



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

CENTRAL BANK OF MALTA

DIRECTIVE NO 1

in terms of the

CENTRAL BANK OF MALTA ACT
(Cap. 204 of the Laws of Malta)

THE PROVISION AND USE OF PAYMENT SERVICES

Ref: CBM 01/2018

TITLE I SUBJECT MATTER, SCOPE AND DEFINITIONS

Subject matter

1. In terms of article 34A(1) of the Central Bank of Malta Act (*Cap.204 of the Laws of Malta*) (hereinafter referred to as “the Act”), the Central Bank of Malta (hereinafter referred to as “the Bank”) has been empowered to make directives in respect of, inter alia, the provision and use of payments services. For the purposes of this Directive, terms used in this Directive shall have the same meaning as is assigned to them under the Act.

2. (1) This Directive lays down rules concerning transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular or habitual occupation or business activity.

(2) The rules laid down in this Directive for the provision of payment services apply to the following payment service providers:
 - (a) credit institutions licensed in terms of Banking Act (*Cap. 371 of the Laws of Malta*), and agents and branches in Malta of credit institutions which have their head offices outside Malta;
 - (b) electronic money institutions licensed in terms of the Financial Institutions Act (*Cap. 376 of the Laws of Malta*) to undertake the activities listed in the Third Schedule thereto, and agents and branches in Malta of electronic money institutions which have their head offices located outside Malta, in as far as the payment services provided by those agents and branches are linked to the issuance of electronic money;
 - (c) payment institutions licensed in terms of the Financial Institutions Act (*Cap. 376 of the Laws of Malta*) to undertake the activities listed in the Second Schedule thereto, and agents and branches in Malta of payment institutions which have their head offices licenced in another Member State;
 - (d) a natural or legal person benefiting from an exemption pursuant to Article 32 or 33 of Directive (EU) 2015/2366
 - (e) the Bank when not acting in its capacity as monetary or public authority.

3. The Directive is modelled on the requisites of the Directive (EU) 2015/2366.

Scope

4. (1) This Directive applies to payment services provided within the European Union.

(2) Titles III and IV apply to payment transactions in the currency of a Member State where both the payer’s payment service provider and the payee’s payment service provider are, or the sole payment service provider in the payment transaction is, located within the European Union.

(3) Title III, except for Paragraphs 21(1)(b), 28(2)(e) and 32(1)(a) and Title IV, except for Paragraphs 57 to 61, applies to payment transactions in a currency that is not the currency of a Member State where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located within the European Union, in respect to those parts of the payments transaction which are carried out in the European Union.

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

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

5. This Directive shall be without prejudice to the Consumer Credit Regulations (S.L. 378.12). This Directive shall also be without prejudice to other relevant European Union or national legislation regarding conditions for granting credit to consumers not harmonised by this Directive that are in conformity with European Union law.

Exclusions

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

- (ii) paper cheques similar to those referred to in Paragraph 6(g)(i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
 - (iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
 - (iv) paper-based drafts similar to those referred to in Paragraph 6(g)(iii) and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
 - (v) paper-based vouchers;
 - (vi) paper-based traveller's cheques;
 - (vii) paper-based postal money orders as defined by the Universal Postal Union;
- (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Paragraph 12;
 - (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in Paragraph 6(h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
 - (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;
 - (k) services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:
 - (i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
 - (ii) instruments which can be used only to acquire a very limited range of goods or services;
 - (iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer;
 - (l) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:

- (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
- (ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;

provided that the value of any single payment transaction referred to in Paragraph 6(l)(i) and (ii) does not exceed EUR 50 and:

— the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month, or

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

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

Definitions

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

- (1) ‘account information service’ means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider.
- (2) ‘account information service provider’ means a payment service provider pursuing business activities as referred to in point (8) of Annex I of Directive (EU) 2015/2366;
- (3) ‘account servicing payment service provider’ means a payment service provider providing and maintaining a payment account for a payer;
- (4) ‘acquiring of payment transactions’ means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee;
- (5) ‘ADR’ means Alternative Dispute Resolution established by the Arbitrator for Financial Services (Designation of ADR entity) Regulations (*S.L 555.01 of the Laws of Malta*);

- (6) 'agent' means a natural or legal person who acts on behalf of a payment institution in providing payment services;
- (7) 'authentication' means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user's personalised security credentials;
- (8) 'branch' means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all of the places of business set up in the same Member State by a payment institution with a head office in another Member State shall be regarded as a single branch;
- (9) 'business day' means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;
- (10) 'card-based payment instrument' means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012;
- (11) 'card-based payment transaction' means a service based on a payment card scheme's infrastructure and business rules to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction. Card-based payment transactions exclude transactions based on other kinds of payment services;
- (12) 'co-badging' means the inclusion of two or more payment brands or payment applications of the same payment brand on the same payment instrument.
- (13) 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned;
- (14) 'consumer' means a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his or her trade, business or profession;
- (15) 'consumer association' means a consumer association as defined in Article 2 of the of the Consumer Affairs Act (Cap. 378 of the laws of Malta);
- (16) 'credit transfer' means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;
- (17) 'digital content' means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;
- (18) 'direct debit' means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the

- payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;
- (19) 'Directive (EU) 2015/2366' means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC;
- (20) 'durable medium' means any instrument which enables the payment service user to store information addressed personally to that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;
- (21) 'EBA' means European Banking Authority established under Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European banking authority), amending Decision No 716/2009/EC and repealing Commission Decision No 2009/78/EC;
- (22) 'ECB' means the European Central Bank established by the Statute of the European System of Central Banks and of the European Central Bank.
- (23) 'electronic communications network' means an electronic communications network as defined in Article 2 of the Electronic Communications (Regulation) Act (*Cap. 399 of the Laws of Malta*);
- (24) 'electronic communications service' means an electronic communications service as defined in Article 2 of the Electronic Communications (Regulation) Act (*Cap. 399 of the Laws of Malta*);
- (25) 'European Union' means the European Union as established by the Treaty on European Union;
- (26) 'Financial Institutions Rules on Security of Internet Payments of Credit, Payment and Electronic Money Institutions (FIR/04/2015)' means Financial Institutions Rules on Security of Internet Payments of Credit, Payment and Electronic Money Institutions which implements the Guidelines on the security of internet payments issued by the European Banking Authority on the 19th of December 2014;
- (27) 'framework contract' means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
- (28) 'funds' means banknotes, coins and scriptural money as defined in the Banking Act (*Cap. 371 of the Laws of Malta*) or electronic money as defined in the Third Schedule to the Financial Institutions Act (*Cap. 376 of the Laws of Malta*);
- (29) 'group' means any body corporate which is that company's subsidiary or parent company, or a subsidiary of that company's parent company, and the term "group" shall be construed accordingly as well as meaning a parent undertaking and all its subsidiary undertakings in accordance with the Companies Act (*Cap. 386 of the Laws of Malta*) or undertakings as defined in Article 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014 which are linked to each other by a relationship referred to in Article 10(1) or in Article 113(6) or (7) of Regulation (EU) No 575/2013;
- (30) 'home Member State' means either of the following:

- (a) the Member State in which the registered office of the payment service provider is situated; or
 - (b) if the payment service provider has, under its national law, no registered office, the Member State in which its head office is situated;
- (31) 'host Member State' means the Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services;
- (32) 'issuer' means a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's card-based payment transactions;
- (33) 'issuing of payment instruments' means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions;
- (34) 'means of distance communication' means a method which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;
- (35) 'Member State' means a Member State of the European Union and includes EEA countries;
- (36) 'MFSA' means the Malta Financial Services Authority established by the Malta Financial Services Authority Act (*Cap. 330 of the Laws of Malta*);
- (37) 'microenterprise' means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined in Paragraph 3 of the Business Promotion Regulations (*S.L.325.06*);
- (38) 'money remittance' means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;
- (39) 'Office of the Arbiter' means the Office of the Arbiter for Financial Services established by the Arbiter for Financial Services Act (*Cap. 555 of the Laws of Malta*);
- (40) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (41) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
- (42) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
- (43) 'payment brand' means any material or digital name, term, sign, symbol or combination of them, capable of denoting under which payment card scheme card-based payment transactions are carried out;

- (44) 'payment initiation service' means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;
- (45) 'payment initiation service provider' means a payment service provider pursuing business activities as referred to in point (7) of Annex I of Directive (EU) 2015/2366;
- (46) 'payment institution' means a legal person that has been granted authorisation in accordance with Article 11 of Directive (EU) 2015/2366 to provide and execute payment services throughout the European Union;
- (47) 'payment instrument' means a personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;
- (48) 'payment order' means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;
- (49) 'payment service' means any business activity set out in Annex I of Directive (EU) 2015/2366;
- (50) 'payment service provider' means a payment service provider as referred to in Article 4(11) of the Directive (EU) 2015/2366;
- (51) 'payment service user' means a natural or legal person making use of a payment service in the capacity of payer, payee, or both;
- (52) 'payment system' means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;
- (53) 'payment transaction' means an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
- (54) 'personalised security credentials' means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;
- (55) 'reference exchange rate' means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;
- (56) 'reference interest rate' means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;
- (57) 'Regulation (EU) No 260/2012' means Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;
- (58) 'Regulation (EU) No 1093/2010' means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory

Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision No 2009/78/EC;

(59) 'Regulation (EU) 2015/847' means Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;

(60) 'remote payment transaction' means a payment transaction initiated via internet or through a device that can be used for distance communication;

(61) 'sensitive payment data' means data, including personalised security credentials which can be used to carry out fraud. For the activities of payment initiation service providers and account information service providers, the name of the account owner and the account number do not constitute sensitive payment data;

(62) 'strong customer authentication' means an authentication based on the use of two or more elements categorised as knowledge (something only the user knows), possession (something only the user possesses) and inherence (something the user is) that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data;

(63) 'unique identifier' means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously another payment service user and/or the payment account of that other payment service user for a payment transaction;

(64) 'value date' means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account;

TITLE II PAYMENT SERVICE PROVIDERS

CHAPTER 1 Competent authorities and supervision

Competent authorities

8. (1) The Bank shall be the competent authority in the event of infringements or suspected infringements of the provisions of this Directive, carried out by the payment service providers referred to in Paragraph 2(2).

