charges for those transactions), and
 - (ii) the payment service provider need not provide or make available information referred to in subparagraph (i) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically able to provide it, but the payment service provider shall provide the payer with a way of verifying the amount of funds stored.

CHAPTER 4—COMMON PROVISIONS

Currency and currency conversion.

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

(2) If a payment service provider or payee offers a payer the service of currency conversion, and the conversion is to be made either before the initiation of a payment transaction or at a point of sale, the party offering the currency conversion service shall disclose to the payer all charges and the exchange rate to be used for converting the payment. If the payer accepts the offer, the payer is to be taken to agree to the currency conversion service on that basis.

Information on additional charges or reductions.

59.-(1) Where a payee imposes a charge or offers a reduction for the use of a particular payment instrument, the payee shall so inform the payer concerned before the initiation of a relevant payment transaction.

(2) Where a payment service provider or a third party imposes a charge for the use of a particular payment instrument, the provider or third party shall so inform the payment service user concerned before the initiation of a relevant payment transaction.

Manner in which information to be given.

60.-(1) Where a provision of this Part requires a payment service provider to give information to a payment service user, the payment service provider must provide the information—

- (a) in an easily accessible manner,
- (b) in easily understandable words and in a clear and comprehensible form,
- (c) in Irish or English, as agreed between the payment service provider and the payment service user, or in any other language agreed between them, and
- (d) if the payment service user so requests, on paper or on another durable medium.

(2) For the purposes of paragraph (1)(d), a durable medium is one that enables a payment service user to store information addressed personally to him or her in a way accessible for future reference for a period of time adequate to the purposes of the information and allows the stored information to be reproduced unchanged.

PART 4
RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE
OF PAYMENT SERVICES

CHAPTER 1—COMMON PROVISIONS

Scope.

61.-(1) In the case of a payment service user that is not a consumer, the parties to a payment transaction or a framework contract may agree that any one or more of Regulation 63(1), Regulation 65(3), and Regulations 70, 72, 73, 74, 79 and 87 do not apply in whole or in part. The parties may also agree on a period different from that specified in Regulation 69.

(2) This Part applies to micro enterprises in the same way as to consumers.

Application of this Part.

62.-(1) This Part (except Regulation 85) applies in relation to a payment only if the payer's payment service provider and the payee's payment service provider are each located in a Member State, or the only payment service provider in the payment transaction is located in a Member State.

(2) This Part applies to payment services regardless of whether the payment is denominated in euro or any other currency of a Member State.

Charges applicable.

63.-(1) A payment service provider shall not charge a payment service user for the fulfilment of its information obligations or corrective and preventive measures under this Part unless a provision of this Part so permits. Any charges imposed 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) If a payment transaction does not involve any currency conversion, the payee shall pay the charges levied by his or her payment service provider, and the payer shall pay the charges levied by his or her payment service provider.

(3) A payment service provider shall not prevent a payee from requesting a payer to pay a charge or from offering a payer a reduction for the use of a particular payment instrument.

Right of payment service provider and user to agree on application of certain provisions of these Regulations.

64.-(1) In this Regulation "low-value payment instrument" means a payment instrument that, according to the relevant framework contract—

(a) where the payment instrument is not prepaid, and relates to payment transactions not wholly within the State—

- (i) concerns only one or more payment transactions none of which exceeds €30,
 - (ii) has a spending limit of €150, or
 - (iii) does not store more than €150 at any time.
- (b) where the payment instrument is not prepaid, and relates to payment transactions wholly within the State—
 - (i) concerns only one or more payment transactions none of which exceeds €60,
 - (ii) has a spending limit of €300, or
 - (iii) does not store more than €300 at any time, and
- (c) where the payment instrument is prepaid—
 - (i) concerns only one or more payment transactions none of which exceeds €500,
 - (ii) has a spending limit of €500, or
 - (iii) does not store more than €500 at any time.

(2) In relation to low-value payment instruments, a payment service provider may agree with a payment service user that:

- (a) Regulation 67(1)(b), subparagraphs (c), (d) and (e) of Regulation 68(1) and paragraphs (3) and (4) of Regulation 72 do not apply if the payment instrument cannot be blocked or its further use prevented;
- (b) Regulation 70, paragraphs (1) and (2) of Regulation 72, and Regulation 77 do not apply if the payment instrument is used anonymously or the payment service provider is not in a position, for other reasons intrinsic to the instrument, to prove that a payment transaction was authorised;
- (c) despite paragraphs (1) to (3) of Regulation 78, the payment service provider need not notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- (d) despite Regulation 79, the payer may not revoke the payment order after transmitting the payment order or giving his or her consent to execute the payment transaction to the payee;
- (e) despite Regulations 82 and 83, other execution periods apply.

CHAPTER 2—AUTHORISATION OF PAYMENT TRANSACTIONS

Consent and withdrawal of consent.

65.-(1) A payment transaction is authorised only if the payer concerned has consented to its execution. A payer can authorise a payment transaction before or, if agreed between the payer and the payment service provider concerned, after the execution of the payment transaction.

(2) Consent to execute a payment transaction or a series of payment transactions is valid only if given in a form agreed between the payer and payment service provider concerned.

(3) In the absence of consent, a payment transaction is unauthorised.

(4) A payer may withdraw his or her consent at any time before the time of irrevocability under Regulation 79. A payer may withdraw his or her consent to execute a series of payment transactions with the effect that any future payment transaction is unauthorised.

(5) The procedure for giving consent shall be as agreed between the payer and the payment service provider.

Limits of the use of payment instruments.

66.-(1) If a specific payment instrument is used for the purposes of giving consent, the payer and the payment service provider concerned may agree on a spending limit for payment transactions executed through that payment instrument.

(2) If agreed in the relevant framework contract, a payment service provider may reserve the right to block a payment instrument for objectively justified reasons related to the security of the payment instrument, any 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 or her obligation to pay.

(3) In such cases the payment service provider shall inform the payer in an agreed manner of the blocking of the payment instrument and the reasons for it, if possible before the payment instrument is blocked and at the latest immediately after the blocking, unless giving such information would compromise the security of the payment service provider or is prohibited by another law.

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

Obligations of payment service users in relation to payment instruments.

67.-(1) The obligations of a payment service user entitled to use a payment instrument are—

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

(2) Without limiting paragraph (1)(a), a payment service user shall, as soon as he or she receives a payment instrument, take all reasonable steps to keep its personalised security features safe.

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

68.-(1) The payment service provider that issues a payment instrument has the following obligations:

- (a) that of making sure that the personalised security features of the payment instrument are not accessible to anyone other than the payment service user entitled to use the instrument;
- (b) that of not sending an unsolicited payment instrument unless a payment instrument already given to the same payment service user is to be replaced;
- (c) that of ensuring that appropriate means are available at all times to enable the payment service user concerned to give a notification under Regulation 67(1)(b) or ask for the unblocking of the instrument;
- (d) on request, to provide the payment service user with the means to prove, for 18 months after giving such a notification, that he or she did so; and
- (e) that of preventing the use of the instrument once such a notification has been given.

(2) A payment service provider bears the risk of sending a payment instrument to the payer or of sending any personalised security features of it.

Rectification of unauthorised, etc., payment transactions dependent on notice.

69.-A payment service user is entitled to rectification of an unauthorised or incorrectly executed payment transaction from a payment service provider only if he or she notifies the payment service provider without undue delay on becoming aware of the transaction, and no later than 13 months after the debit date, unless the payment service provider is obliged to provide information on the transaction in accordance with Part 3 and has failed to do so.

Evidence on authentication and execution of payment transactions.

70.-(1) If a payment service user denies having authorised an executed payment transaction or claims that a payment transaction was not correctly executed, it is for the payment service provider concerned to prove that the transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other error or failure.

(2) If a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider is not in itself necessarily sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or intentionally or failed, because he or she acted without reasonable care, to fulfil one or more of his or her obligations under Regulation 67.

Payment service provider’s liability for unauthorised payment transactions.

71.-(1) In the case of an unauthorised payment transaction, the payer’s payment service provider shall refund to the payer immediately the amount of the transaction and, if necessary, restore the debited payment account to the state it would have been in had the transaction not taken place.

(2) Paragraph (1) does not affect any other right that the payer concerned may have to obtain compensation (including damages).

(3) Paragraph (1) does not apply to electronic money if the payer’s payment service provider cannot freeze the payment account or block the payment instrument.

Payer’s liability for certain unauthorised payment transactions.

72.-(1) Despite Regulation 71, and subject to paragraphs (2) to (5), a payer shall bear the loss relating to unauthorised payment transactions on the payer’s account, up to €150 in total, if the transaction results from—

- (a) the use of a lost or stolen payment instrument, or
- (b) if the payer has failed to keep a payment instrument’s personalised security features safe, its misappropriation.

(2) A payer shall bear all the losses relating to an unauthorised payment transaction if he or she incurred them by acting fraudulently or by failing, intentionally or by acting with gross lack of reasonable care, to fulfil one or more of his or her obligations under Regulation 67.

(3) A payer shall not bear any financial consequences resulting from the use of a lost, stolen or misappropriated payment instrument after giving notice in accordance with Regulation 67(1)(b), unless he or she has acted fraudulently.

(4) If a payment service provider does not provide appropriate means for a payer to give notice at any time of a lost, stolen or misappropriated payment instrument, a payer is not liable for the financial consequences of the use of such a payment instrument, unless he or she has acted fraudulently.

(5) Paragraph (1) does not apply to electronic money if the payer’s payment service provider cannot freeze the payment account or block the payment instrument.

Refunds for payment transactions initiated by or through a payee.

73.-(1) A payer is entitled to a refund from the payment service provider concerned of an authorised payment transaction initiated by or through a payee that has already been executed, if—

- (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 or her previous

spending pattern, the terms and conditions of the relevant framework contract and the circumstances of the case.

(2) At a payment service provider's request, a payer shall provide factual information relating to the circumstances of the case.

(3) The refund is to be of the full amount of the payment.

(4) In the case of a direct debit the payer and payment service provider concerned may agree in the relevant framework contract that the payer is entitled to a refund from the payment service provider even if the conditions in paragraph (1) are not met.

(5) For the purposes of paragraph (1)(b), a payer may not rely on currency exchange considerations if the reference exchange rate agreed with the payment service provider concerned was applied.

(6) A payer and payment service provider may agree in a framework contract that the payer has no right to a refund where—

- (a) the payer has consented to the execution of the payment transaction in advance directly to the payment service provider, and
- (b) where applicable, the payment service provider or the payee concerned provided or made available to the payer information on the transaction in an agreed manner at least four weeks before the due date.

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

74.-(1) A payer may request a refund under Regulation 73 up to eight weeks after the date on which the relevant funds were debited.

(2) Within ten business days of receiving a request for a refund, the payment service provider concerned shall either refund the full amount of the payment transaction or provide reasons for refusing the refund, and contact details for the bodies to which the payer may refer the matter in accordance with Regulation 100 if he or she does not accept the reasons.

(3) A payment service provider may not refuse a refund in a case to which Regulation 73(4) applies.

No liability in certain circumstances.

75.-A payment service provider is not liable under this Chapter in abnormal and unforeseeable circumstances beyond its control, the consequences of which would have been unavoidable despite all efforts to the contrary, or that arise from other legal obligations.

Other compensation not prevented.

76.-Nothing in this Chapter affects a person's right to compensation in accordance with the law applicable to the relevant contract.

CHAPTER 3—EXECUTION OF PAYMENT TRANSACTIONS

Receipt of payment orders.

77.-(1) The time of receipt of a payment order by the payment service provider of the payer concerned is the time when it is received by that provider (whether transmitted directly by the payer or indirectly by or through a payee). If the time of receipt is not on a business day for that payment service provider, the order is to be taken to have been received on the next business day.

(2) A payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received is to be taken to have been received on the next business day.

(3) If the payment service user that initiates a payment order agrees with a payment service provider that the payment order is to be executed on a specific day or at the end of a specified period or on the day on which the payer concerned has set funds at the payment service provider's disposal, the time of receipt is to be taken to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order is to be taken to have been received on the next business day.

Refusal of payment orders.

78.-(1) If a payment service provider refuses to execute a payment order, the provider shall give the payment service user notice of the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to it, unless prohibited by any other law.

(2) A payment service provider shall give or make available the notice in an agreed manner at the earliest opportunity, and in any case, within the period specified in, or determined in accordance with, Regulation 82.

(3) A framework contract may include a condition that the payment service provider concerned may charge for such a notification in the case of a refusal that is objectively justified.

(4) Subject to any other law, in a case where all the conditions set out in the relevant framework contract are met, a payment service provider shall not refuse to execute an authorised payment order regardless of whether the payment order is initiated by a payer or by or through a payee.

(5) For the purposes of Regulations 82 and 87 a payment order of which execution has been refused is to be taken not to have been received.

Irrevocability of payment orders.

79.-(1) Subject to paragraphs (2) to (5), a payment service user may not revoke a payment order after it is received by the payer's payment service provider.

(2) If a payment transaction is initiated by or through the payee, the payer may not revoke the relevant payment order after transmitting it or giving the payee his or her consent to execute the transaction.

(3) However, in the case of a direct debit the payer may revoke the relevant payment order until the end of the business day before the day agreed for debiting the funds.

(4) In a case to which Regulation 77(3) applies, the payment service user concerned may revoke a payment order until the end of the business day before the agreed day.