(2) In order to carry out the controls and take the necessary steps provided for in Title II of Directive (EU) 2015/2366 and this Directive, in accordance with Paragraph 8(1), in respect of the agent or branch in Malta of a payment institution or an electronic money institution located in another Member State, the Bank shall cooperate with the MFSA and the competent authorities of the home Member State.

Furthermore, with respect to the agent or branch located in another Member State of a payment institution or an electronic money institution located in Malta, the Bank shall cooperate with the MFSA and the competent authorities of the host Member State.

(3) The Bank, in collaboration with the MFSA, may require that payment institutions and electronic money institutions having agents or branches in Malta to report periodically on the activities carried out in Malta.

Such reports shall be required for information or statistical purposes and, as far as the agents and branches conduct the payment service business under the right of establishment, to monitor compliance with the provisions of this Directive. Such agents and branches shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 24 of Directive (EU) 2015/2366.

(4) With reference to Paragraph 8(2) and (3), the exchange of all essential and/or relevant information between the competent authorities of the home or the host Member States and the Bank shall be in accordance with the provisions of the regulatory technical standards specifying the framework for cooperation and the exchange of information as developed by the EBA in accordance with their obligation laid down in Article 29(6) of Directive (EU) 2015/2366.

(5) The Bank, in collaboration with the MFSA, may require payment institutions and electronic money institutions operating in Malta through agents and branches under the right of establishment, the head office of which is situated in another Member State, to appoint a central contact point in Malta to ensure adequate communication and information reporting on compliance with this Directive, without prejudice to any provisions on anti-money laundering and countering terrorist financing provisions and to facilitate supervision by the Bank and the competent authorities of home Member State, including the provision of documents and information on request.

(6) With reference to Paragraph 8(5), the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate, and the functions of those contact points, shall be specified in the regulatory technical standards developed by the EBA in accordance with their obligation laid down in Article 29(5) of Directive (EU) 2015/2366

(7) Without prejudice to the responsibility of the competent authorities of the home Member State, where the Bank, in collaboration with the MFSA, ascertains that a payment institution or an electronic money institution, established in another Member State, having agents or branches in Malta, does not comply with the provisions of Title II of Directive (EU) 2015/2366 and this Directive, the Bank shall inform the competent authority of the home Member State without delay.

The Bank, in collaboration with the MFSA, after having evaluated the information received about a payment institution or an electronic money institution in Malta, having agents or branches in another Member State, which does not comply with the host Member State's national law transposing Titles II, III or IV of Directive (EU) 2015/2366, shall, without undue delay, take all appropriate measures to ensure that the payment institution or electronic money institution concerned puts an end to its irregular situation. The Bank, in collaboration with the MFSA, shall communicate those measures without delay to the competent authority of the host Member State and to the competent authorities of any other Member State concerned.

(8) Any measures taken by the Bank in collaboration with the MFSA, pursuant to the provisions of Paragraph 8(2), (3), (4), (5), (6) and (7) of this Directive and the provisions of Articles 23, 28 and 30 of Directive 2015/2366 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly justified and communicated to the payment institution or electronic money institution concerned.

The provisions of Paragraph 8(2), (3), (4), (5), (6) and (7) of this Directive and the provisions of Articles 28 and 30 of Directive 2015/2366 shall be without prejudice to the obligations of the Bank under the Prevention of Money Laundering Act (*Cap. 373 of the Laws of Malta*), the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01), and Regulation (EU) 2015/847, to supervise or monitor the compliance with the requirements laid down in those instruments.

Right to apply to Courts

9. (1) Any decisions taken by the Bank, in collaboration with the MFSA, in respect of a payment service provider(s) pursuant to the laws, regulations and administrative provisions adopted in accordance with Title II of Directive (EU) 2015/2366 and this Directive, may be appealed with the Financial Services Tribunal, established by the Malta Financial Services Authority Act (*Cap. 330 of the Laws of Malta*), in accordance with Article 35 of the Central Bank of Malta Act (*Cap. 204 of the Laws of Malta*) without prejudice to the right of recourse before the Courts of Malta.

(2) Paragraph 9(1) shall apply also in respect of failure to act.

Exchange of Information

10. (1) Where appropriate, the Bank shall cooperate and exchange information with the following:

- (a) European Union regulatory authorities, including the EBA and the ECB;
- (b) competent authorities of other Member States, (in their capacity as competent authorities for Directive (EU) 2015/2366); and,
- (c) other relevant authorities designated under European Union law or national law applicable to payment service providers.

Settlement of disagreements between competent authorities of different Member States

11. (1) Where the Bank considers that, in a particular matter, cross-border cooperation with competent authorities of another Member State referred to in Paragraphs 8(2), (3), (4), (5), (6), (7), (8) and 10 of this Directive and Articles 28 and 30 of Directive (EU) 2015/2366 does not comply with the relevant conditions set out in those provisions, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Where the competent authority of another Member State considers that, in a particular matter, cross-border cooperation with the Bank as referred to in the Member State's national law transposing Articles 26, 28, 29, 30 or 31 of Directive (EU) 2015/2366 does not comply with the relevant conditions set out in those provisions and requests the assistance of the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Bank shall defer any decisions pending resolution under Article 19 of that Regulation.