(5) After the time limits specified in paragraphs (1) to (4), a payment order may be revoked only if the payment service provider concerned so agrees. In the cases referred to in paragraphs (2) and (3), the payee's agreement is also required. If so agreed in the relevant framework contract, the payment service provider may charge for revocation under this Regulation.

Amounts transferred and amounts received.

80.-(1) In the execution of a payment transaction, the payer's payment service provider, the payee's payment service provider and any intermediary shall transfer the full amount of the payment transaction and shall not deduct any charge from the amount transferred.

(2) However, the payee and the payee's payment service provider may agree that the payment service provider may deduct its charge from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and the charge shall be shown separately in the information given to the payee.

(3) If any charge other than one referred to in paragraph (2) is deducted from the amount transferred, the payer's payment service provider shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. In the case of a payment transaction initiated by or through the payee, the payee's payment service provider shall ensure that the full amount of the payment transaction is received by the payee.

Execution time and value date.

81.-(1) Regulations 82 to 84 apply to—

- (a) payment transactions in euro, and
- (b) payment transactions involving only one conversion between euro and another currency of a Member State if—
 - (i) the currency conversion is carried out in that other Member State and
 - (ii) in the case of a cross-border payment transaction, the cross-border transfer takes place in euro.

(2) Regulations 82 to 84 apply to other payment transactions unless otherwise agreed between the payment service user and payment service provider concerned. However, when a payment service user and payment service provider agree on a longer period than laid down in Regulation 82, for intra-Community payment transactions the period shall not exceed 4 business days after the time of receipt of the relevant payment order.

Payment transactions to payment account.

82.-(1) Subject to paragraph (2), a payer's payment service provider shall ensure that, after the time of receipt of a payment order, the amount of the relevant payment is credited to the payee's payment service provider's account by the end of the next business day.

(2) A payer and his payment service provider may agree on a period of no longer than three business days instead of the period specified in paragraph (1).

(3) Paragraph (2) and any agreement made in reliance on it cease to have effect on 31 December 2011.

(4) The periods specified in paragraphs (1) and (2) are extended by one business day in relation to paper-initiated payment transactions.

(5) The payment service provider of the payee concerned shall value-date the payment and make the amount of the payment available to the payee's payment account after the payment service provider has received the funds.

(6) A payee's payment service provider shall transmit a payment order initiated by or through the payee to the payer's payment service provider concerned within the period agreed between the payee and the payee's payment service provider so as to enable settlement, as far as direct debit is concerned, on the agreed due date.

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

83.-Where a payee does not have a payment account with a payment service provider, a payment service provider who receives funds for the payee shall make the funds available to the payee the within the period specified in or determined in accordance with Regulation 82.

Cash placed on a payment account.

84.-(1) Where a consumer places cash on a payment account with a payment service provider in the currency of that account, the payment service provider shall ensure that the amount is made available and value-dated immediately after the time of receipt of the funds.

(2) Where a payment service user that is not a consumer places cash on a payment account with a payment service provider in the currency of that account, the payment service provider shall ensure that the amount is made available and value-dated on the next business day after the receipt of the funds.

Value date and availability of funds.

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

(2) A payee's payment service provider shall ensure that the amount of a payment transaction is at the payee's disposal immediately after that amount is credited to the payment service provider's account.

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

Incorrect unique identifiers.

86.-(1) If a payment order is executed in accordance with the correct unique identifier, the payment order is to be taken to have been executed correctly so far as the order required payment to the payee specified by the unique identifier.

(2) If a unique identifier provided by a payment service user is incorrect, the payment service provider concerned is not liable for non-execution or defective execution of the relevant payment transaction. However, the payer's payment service provider concerned shall make reasonable efforts to recover the funds involved in the transaction.

(3) If so agreed in the relevant framework contract, a payment service provider may charge a payment service user for recovery.

(4) If a payment service user provides information additional to the information or unique identifier that must be provided by the user for a payment order to be properly executed, the payment service provider concerned remains liable only for the execution of payment transactions in accordance with the unique identifier so provided.

Non-execution or defective execution.

87.-(1) Where a payment order is initiated by the payer concerned, the payer's payment service provider is liable to the payer for correct execution of the relevant payment transaction, unless the payment service provider 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. If so, the payee's payment service provider is liable to the payee for the correct execution of the transaction.

(2) Where a payment service provider is liable to a payer under paragraph (1), it shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(3) Where a payment service provider is liable to a payee under paragraph (1), it shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

(4) In the case of a non-executed or defectively executed payment transaction where the payment order was initiated by the payer, the payer's payment service provider—

- (a) regardless of liability under paragraphs (1) to (3), shall on request immediately try to trace the payment transaction, and
- (b) shall notify the payer of the outcome.

(5) Where a payment order is initiated by or through the payee concerned, the payee's payment service provider is liable to the payee for correct transmission of the payment order to the payer's payment service provider. Where a payment service provider is liable under this paragraph, it shall immediately re-transmit the payment order in question to the payer's payment service provider.

(6) A payee's payment service provider is liable to the payee for handling a payment transaction in accordance with Regulation 85. Where a payment service provider is liable under this paragraph, it shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payment service provider's account.

(7) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under paragraphs (5) and (6), the payer's payment service provider is liable to the payer. Where a payment service provider is so liable it shall, as appropriate and without undue delay, refund to the payer concerned 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.

(8) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee concerned, the payee's payment service provider shall, regardless of liability under paragraphs (5) to (7), on request, try immediately to trace the payment transaction and notify the payee of the outcome.

(9) A payment service provider is liable to its payment service users for any charges for which those users are responsible, and for any interest to which those users are subject, as a consequence of non-execution or defective execution of a payment transaction.

Right of recourse.

88.-Where the liability of a payment service provider under Regulation 87 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 in accordance with that Regulation.

No liability in certain circumstances.

89.-A payment service provider is not liable under this Chapter in abnormal and unforeseeable circumstances beyond its control, the consequences of which would have been unavoidable despite all efforts to the contrary, or that arise from other legal obligations.

Other compensation not prevented.

90.-Nothing in Regulations 81 to 89 affects a person's right to compensation in accordance with the law applicable to the relevant contract.

CHAPTER 4—DATA PROTECTION

Processing of personal data.

91.-The processing, within the meaning of the Data Protection Acts 1988 and 2003, of personal data by a payment system or payment service provider is permitted for the purposes of the prevention, investigation and detection of payment fraud.

PART 5

POWERS AND DUTIES OF THE BANK

CHAPTER 1—SUPERVISORY POWERS AND DUTIES

Bank as competent authority.

92.-The powers of the Bank extend to cover infringement or suspected infringement of Parts III and IV by payment service providers authorised in the State and agents and branches in the State of payment service providers authorised in another Member State.

Supervision.

93.-(1) The Bank—

- (a) may require a payment institution to provide any information needed to monitor the institution's compliance with these Regulations,
- (b) may carry out on-site inspections at the premises of a payment institution, at any agent or branch providing payment services under the responsibility of a payment institution, or at any entity to which a payment institution's activities are outsourced, and
- (c) may issue recommendations and guidelines.

(2) The Bank may take steps to ensure that a payment institution maintains sufficient capital for payment services, in particular where the non-payment services activities of a payment institution impair or are likely to impair the financial soundness of the payment institution.

Bank's power to give directions.

94.-(1) If the Bank considers it necessary to do so in the interests of the proper and orderly supervision of payment services the Bank may give a direction in writing to—

- (a) a payment institution,
- (b) another person registered to provide payment services in the State, or
- (c) any other person involved in or connected with the provision of a payment service in the State.

(2) A direction under paragraph (1)—

- (a) takes effect on the date, or on the occurrence of the event, specified in the direction for the purpose, and
- (b) ceases to have effect on the earlier of—
 - (i) the date, or the occurrence of the event, specified in the direction for the purpose, or
 - (ii) the expiration of the period of 12 months immediately following the day on which it took effect.

(3) If a direction under this Regulation has not been complied with or is unlikely to be complied with, the Bank may apply to the court in a summary manner for such order as the court thinks appropriate by way of enforcement of the direction.

Exchange of information.

95.-(1) The Bank shall cooperate with the competent authorities of other Member States and with the European Central Bank and the central banks of other Member States and other relevant competent authorities designated under the laws of other Member States applicable to payment service providers.

(2) The Bank may exchange of information with—

- (a) the competent authorities of other Member States responsible for the authorisation and supervision of payment institutions,
- (b) the European Central Bank and the central banks of other Member States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems, and
- (c) relevant authorities of other Member States designated under laws giving effect to the Payment Services Directive and other Acts of the European Communities applicable to payment service providers (for example, Acts applicable to the protection of individuals with regard to the processing of personal data and to money laundering and terrorist financing).

CHAPTER 2—POWERS OF AUTHORISED OFFICERS

Interpretation (Chapter 2).

96.-In this Chapter “relevant records” means books, records or other documents related to the business of a payment services provider.

Power to appoint authorised officers.

97.-(1) The Bank may, in writing—

- (a) authorise a person as an authorised officer, and
- (b) revoke such an authorisation.

(2) The appointment of an authorised officer may be for a specified period or indefinite.

(3) The Bank shall furnish an authorised officer with a certificate of his or her appointment as an authorised officer.

(4) The appointment of a person as an authorised officer ceases—

- (a) if the Bank revokes the appointment, at the time of revocation,
- (b) if the person dies, at the time of his or her death,
- (c) if the appointment is for a specified period, at the end of that period, or
- (d) if the person is, when appointed, an officer of the Bank, and the person ceases to be such an officer, when he or she so ceases.

Powers of authorised officers.

98.-(1) An authorised officer may, for the purpose of carrying out an investigation under this Part, do all or any of the following at any reasonable time during normal business hours—

- (a) enter any premises (other than a private dwelling) at which the officer has reasonable grounds to believe that the business of a payment services provider is, or has been, carried on, or on which there are relevant records;
- (b) search and inspect such premises and any relevant records on the premises,
- (c) secure for later inspection such premises or any part of such premises in which relevant records are kept or in which the officer has reasonable grounds for believing relevant records are kept,
- (d) require a person who carries on the business of a payment services provider and any person employed in connection with such a business to produce to the officer relevant records, and if any such record is in a non-legible form, to reproduce it in a legible form or to give the officer

such information as the officer reasonably requires in relation to entries in the relevant records,

- (e) inspect and take copies of relevant records inspected or produced to the officer (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form),
- (f) remove and retain any of the relevant records inspected or produced under this Act for such period as may be reasonable to allow their further examination,
- (g) require a person to give to the officer information (including information by way of a written report) that the officer reasonably requires in relation to activities covered by this Chapter and to produce to the officer any relevant records that the person has or has access to,
- (h) require a person by whom or on whose behalf data equipment is or has been used, or any person who has charge of, or is otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to give the officer all reasonable assistance in relation the operation of that equipment, and
- (i) require a person to explain entries in any relevant records.

(2) When exercising a power of an authorised officer, an authorised officer shall produce the certificate, together with some form of personal identification, if requested to do so by a person affected by the exercise of that power.

(3) An authorised officer shall not enter a private dwelling (other than a part of the dwelling used as a place of work) except with the consent of the occupier.

(4) If a person from whom production of a relevant record is required claims a lien over it, the production of it does not affect the lien.

(5) An obligation to produce a relevant record or report or to provide information or assistance under this Regulation applies to—

- (a) a liquidator or receiver of, or a person who is or has been an officer or employee or agent of, a payment service provider, or
- (b) any other person who appears to the Bank or the authorised officer to have a relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.

(6) An authorised officer may, if the officer considers it necessary, be accompanied by a member of the Garda Síochána when exercising a power under this Chapter.

(7) A person shall not obstruct or interfere with an authorised officer in the exercise of his or her powers under this Act.

Warrants.

99.-(1) If an authorised officer, while in the exercise of the authorised officer's powers under Regulation 98—

- (a) is prevented from entering any premises, or
- (b) believes that there are relevant records in a private dwelling,

he or she may apply to a judge of the District Court for a warrant authorising the entry by the authorised officer into the premises or the dwelling.

(2) If on an application under paragraph (1) a judge of the District Court is satisfied, on the information of the applicant authorised officer, that the applicant authorised officer—

- (a) has been prevented from entering the premises concerned, or
- (b) has reasonable grounds for believing that there are relevant records in the private dwelling concerned,

the judge may issue a warrant under his or her hand authorising the applicant authorised officer, accompanied, if the judge considers it appropriate, by a specified number of members of the *Gárda Síochána*, to enter, if need be by force, at any time within 4 weeks from the date of issue of the warrant, the premises or private dwelling and there exercise the powers set out in Regulation 98.

CHAPTER 3—OUT-OF-COURT COMPLAINT AND REDRESS PROCEDURES

Out-of-court redress.

100.-(1) The Financial Services Ombudsman has jurisdiction over the settlement of disputes between payment service users (being payment service users that are consumers or micro enterprises) and payment service providers concerning rights and obligations arising under these Regulations.

(2) In the case of a cross-border dispute, the Financial Services Ombudsman shall cooperate actively with equivalent bodies in other EEA Member States in resolving them.

CHAPTER 4—APPEALS

Appealable decisions.

101.-The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942):

- (a) a decision under Regulation 18—
 - (i) refusing to grant an authorisation to operate as a payment institution, or
 - (ii) granting such an authorisation subject to conditions or requirements;

- (b) a decision under Regulation 34 to withdraw such an authorisation, or to vary the conditions or requirements of such an authorisation;
- (c) a decision under Regulation 35(4) to require a person registered as a small payment institution in accordance with Regulation 35(2) to engage only in a specified activity;
- (d) a decision under Regulation 94 to give a direction to a person.