CHAPTER 2

Common provisions

Access to payment systems

12. (1) The rules on access of authorised or registered payment service providers that are legal persons to payment systems approved by the Bank in terms of CBM Directive No. 13 entitled 'Approval of Payment Systems' shall be objective, non-discriminatory and proportionate and shall not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

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

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

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

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

- (a) payment systems designated under CBM Directive No. 2 entitled 'Payment and Securities Settlement Systems';
- (b) payment systems composed exclusively of payment service providers belonging to a group.

For the purposes of Paragraph 12(3)(a) where a participant in a designated system allows an authorised or registered payment service provider that is not a participant in the system to pass transfer orders through the system that participant shall, when requested, give the same opportunity in an objective, proportionate and non-discriminatory manner to other authorised or registered payment service providers in line with Paragraph 12(1).

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

Access to accounts maintained with a credit institution

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

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

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

**CHAPTER 1
General Rules**

Application

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

Other provisions in European Union Law

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

However, where the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07) is also applicable, the information requirements set out in Article 5(1)(a) of those Regulations, with the exception of sub-articles 1(b)(iii) to (viii), (c)(i), (iv), (v) and (d)(iv) shall be replaced by Paragraphs 20, 21, 27 and 28 of this Directive.

Charges for information

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

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

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

Burden of proof on information requirements

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

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

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

(a) by way of derogation Paragraphs 27, 28 and 32, the payment service provider shall provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an

indication of where any other information and conditions specified in Paragraph 28 are made available in an easily accessible manner;

- (b) it may be agreed that, by way of derogation Paragraph 30, the payment service provider is not required to propose changes to the conditions of the framework contract in the same way as provided for in Paragraph 27(1);
- (c) it may be agreed that, by way of derogation from Paragraphs 33 and 34, after the execution of a payment transaction:
 - (i) the payment service provider provides or makes available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction, any charges and/or, in the case of several payment transactions of the same kind made to the same payee, information on the total amount and charges for those payment transactions;
 - (ii) the payment service provider is not required to provide or make available information referred to in Paragraph 18(1)(c)(i) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.

CHAPTER 2

Single payment transactions

Application

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

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

Prior general information

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

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

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

Information and conditions

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

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

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

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

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

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

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

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

- (d) where applicable, the amount of any charges payable to the payment initiation service provider for the transaction, and where applicable a breakdown of the amounts of such charges.

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

23. When initiating a payment order, the payment initiation service provider shall make available to the payer's account servicing payment service provider the reference of the payment transaction.

Information for the payer after receipt of the payment order

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

Information for the payee after execution

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

CHAPTER 3

Framework contracts

Application

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

Prior general information

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

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

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

Information and conditions

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

(1) On the payment service provider:

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

(2) On use of the payment service:

- (a) a description of the main characteristics of the payment service to be provided;
- (b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly initiated or executed;
- (c) the form of and procedure for giving consent to initiate a payment order or execute a payment transaction and withdrawal of such consent in accordance with Paragraphs 40 and 56;

- (d) a reference to the time of receipt of a payment order in accordance with Paragraph 54 and the cut-off time, if any, established by the payment service provider;
 - (e) the maximum execution time for the payment services to be provided;
 - (f) whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with Paragraph 44(1);
 - (g) in the case of co-badged, card-based payment instruments, the payment service user's rights as specified in Article 8 of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions;
- (3) On charges, interest and exchange rates:
- (a) all charges payable by the payment service user to the payment service provider including those connected to the manner in and frequency with which information under this Directive is provided or made available and, where applicable, the breakdown of the amounts of such charges;
 - (b) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate;
 - (c) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with Paragraph 30(2);
- (4) On communication:
- (a) where applicable, the means of communication, including the technical requirements for the payment service user's equipment and software, agreed between the parties for the transmission of information or notifications under this Directive;
 - (b) the manner in and frequency with which information under this Directive is to be provided or made available;
 - (c) the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken;
 - (d) the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with Paragraph 29;
- (5) On safeguards and corrective measures:
- (a) where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of Paragraph 45(1)(b);
 - (b) the secure procedure for notification of the payment service user by the payment service provider in the event of suspected or actual fraud or security threats;

- (c) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Paragraph 44;
 - (d) the liability of the payer in accordance with Paragraph 50, including information on the relevant amount;
 - (e) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly initiated or executed payment transaction in accordance with Paragraph 47 as well as the payment service provider's liability for unauthorised payment transactions in accordance with Paragraph 49;
 - (f) the liability of the payment service provider for the initiation or execution of payment transactions in accordance with Paragraph 64;
 - (g) the conditions for refund in accordance with Paragraphs 52 and 53;
- (6) On changes to, and termination of, the framework contract:
- (a) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with Paragraph 30, unless the payment service user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted;
 - (b) the duration of the contract;
 - (c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Paragraphs 30(1) and 31;
- (7) On redress:
- (a) any contractual clause on the law applicable to the framework contract and/or the competent courts;
 - (b) the complaint procedures available to the payment service user in accordance with Paragraphs 72 to 74.

Accessibility of information and conditions of the framework contract

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

Changes in conditions of the framework contract

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

Where applicable and in accordance with Paragraph 28(6)(a), the payment service provider shall inform the payment service user that, in the absence of an objection to the proposed

changes to the conditions laid down in the framework contract, the payment service user shall be deemed to have accepted these proposed changes.