PART 6

OFFENCES

Penalties.

102.-A person who contravenes any provision of Part 3 or 4 not open to variation by agreement between a payment service provider and a payment service user commits an offence and is liable—

- (a) on summary conviction, to a fine of up to €5,000 or imprisonment for up to 6 months, or both, or
- (b) on conviction on indictment, to a fine of up to €500,000 or imprisonment for up to 3 years, or both.

PART 7

TRANSITIONAL

Payment service providers active before 25 December 2007.

103.-(1) A person (other than a person to which regulation 104 or 105 applies) that commenced before 25 December 2007 to carry on the provision of a payment service in the State may continue to provide that service until 30 April 2011.

(2) If a person referred to in paragraph (1) satisfies the Bank that the person complies with the requirements in Regulations 10 and 19, the Bank shall grant authorisation to the person and shall register the person. The Bank shall notify the person before granting the authorisation.

(3) The Bank may revoke an authorisation granted under paragraph (2) as if the authorisation had been granted under Chapter 2 of Part 2.

Payment service providers active before 25 December 2007 included in consolidated supervision of another undertaking.

104.-(1) A financial institution that is included in the consolidated supervision of a parent undertaking, and commenced the provision of a payment service before 25 December 2007 may continue to provide that payment service if—

- (a) it notifies the Bank before 25 December 2009 that it intends to continue providing that payment service, and

(b) it includes with the notification the information required by subparagraphs (a), (d), (g) to (i), (k) and (l) of Regulation 10(1).

(2) Where the Bank is satisfied that those requirements are complied with, the Bank shall register the financial institution concerned. The Bank may exempt the financial institution from the requirement to comply with Regulation 10.

Small payment service providers active before 25 December 2007.

105.-(1) A person who commenced the provision of a payment service in the State before 25 December 2007 and who qualifies as a small payment institution under Regulation 35(1) may continue to provide that payment service within the State until 25 December 2010.

(2) If a person referred to in paragraph (1) notifies the Bank that the person intends to continue to provide a payment service, and satisfies the bank that it qualifies as a small payment institution, the Bank shall register the person as a small payment institution.

PART 8

AMENDMENT AND REVOCATION OF OTHER LEGISLATION

Amendment of European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001.

106.-Regulation 10 of the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (S.I. No. 207 of 2001) is revoked.

Amendments of European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

107.-Regulation 29 (as amended by the European Communities (Distance Marketing of Consumer Financial Services) (Amendment) Regulations 2005 (S.I. No. 63 of 2005)) of the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853 of 2004) is revoked.

Amendment of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992.

108.-The European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) are amended by substituting for points 4 and 5 in the Schedule the following:

“(4) Payment services (as defined in Article 4(3) of Directive 2007/64/EC⁶ of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market)

(5) Issuing and administering other means of payment (for example, travellers’ cheques and bankers’ drafts) insofar as this activity is not covered by point 4”.

Amendments of Central Bank Act 1942.

109.-(1) Section 33AK(10) (as substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942 (No. 22 of 1942) is amended in the definition of ‘Supervisory Directives’ by substituting for paragraphs (n) and (o) the following:

- “(n) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,
- (o) the Supplemental Directive and the MiFID Regulation as defined in section 3(1) of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (No. 37 of 2007), and
- (p) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.”.

(2) Schedule 2 (as substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003 (N. 12 of 2003)) to the Central Bank Act 1942 (No. 22 of 1942) is amended by inserting at the end of Part 2:

“SI No.	of	European Communities (Payment	The whole
2009		Services) Regulations 2009	instrument”

Revocation of European Communities (Cross-Border Credit Transfers) Regulations 1999.

110.-The European Communities (Cross-Border Credit Transfers) Regulations 1999 (S.I. No. 231 of 1999) are revoked.

⁶ OJ L 319, 5.12.2007, p.1

SCHEDULE

PAYMENT SERVICES

1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
 - .1 execution of direct debits, including one-off direct debits,
 - .2 execution of payment transactions through a payment card or a similar device,
 - .3 execution of credit transfers, including standing orders.
4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:
 - .1 execution of direct debits, including one-off direct debits,
 - .2 execution of payment transactions through a payment card or a similar device,
 - .3 execution of credit transfers, including standing orders.
5. Issuing and/or acquiring of payment transactions.
6. Money remittance.
7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

GIVEN under my Official Seal,

_____ 2009.

Minister for Finance.

Annex 2 –Concordance table.

(Shaded cells indicate no transposition required.)

Directive provisions	Relevant provisions of the national law, regulation or administrative acts	Comments on implementing measures
TITLE I – SUBJECT MATTER, SCOPE AND DEFINITIONS		
Article 1 – Subject Matter		
Article 1(1)	Regulation 8(1)	
Article (1)2		Does not require transposition
Article 2 - Scope		
Article 2(1)	Regulations 5, 39(1) and 62(1)	
Article 2(2)	Regulations 39(2) and 62(2)	
Article 2(3)	Regulation 8(1)(f)	
Article 3 – Negative Scope	Regulation 6	
Article 4 - Definitions	Regulation 3	Article 4(3) is also defined by reference to the Schedule.
TITLE II - PAYMENT SERVICE PROVIDERS		
CHAPTER 1 - PAYMENT INSTITUTIONS		
Article 5 – Applications for Authorisation	Regulation 10(2) & (3)	
Article 6 – Initial Capital	Regulation 11	
Article 7 – Own Funds		
Article 7(1)	Regulations 12(1) & (2) and 13(2)	
Article 7(2)	Regulation 13(3)	
Article 7(3)	Regulation 12(3)	
Article 8 – Calculation of		

Own Funds		
Article 8(1)	Regulations 13(1), 14, 15, 16	
Article 8(2)	Regulation 17	
Article 8(3)	Regulation 12(4)	
Article 9 – Safeguarding Requirements		
Article 9(1)	Regulation 24(1) & (2)	
Article 9(2)	Regulation 24(3)	
Article 9(3)	Regulation 24(4)	
Article 9(4)	Regulation 24(5)	
Article 10 – Granting of Authorisation		
Article 10(1)	Regulations 8(2)-(6) and 19(1)	
Article 10(2)	Regulation 19(2)	
Article 10(3)	Regulation 19(3)	
Article 10(4)	Regulation 19(5)	
Article 10(5)	Regulation 19(5)	
Article 10(6)	Regulation 18 and 19(6)	
Article 10(7)	Regulation 19(7) & (9)	
Article 10(8)	Regulation 19(8) & (9)	
Article 10(9)	Regulation 8(2)	
Article 11 – Communication of the decision	Regulation 21	
Article 12 – withdrawal of authorisation		
Article 12(1)	Regulation 34(1)	
Article 12(2)	Regulation 34(2) & (3)	