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

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

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

Termination

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

(2) Termination of the framework contract shall be free of charge for the payment service user except where the contract has been in force for less than 6 months. Charges, if any, for termination of the framework contract shall be appropriate and in line with costs.

(3) On termination of the framework contract the payment service provider shall provide the payment service user free of charge, on paper or on another durable medium, in line with provisions of Paragraph 27(1) with both of the following:

(a) The latest available yearly statement as governed by the framework contract; and

(b) An interim statement covering the period from the last date of the statement as referred to in Paragraph 31(3)(a) until the date of the termination.

(4) If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least 2 months' notice in the same way as provided for in Paragraph 27(1).

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

(6) The provisions of Paragraph 31 are without prejudice to the relevant local legislation, including the Credit Institutions and Financial Institutions (Payment Accounts) Regulations (S.L. 371.18), governing the rights of the parties to declare the framework contract unenforceable or void.

Information before execution of individual payment transactions

32. (1) In the case of an individual payment transaction under a framework contract initiated by the payer, a payment service provider shall, at the payer's request for this specific payment transaction, provide explicit information on all of the following:

- (a) the maximum execution time;
- (b) the charges payable by the payer;
- (c) where applicable, a breakdown of the amounts of any charge.

Information for the payer on individual payment transactions

33. (1) After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account, after receipt of the payment order, the payer's payment service provider shall provide the payer, without undue delay and in the same way as laid down in Paragraph 27(1) with all of the following information:

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

(2) A framework contract shall include a provision whereby the payment service provider shall provide or make available periodically, at least once a month, free of charge, on paper or on another durable medium which allows the payer to store and reproduce unchanged the information referred to in Paragraph 33(1).

(3) Without prejudice to Paragraph 33(2), the payment service provider shall also provide or make available periodically, at least once a year, free of charge, on paper or on another durable medium which allows the payer to store and reproduce information unchanged the information referred to in Paragraph 33(1).

(4) Without prejudice to Paragraphs 16(2) and 33(3), a framework contract shall include a provision whereby the payer may require the information referred to in Paragraph 33(1) to be provided or made available free of charge, on paper or on another durable medium which allows the payer to store and reproduce information unchanged, at a less frequent basis than as provided in Paragraph 33(2). However, the payer shall be allowed to revert back to frequency referred to in Paragraph 33(2) at any time and free of charge.

Information for the payee on individual payment transactions

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

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

(2) A framework contract shall include a provision whereby the payment service provider shall provide or make available periodically, at least once a month, free of charge, on paper or on another durable medium which allows the payee to store and reproduce unchanged the information referred to in Paragraph 34(1).

(3) Without prejudice to Paragraph 34(2), the payment service provider shall also provide or make available periodically, at least once a year, free of charge, on paper or on another durable medium which allows the payee to store and reproduce information unchanged the information referred to in Paragraph 34(1).

(4) Without prejudice to Paragraphs 16(2) and 34(3), a framework contract shall include a provision whereby the payee may require the information referred to in Paragraph 34(1) to be provided or made available free of charge, on paper or on another durable medium which allows the payee to store and reproduce information unchanged, at a less frequent basis than as provided in Paragraph 34(2). However, the payee shall be allowed to revert back to frequency referred to in Paragraph 34(2) at any time and free of charge.

CHAPTER 4 Common provisions

Currency and currency conversion

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

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

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

Information on additional charges or reductions

36. (1) Where, for the use of a given payment instrument, the payee offers a reduction, the payee shall inform the payer thereof prior to the initiation of the payment transaction.

(2) Where, for the use of a given payment instrument, the payment service provider or another party involved in the transaction requests a charge, the payment service user shall be informed prior to the initiation of the payment transaction.

(3) The payer shall only be obliged to pay for the charges referred to in Paragraph 36(2), if made aware of the full amount of these charges prior to the initiation of the payment transaction.

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

CHAPTER 1 Common provisions

Application

37. Where the payment service user is not a consumer, the payment service user and the payment service provider may agree that Paragraphs 38(1), 40(3), 48, 50, 52, 53, 56 and 64 do not apply in whole or in part. The payment service user and the payment service provider may also agree on different time limits than those laid down in Paragraph 47.

Charges applicable

38. (1) The payment service provider shall not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Title, unless otherwise specified in Paragraphs 55(1), 56(5) and 63(2). Those charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.

(2) With respect to payment transactions provided within the European Union, where both the payer's and the payee's payment service providers are, or the sole payment service provider in the payment transaction is located therein, the payee shall pay the charges levied by his payment service provider, and the payer shall pay the charges levied by his payment service provider.

(3) The payment service provider shall not prevent the payee from steering the payer towards the use of any particular payment instrument. Furthermore the payee shall not be prevented from offering the payer a reduction for using electronic payments.

(4) The payee is prohibited from requesting charges for electronic payment transactions.

Derogation for low value payment instruments and electronic money

39. (1) In the case of payment instruments which, according to the framework contract, solely concern individual payment transactions not exceeding EUR 30 or which either have a

spending limit of EUR 150, or store funds which do not exceed EUR 150 at any time, payment service providers may agree with their payment service users that:

- (a) Paragraphs 45(1)(b), 46(1)(c) and (d) and 50(3) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
- (b) Paragraphs 48, 49, 50(1) and (3) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;
- (c) by way of derogation from Paragraph 55(1) the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- (d) by way of derogation from Paragraph 56, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee;
- (e) by way of derogation from Paragraphs 59 and 60, other execution periods apply.