Article 12(3)	Regulation 13(4) & (5)	
Article 13 – Registration		
Article 13 – first sub-paragraph	Regulation 9(1) & (2)	
Article 13 – second sub-paragraph	Regulation 9(3) & (4)	
Article 14 – Maintenance of Authorisation	Regulation 25	
Article 15 – Accounting and statutory audit	Regulation 26	
Article 15(1)		Articles 15(1) and (2) do not require transposition as the requirements of the Directives referred to apply to payment institutions.
Article 15(2)		
Article 15(3)	Regulation 26(1)	
Article 15(4)	Regulation 26(2)	
Article 16		
Article 16(1)	Regulation 27(1)	
Article 16(2)	Regulation 27(2)	
Article 16(3)	Regulation 27(3)	
Article 16(4)	Regulation 27(4)	
Article 16(5)	Regulation 7	
Article 17 – Use of agenda, branches or entities to which activities are outsourced		
Article 17(1)	Regulation 28(1)	
Article 17(2)	Regulation 28(2)	
Article 17(3)	Regulation 28(3)	
Article 17(4)	Regulation 28(4)	
Article 17(5)	Regulation 28(5)	

Article 17(6)	Regulation 29	
Article 17(7)	Regulation 30	
Article 17(8)	Regulation 28(6)	
Article 18 – Liability		
Article 18(1)	Regulation 31(1)	
Article 18(2)	Regulation 31(2)	
Article 19 – Record-keeping	Regulation 32	
Article 20 – Designation of competent authorities		
Article 20(1) first sub-paragraph	Regulation 4(1)	
Article 20(1) second sub-paragraph		No transposition required
Article 20(1) third sub-paragraph		No transposition required
Article 20(2)	Regulation 8(6)	Other supervisory powers are already available to the Financial Regulator under the Central Bank Acts
Article 20(3)		No transposition required
Article 20(4)		No transposition required
Article 20(5)	Regulation 4(2)	
Article 21 – Supervision		
Article 21(1)	Regulations 93, 94 and 96-99	
Article 21(2)		Relevant powers already available to Financial Regulator under its Administrative Sanctions powers under Central Bank Acts
Article 21(3)	Regulation 93(2)	
Article 22 – Professional Secrecy		Section 33AK of Central Bank Act 1942 covers professional secrecy obligations

Article 23 – Right to apply to the courts	Regulation 101	Transposition provides for appeal to IFSAT for specified decisions.
Article 24 – Exchange of information	Regulation 95	
Article 25 – Exercise of right of establishment and freedom to provide services		
Article 25(1)	Regulations 28(1) & (5), and 33(1) & (2)	
Article 25(2)	Regulation 95	
Article 25(3)	Regulation 33(4)	
Article 25(4)	Regulation 33(5)	
Article 25(5)	Regulation 33(6)	
Article 26 – Waiver for small payment institutions		
Article 26(1)	Regulations 35(1) & (2)(a)&(b) and 37	
Article 26(2)	Regulation 35(2)(c)&(d)	
Article 26(3)	Regulation 35(3)	
Article 26(4)	Regulation 35(4)	I
Article 26(5)	Regulations 35(5) and 36	
Article 26(6)	Regulation 24(6)	No transposition required.
Article 27 – Notification and information		This obliges member States to notify where the discretion in Article 26 is being applied. No transposition required.
CHAPTER 2 – COMMON PROVISIONS		
Article 28 – Access to payment systems	Regulation 25	Article 28 is transposed by Part II of the Central Bank Act 1997.
Article 29 - Prohibition for persons other than payment service providers to provide	Regulation 8	

payment services		
PART III - TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS FOR PAYMENT SERVICES		
CHAPTER 1 – GENERAL RULES		
Article 30 – Scope of this Part		
Article 30(1)	Regulation 38(1)	
Article 30(2)	Regulation 38(2)	
Article 30(3)	Regulation 7	
Article 31 – Other provisions in Community legislation		
Article 31 – first subparagraph	Regulation 40(1)	
Article 31 – second subparagraph	Regulation 40(2)	
Article 32 – Charges for information		
Article 32(1)	Regulation 41(1)	
Article 32(2)	Regulation 41(2)	
Article 32(3)	Regulation 41(3)	
Article 33 - Burden of proof on information requirements		It is not proposed to avail of this discretion.
Article 34 - Derogation from information requirements for low-value payment instruments and electronic money	Regulations 47 and 57	
CHAPTER 2 – SINGLE PAYMENT TRANSACTIONS		
Article 35 – Scope		

Article 35(1)	Regulation 42	
Article 35(2)	Regulation 48(2)	
Article 36 – Prior general information		
Article 36(1)	Regulations 43(1) and 60	
Article 36(2)	Regulation 43(2)	
Article 36(3)	Regulation 43(3)	
Article 37 – information and conditions		
Article 37(1)	Regulation 44(1)	
Article 37(2)	Regulation 44(2)	
Article 38 - Information for the payer after receipt of the payment order	Regulation 45	
Article 39 – Information for the payee after execution	Regulation 46	
CHAPTER 3 – FRAMEWORK CONTRACTS		
Article 40 – Scope	Regulation 48(1)	
Article 41 – Prior General Information		
Article 41(1)	Regulation 49(1)	
Article 41(2)	Regulation 49(2)	
Article 41(3)	Regulation 49(3)	
Article 42 – Information and conditions	Regulation 50	
Article 43 – Accessibility of Information and conditions in the framework contract	Regulation 51	
Article 44 – Changes in conditions of the framework contract		
Article 44(1) first sub-	Regulation 52(1)	

paragraph		
Article 44(1) second sub-paragraph	Regulation 52(2)	
Article 44(2)	Regulation 52(3) – (5)	
Article 44(3)	Regulation 52(6)	
Article 45 – Termination		
Article 45(1)	Regulation 53(1)	
Article 45(2)	Regulation 53(2)	
Article 45(3)	Regulation 53(3)	
Article 45(4)	Regulation 53(4)	
Article 45(5)	Regulation 53(5)	
Article 45(6)		It is not proposed to avail of this discretion.
Article 46 – Information before execution of individual payment transactions	Regulation 54	
Article 47 – Information for the payer on individual payment transactions		
Article 47(1)	Regulation 55(1)	
Article 47(2)	Regulation 55(2)	
Article 47(3)		It is not proposed to avail of this discretion.
Article 48 – Information for the payee on individual payment transactions		
Article 48(1)	Regulation 56(1)	
Article 48(2)	Regulation 56(2)	
Article 48(3)		It is not proposed to avail of this discretion.
CHAPTER 4 – COMMON PROVISIONS		

Article 49 - Currency and currency conversion		
Article 49(1)	Regulation 58(1)	
Article 49(2) first sub-paragraph	Regulation 58(2)	
Article 49(2) second sub-paragraph	Regulation 58(2)	
Article 50 – Information on additional charges of reductions		
Article 50(1)	Regulation 59(1)	
Article 50(2)	Regulation 59(2)	
TITLE IV – RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES		
CHAPTER 1 – COMMON PROVISIONS		
Article 51 – Scope		
Article 51(1)	Regulation 61(1)	
Article 51(2)	Regulation 100	
Article 51(3)	Regulation 61(2)	
Article 51(4)	Regulation 7	
Article 52 – Charges Applicable		
Article 52(1)	Regulation 63(1)	
Article 52(2)	Regulation 63(2)	
Article 52(3)	Regulation 63(3)	A discretion allowing Member States to forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments is not availed of.
Article 53 – Derogation for low value payment instruments and electronic		

money		
Article 53(1)	Regulation 53(1) & (2)	
Article 53(2)	Regulation 53(1) & (2)	
Article 53(3)	Regulations 71(3) & 72(5)	A discretion to limit to application of Article 53(3) payment accounts or payment instruments of a certain value is not availed of.
CHAPTER 2 – AUTHORISATION OF PAYMENT TRANSACTIONS		
Article 54 – Consent and withdrawal of consent		
Article 54(1)	Regulation 65(1)	
Article 54(2) first sub-paragraph	Regulation 65(2)	
Article 54(2) second sub-paragraph	Regulation 65(3)	
Article 54(3)	Regulation 65(4)	
Article 54(4)	Regulation 65(5)	
Article 55 – limits of the use of the payment instrument		
Article 55(1)	Regulation 66(1)	
Article 55(2)	Regulation 66(2)	
Article 55(3)	Regulation 66(3)	
Article 55(4)	Regulation 66(4)	
Article 56 - Obligations of the payment service user in relation to payment instruments		
Article 56(1)	Regulation 67(1)	
Article 56(2)	Regulation 67(2)	
Article 57 - Obligations of the payment service provider in relation to		

payment instruments		
Article 57(1)	Regulation 68(1)	
Article 57(2)	Regulation 68(2)	
Article 58 - Notification of unauthorised or incorrectly executed payment transactions	Regulation 69	
Article 59 - Evidence on authentication and execution of payment transactions		
Article 59(1)	Regulation 70(1)	
Article 59(2)	Regulation 70(2)	
Article 60 - Payment service provider's liability for unauthorised payment transactions		
Article 60(1)	Regulation 71(1)	
Article 60(2)	Regulation 71(2)	
Article 61 - Payer's liability for unauthorised payment transactions		
Article 61(1)	Regulation 72(1)	
Article 61(2)	Regulation 72(2)	
Article 61(3)		It is not proposed to avail of this discretion.
Article 61(4)	Regulation 72(3)	

Article 61(5)	Regulation 72(4)	
Article 62 - Refunds for payment transactions initiated by or through a payee		
Article 62(1) first subparagraph (including indents (a) and (b))	Regulation 73(1)	
Article 62(1) second subparagraph	Regulation 73(2)	
Article 62(1) third subparagraph	Regulation 73(3)	
Article 62(1) fourth subparagraph	Regulation 73(4)	
Article 62(2)	Regulation 73(5)	
Article 62(3)	Regulation 73(6)	
Article 63 - Requests for refunds for payment transactions initiated by or through a payee		
Article 63(1)	Regulation 74(1)	
Article 63(2) first subparagraph	Regulation 74(2)	
Article 63(2) second subparagraph	Regulation 74(3)	
CHAPTER 3 - EXECUTION OF PAYMENT TRANSACTIONS		
Article 64 – Receipt of payment orders		
Article 64(1)	Regulation 77(1)&(2)	
Article 64(2)	Regulation 77(3)	
Article 65 – Refusal of payment orders		
Article 65(1) first subparagraph	Regulation 78(1)	

Article 65(1) second sub-paragraph	Regulation 78(2)	
Article 65(1) third sub-paragraph	Regulation 78(3)	
Article 65(2)	Regulation 78(4)	
Article 65(3)	Regulation 78(5)	
Article 66 - Irrevocability of a payment order		
Article 66(1)	Regulation 79(1)	
Article 66(2)	Regulation 79(2)	
Article 66(3)	Regulation 79(3)	
Article 66(4)	Regulation 79(4)	
Article 66(5)	Regulation 79(5)	
Article 67 - Amounts transferred and amounts received		
Article 67(1)	Regulation 80(1)	
Article 67(2)	Regulation 80(2)	
Article 67(3)	Regulation 80(3)	
Article 68 – Scope [Execution time and value date]		
Article 68(1)	Regulation 81(1)	Article 68(1)(b) “(b) national payment transactions in the currency of the Member State outside the Euro area concerned” was not transposed as it applies to non-Euro MS only.
Article 68(2)	Regulation 81(2)	
Article 69 – Payment transactions to a payment account		
Article 69(1)	Regulation 82(1)-(4)	

Article 69(2)	Regulation 82(5)	
Article 69(3)	Regulation 82(6)	
Article 70 – Absence of payee’s payment account with the payment service provider	Regulation 83	
Article 71 - Cash placed on a payment account	Regulation 84	
Article 72 – National payment transactions		This Article is not being transposed.
Article 73 - Value date and availability of funds		
Article 73(1) first sub-paragraph	Regulation 85(1)	
Article 73(1) second sub-paragraph	Regulation 85(2)	
Article 73(2)	Regulation 85(3)	
Article 74 - Incorrect unique identifiers		
Article 74(1)	Regulation 86(1)	
Article 74(2) first sub-paragraph	Regulation 86(2)	
Article 74(2) second sub-paragraph	Regulation 86(2)	
Article 74(2) third sub-paragraph	Regulation 86(3)	
Article 74(3)	Regulation 86(4)	
Article 75 - Non-execution or defective execution		
Article 75(1) first sub-paragraph	Regulation 87(1)	
Article 75(1) second sub-paragraph	Regulation 87(2)	
Article 75(1) third sub-	Regulation 87(3)	

paragraph		
Article 75(1) fourth sub-paragraph	Regulation 87(4)	
Article 75(2) first sub-paragraph	Regulation 87(5)	
Article 75(2) second sub-paragraph	Regulation 87(6)	
Article 75(2) third sub-paragraph	Regulation 87(7)	
Article 75(2) fourth sub-paragraph	Regulation 87(8)	
Article 75(3)	Regulation 87(9)	
Article 76 – Additional financial compensation	Regulation 90	
Article 77 – Right of recourse		
Article 77(1)	Regulation 82	
Article 77(2)	Regulation 90	
Article 78 - No liability	Regulations 75 and 89	
CHAPTER 4 - DATA PROTECTION		
Article 79 – Data protection	Regulation 91	
CHAPTER 5 - OUT-OF-COURT COMPLAINT AND REDRESS PROCEDURES FOR THE SETTLEMENT OF DISPUTES		
Article 80 - Complaints	Regulation 92	
Article 81 - Penalties	Regulation 102	Note: payment service providers will also be subject to the Financial Regulator's administrative sanctions regime.
Article 82 – Competent Authorities	Regulations 92 and 102	