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

CHAPTER 2

Authorisation of payment transactions

Consent and withdrawal of consent

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

(2) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and the payment service provider. Consent to execute a payment transaction may also be given via the payee or the payment initiation service provider.

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

(3) Consent may be withdrawn by the payer at any time, but no later than at the moment of irrevocability in accordance with Paragraph 56. Consent to execute a series of payment transactions may also be withdrawn, in which case any future payment transaction shall be considered to be unauthorised.

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

Confirmation on the availability of funds

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

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

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

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

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

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

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

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

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

42.(1) A payer has the right to make use of a payment initiation service provider to obtain payment services as referred to in point (7) of Annex I of Directive (EU) 2015/2366. The right

to make use of a payment initiation service provider shall not apply where the payment account is not accessible online.

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

(3) The payment initiation service provider shall:

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

(4) The account servicing payment service provider shall:

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

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

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

43. (1) A payment service user has the right to make use of services enabling access to account information as referred to in point (8) of Annex I of Directive (EU) 2015/2366. This right shall apply where the account(s) is accessible online.

(2) The account information service provider shall:

- (a) provide services only where based on the payment service user's explicit consent;
- (b) ensure that the personalised security credentials of the payment service user are not, with the exception of the user and the issuer of the personalised security credentials, accessible to other parties and that when they are transmitted by the account information service provider, this is done through safe and efficient channels;
- (c) for each communication session, identify itself towards the account servicing payment service provider(s) of the payment service user and securely communicate with the account servicing payment service provider(s) and the payment service user, in accordance with procedures for authentication and secure communication as issued by the EBA;
- (d) access only the information from designated payment accounts and associated payment transactions;
- (e) not request sensitive payment data linked to the payment accounts;
- (f) not use, access or store any data for purposes other than for performing the account information service explicitly requested by the payment service user, in accordance with data protection rules.

(3) In relation to accounts, the account servicing payment service provider shall:

- (a) communicate securely with the account information service providers in accordance with procedures for authentication and secure communication as issued by the EBA; and
- (b) treat data requests transmitted through the services of an account information service provider without any discrimination for other than objective reasons.

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

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

44. (1) Where a specific payment instrument is used for the purposes of giving consent, the payer and the payer's account servicing payment service provider may agree on spending limits for payment transactions executed through that payment instrument.

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

(3) In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless providing such information would compromise objectively justified security reasons or is prohibited by other relevant European Union or national law.

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

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

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

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

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

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

- (a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, which must be objective, non-discriminatory and proportionate;

- (b) notify the payment service provider(s), or the entity specified by the latter, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

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

Obligations of the payment service provider in relation to payment instruments

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

- (a) make sure that the personalised security credentials are not accessible to parties other than the payment service user that is entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Paragraph 45;
- (b) refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
- (c) ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Paragraph 45(1)(b) or to request unblocking of the payment instrument pursuant to Paragraph 44(4);
- (d) on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that the payment service user made a notification as referred to in Paragraph 46(1)(c);
- (e) provide the payment service user with an option to make a notification pursuant to Paragraph 45(1)(b) free of charge and to charge, if at all, only replacement costs directly attributed to the payment instrument;
- (f) prevent all use of the payment instrument once notification pursuant to Paragraph 45(1)(b) has been made.

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

Notification and rectification of unauthorised or incorrectly executed payment transactions

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

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

(2) Where a payment initiation service provider is involved, the payment service user shall obtain rectification from the account servicing payment service provider pursuant to Paragraph 47(1), without prejudice to Paragraphs 49(2) and 64(1), (2), (3), (4) and (5).

Evidence on authentication and execution of payment transactions

48. (1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency of the service provided by the payment service provider.

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

(2) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider, including the payment initiation service provider as appropriate, shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of the obligations as specified in Paragraph 45. The payment service provider, including, where appropriate, the payment initiation service provider, shall provide supporting evidence to prove fraud or gross negligence on part of the payment service user.

Payment service provider's liability for unauthorised payment transactions

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

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

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

affected by a technical breakdown or other deficiency linked to the payment service of which it is in charge.

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

Payer's liability for unauthorised payment transactions

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

Paragraph 50(1) shall not apply if:

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

The payer shall bear all of the losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or failing to fulfil one or more of the obligations set out in Paragraph 45 with intent or gross negligence. In such cases, the maximum amount of EUR 50 shall not apply.

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

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

If the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as specified in Paragraph 46(1)(c) the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where the payer has acted fraudulently.

Payment transactions where the transaction amount is not known in advance

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

(2) The payer's payment service provider shall release the funds blocked on the payer's payment account in Paragraph 51(1) without undue delay after receipt of the information

about the exact amount of the payment transaction and at the latest immediately after receipt of the payment order.

Refunds for payment transactions initiated by or through a payee

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

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

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

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

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

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

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

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

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

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

(2) Within 10 business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide a justification for refusing the refund and indicate where the payer may refer the matter to in accordance with Paragraphs 72 to 74, if the payer does not accept the reasons provided.