Article 83 – Out of Court Redress		
Article 83(1)	Regulation 100(1)	
Article 83(2)	Regulation 100(2)	
TITLE V – IMPLEMENTING MEASURES AND PAYMENTS COMMITTEE		
Article 84 – Implementing Measures		Does not require transposition
Article 85 – Committee		Does not require transposition
TITLE VI – FINAL PROVISIONS		
Article 86 – Full harmonisation		Does not require transposition.
Article 87 – Review		Does not require transposition
Article 88 – Transitional provision		
Article 88(1)	Regulation 103	
Article 88(2)	Regulation 104	
Article 88(3)	Regulation 103	
Article 88(4)	Regulation 105	
Article 89 – Amendment of Directive 97/7/EC	Regulation 106	This Directive was transposed as European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001, Regulation 10 of which is revoked by this regulation.
Article 90 – Amendments of Directive 2002/65/EC		
Article 90(1)		Article 90(1) is address by Regulation 40(2). Hence, this Regulation need only take account of the deletion of Article 8 of Directive 2002/65/EC.

Article 90(2)	Regulation 1077	
Article 91 – Amendments to Directive 2005/60/EC		This will be addressed in legislation giving effect to Directive 2005/60/EC
Article 92 – Amendments to Directive 2006/48/EC	Regulation 109	
Article 93 – Repeal	Regulation 110	
Article 94 – Transposition		
Article 94(1)	Regulation 2	
Article 94(2)		No transposition required
Article 94(3)		No transposition required
Article 95 – Entry into force		No transposition required
Article 96 - Addresses		No transposition required
Annex	Schedule	

Annex 3 – Micro-Enterprises

The Payment Services Directive provides, at Articles 30(2) and 51(3) respectively, that the provisions of Title III (provision of information by the payment service provider) and Title IV (conduct of business Rules) may be applied to micro-enterprises in the same way as to consumers.

The term “consumer” is defined in the Directive as “a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his trade, business or profession.”

The term “micro-enterprise” is defined in the Directive as meaning an enterprise, which at the time of conclusion of the payment service contract per Recommendation 2003/361/EC, is “an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2m”.

Title III of the PSD sets out a broad range of information and contractual requirements relating to the provision of payment services to users. Title III is mandatory so far as consumers are concerned.

Title IV of the PSD sets out a large number of detailed rules relating to the life of a payment transaction, from the placement of the payment order, the execution of the related payment transaction, the time period in which a payment should be made, and related liabilities of the parties. Title IV applies to all PSUs, save however that a number of the more important provisions can be disapplied by contract as between the PSP and the PSU. However, in the case of a PSU who is a consumer, the Title IV provisions are mandatory and cannot be contracted out of.

The draft regulations attached to this document propose that micro-enterprises be included in the scope of Titles III and IV. In previous consultations on this issue, stakeholders have raised a number of points both in favour of and against the inclusion of micro-enterprises in the scope of both Titles III and IV of the Directive.

1. Equivalent protection to consumers

The proposed inclusion of micro-enterprises is in line with a broader policy approach to the protection of such entities which recognises that they may be similar to consumers in their level of financial sophistication and thus in the level of protection required. This can be seen, for example, in the scope of the Financial Regulator’s Consumer Protection Code and in the legislative scope of who may access the services of the Financial Services Ombudsman. Both the Consumer Protection Code and the legislation applying to the Financial Services Ombudsman broadly define consumer as any of the following –

- a) a natural person acting outside their business, trade or profession;
- b) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3million (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or

- c) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group.

Article 51, in determining the scope of Title IV, provides that parties to a payment service transaction or contract, when the payment service user is not a consumer, may agree not to apply any one of number of specified articles, in whole or in part.

Is the mandatory application of certain provisions of Title IV, regardless of whether payment service user is a consumer or not, sufficient protection for micro-enterprises, without having to transpose Article 51(3)?

2. Competition Issues

Given the discretionary nature of the application of Titles III and IV to micro-enterprises, it is not possible to determine how many Member States will ultimately choose to bring micro-enterprises within scope.

If Ireland chose to implement the two derogations for micro-enterprises, payment service providers passporting into Ireland would be equally required to apply the provisions in relation to micro-enterprises in the same way as payment services providers authorised in this jurisdiction.

If some Member States choose not to avail of the discretions to include micro-enterprises in the scope of Titles III or IV, will this have any impact on the internal market for payment services?

3. Identification of micro-enterprises

The Directive requires that micro-enterprises be defined, in accordance with Recommendation 2003/361/EC,⁷ as an enterprise, which at the time of conclusion of the payment service contract, is “an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2m”.

Regulated financial services providers are already required to distinguish between different categories of customer in line with the requirement of the Consumer Protection Code.

However, the definition of micro-enterprise is not completely aligned with existing definition of ‘consumer’ used for the purposes of the Consumer Protection Code and under the Central Bank Acts in setting out who may have access to the Financial Services Ombudsman.

The difference in scope between the definition of ‘consumer’ (set out in Section 1 above) and that of micro-enterprise applying to the Payment Services Directive will

⁷Available to download at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:EN:PDF>

require payment service providers to apply a different threshold in determining which of their customers may be covered by the protections of the Directive and which of their customers may have access to the Financial Services Ombudsman.

What difficulties may arise for payment service providers in the application the definition of micro-enterprises for the purposes of the Payment Services Directive?

4. Interaction with the Single Euro Payments Area (SEPA) Direct Debit Scheme for businesses

The SEPA direct debit scheme will come into operation from November 2009. There are two distinct rulebooks governing direct debits for consumers and for businesses⁸. The Payment Services Directive provides the legal basis of the operation of the SEPA Direct Debit. The SEPA Business to Business Scheme will serve as the basis for the development of specific direct debit products and services that allow business customers to make payments by direct debit as part of their business transactions.

There are a number of differences between the consumer and the business-to-business SEPA direct debit Schemes, one of the most important of which is that the debtor is not entitled to obtain a refund of an authorized transaction in the business-to-business Scheme. The right of refund is a specific right under Article 62 of the Payment Services Directive, albeit one which may be contracted out of by non-consumer payment service users under Article 51(1). The SEPA Business to Business Scheme Rulebook requires that “a customer may only use the Scheme as a debtor, when he is authorised by national law to opt-out from the refund right in respect of authorised transactions contained in Articles 51(1) and 62(1) of the Payment Services Directive (“Business Customer” or “Customer”)”.

Should specific provision be made, if Article 51(3) is to be transposed, for micro-enterprises to be able to avail of the SEPA business to business direct debit scheme?

⁸ Available to download at:
http://www.europeanpaymentscouncil.eu/content.cfm?page=sepa_direct_debit_sdd