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

CHAPTER 3
Execution of payment transactions

Section 1
Payment orders and amounts transferred

Receipt of payment orders

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

The payer's account shall not be debited before receipt of the payment order. If the time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day. The payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.

(2) If the payment service user initiating a payment order and the payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has put funds at the payment service provider's disposal, the time of receipt for the purposes of Paragraph 59 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

Refusal of payment orders

55. (1) Where the payment service provider refuses to execute a payment order or to initiate a payment transaction, the refusal and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user, unless prohibited by other relevant European Union or national law.

The payment service provider shall provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Paragraph 59.

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

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

(3) For the purposes of Paragraphs 59 and 64 a payment order for which execution has been refused shall be deemed not to have been received.

Irrevocability of a payment order

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

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

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

(4) In the case referred to in Paragraph 54(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.

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

Amounts transferred and amounts received

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

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

(3) If any charges other than those referred to in Paragraph 57(2) are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. Where the payment transaction is initiated by or through the payee, the payment service provider of the payee shall ensure that the full amount of the payment transaction is received by the payee.

Section 2 Execution time and value date

Application

58. (1) This Section applies to:

- (a) payment transactions in euro;
- (b) national payment transactions in the currency of the Member State outside the euro area;
- (c) payment transactions involving only one currency conversion between the euro and the currency of a Member State outside the euro area, provided that the required currency conversion is carried out in the Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

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

Payment transactions to a payment account

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

(2) The payment service provider of the payee shall value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with Paragraph 62.

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

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

60. Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the time limit laid down in Paragraph 59.

Cash placed on a payment account

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

Value date and availability of funds

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

(2) The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account where, on the part of the payee's payment service provider, there is:

(a) no currency conversion; or

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

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

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

Section 3 Liability

Incorrect unique identifiers

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

(2) If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable as specified in Paragraph 64 for non-execution or defective execution of the payment transaction.

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

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

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

(5) If the payment service user provides information in addition to that specified in Paragraphs 21(1)(a) or 28(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

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

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

(2) Where the payer's payment service provider is liable under Paragraph 64(1) it shall, without undue delay, refund to the payer the amount of the non-executed or defective payment transaction, and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

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

(3) Where the payee's payment service provider is liable under the Paragraph 64(1) it shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

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

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

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

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

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

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

(9) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under Paragraph 64(6) and (7), the payer's payment service provider shall be liable to the payer. Where the payer's payment service provider is so liable he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. The credit value date for the payer's payment account shall be no later than the date the amount was debited.

(10) The obligation as specified in Paragraph 64(9) shall not apply to the payer's payment service provider where the payer's payment service provider proves that the payee's payment

service provider has received the amount of the payment transaction, even if execution of payment transaction is merely delayed. If so, the payee's payment service provider shall value date the amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly.

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

(12) In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective, including late, execution of the payment transaction.

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

65.(1) Where a payment order is initiated by the payer through a payment initiation service provider, the account servicing payment service provider shall, without prejudice to Paragraphs 47 and 63(2) and (3), refund to the payer the amount of the non- executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

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

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

Additional financial compensation

66. Any financial compensation additional to that provided for under this Section may be determined in accordance with the law applicable to the contract concluded between the payment service user and the payment service provider.

Right of recourse

67.(1) Where the liability of a payment service provider as specified in Paragraphs 49 and 64 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under Paragraphs 49 and 64. That shall include compensation where any of the payment service providers fail to use strong customer authentication.

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

Abnormal and unforeseeable circumstances

68. No liability shall arise under Chapter 2 or 3 in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by European Union or national law.

CHAPTER 4 Data protection

Data protection

69. (1) The processing of personal data by payment systems and payment service providers shall be permitted when necessary to safeguard the prevention, investigation and detection of payment fraud. The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of personal data for the purposes of this Directive shall be carried out in accordance with the Data Protection Act (*Cap. 440 of the Laws of Malta*), Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR) and any applicable legislation.

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

CHAPTER 5 Reporting and Authentication

Incident reporting

70. (1) In the case of a major operational or security incident, payment service providers shall, without undue delay, where Malta is the home Member State, notify the Bank and the MFSA. Payment service providers shall use the procedures established by the EBA for notifying such incidents.

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

(2) Upon receipt of the notification referred to in Paragraph 70(1), the Bank shall, in collaboration with the MFSA, and without undue delay, provide the relevant details of the incident to the EBA and to the ECB. The Bank shall, in collaboration with the MFSA, assess the relevance of the incident to the relevant authorities in Malta, and notify any such authorities accordingly.

The Bank shall, in collaboration with the MFSA, cooperate with the EBA and the ECB for the purpose of assessing the relevance of the incident to other relevant European Union and

national authorities in accordance with the obligations of the EBA and the ECB as laid down in Article 96(2) of Directive (EU) 2015/2366.

The Bank shall, on the basis of notifications received from the EBA and/or the ECB in accordance with their obligations as laid down in Article 96(2) of Directive (EU) 2015/2366, where appropriate and in collaboration with the MFSA, take all of the necessary measures to protect the immediate safety of the financial system.

(3) Payment service providers shall provide, on an annual basis, statistical data on fraud relating to different means of payment to the Bank. The Bank shall, in collaboration with the MFSA, provide the EBA and the ECB with such data in an aggregated format.

Authentication

71.(1) Payment service providers shall apply strong customer authentication in line with the provisions established in the Financial Institutions Rules on Security of Internet Payments of Credit, Payment and Electronic Money Institutions (FIR/04/2015), where the payer:

- (a) accesses its payment account online;
- (b) initiates an electronic payment transaction, including card transactions;
- (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

Provisions established in the Financial Institutions Rules on Security of Internet Payments of Credit, Payment and Electronic Money Institutions (FIR/04/2015) with regards to strong customer authentication will be superseded by the regulatory technical standards referred to in Article 98 of Directive (EU) 2015/2366, 18 months after the date of entry into force of such regulatory technical standards.

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

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

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

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

CHAPTER 6

Dispute resolution, complaints procedure, ADR procedure and penalties

Dispute resolution

72. (1) Payment service providers shall put in place and apply adequate and effective complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations arising from the provisions of this Directive.

With respect to payment services provided in Malta, payment service providers shall make such complaint resolution procedures available in English and/or in Maltese or in any other language agreed upon between the payment service provider and the payment service user.

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

(3) The payment service provider shall inform the payment service user, where such a payment service user is an eligible customer falling within the meaning of paragraph 73(1)(i), about the services offered by the Office of the Arbiter, which is competent to deal with disputes concerning the rights and obligations arising under this Directive.

(4) The information referred to in Paragraph 72(3) shall be mentioned in a clear, comprehensive and easily accessible way on the website of the payment service provider, where one exists, at the branch, and in the general terms and conditions of the contract between the payment service provider and the payment service user. The information referred to in Paragraph 72(3) shall also specify how the payment service user can access further information on the Office of the Arbiter and on the conditions for using such services.

Complaints

73. (1) Any complaint relating to an alleged infringement of this Directive by a payment service provider may be submitted by:

- i. a payment service user, being an eligible customer in terms of the Arbiter for Financial Services Act;
- ii. a payment service user, not being an eligible customer in terms of the Arbiter for Financial Services Act;
- iii. an interested third party, including consumer associations.

(2) Complaints falling within the meaning of paragraph 73(1)(i) shall be directed to the Office of the Arbiter.

(3) Complaints falling within the meaning of paragraph 73(1)(ii) and (iii) shall be directed to the Bank.

ADR Procedure

74.(1) Without prejudice to paragraphs 72 and 73, a payment service user may resort to the Office of the Arbiter for the settlement of a dispute with a payment service provider concerning the rights and obligations arising under this Directive.

Provided that the preceding sub-paragraph shall not apply to a payment service user who is not an eligible customer in terms of the Arbiter for Financial Services Act.

(2) The Bank shall assist the Office of the Arbiter to cooperate effectively with other relevant authorities for the resolution of cross-border disputes concerning the rights and obligations arising under this Directive.

Penalties

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

(2) Any administrative penalties imposed on payment service providers in accordance with Paragraph 75(1) and in line with provisions laid down in CBM Directive No.12 entitled 'Administrative Measures and Penalties for Infringements under the Central Bank of Malta Act' shall be effective, proportionate and dissuasive.

(3) The Bank may disclose to the public any administrative penalty that is imposed for infringement of the provisions of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

TITLE V FINAL PROVISIONS

Obligation to inform consumers of their rights

76.(1) Payment service providers shall ensure that the user-friendly electronic leaflet, listing in a clear and easily comprehensible manner the rights of consumers under this Directive and related European Union law, as published by the European Commission in accordance with its obligations laid down in Article 106(1) and (2) of Directive (EU) 2015/2366, is made available in an accessible manner on their websites, if existing, and on paper at their branches, their agents and the entities to which their activities are outsourced.

(2) In respect of persons with disabilities, the provisions of Paragraph 76(1) shall be applied using appropriate alternative means, allowing the information to be made available in an accessible format.

(3) Payment service providers shall not charge their clients for making information available under Paragraph 76.

(4) The Bank shall also make available in an easily accessible manner on its website the leaflet referred to in Paragraph 76(1)

Full harmonisation

77. (1) Without prejudice to Article 2, Article 38(2), Article 55(6), Article 57(3), Article 58(3), Article 61(2) and (3), Article 62(5), Article 63(3) and the second subparagraph of Article 74(1) of Directive (EU) 2015/2366, for the purpose of full harmonisation at the European Union level, the Bank did not introduce provisions other than those laid down in that Directive.

(2) The Bank shall inform the European Commission of any of the options referred to in Paragraph 77(1), as well as of any subsequent changes. Such information will be made public by the European Commission on a website or other easily accessible means as per obligations laid down in Article 107(2) of Directive (EU) 2015/2366.

(3) Payment service providers shall not derogate, to the detriment of payment service users, from the provisions of this Directive except where explicitly provided for therein. However, payment service providers may decide to grant more favourable terms to payment service users than those laid down in this Directive.

Transposition

78. (1) By way of derogation from Paragraph 79, the application of the provisions related to the security measures referred to in Paragraphs 41, 42, 43 and Paragraph 71(2), (4) and (5) shall apply from 18 months after the date of entry into force of the regulatory technical standards referred to in Article 98 of Directive (EU) 2015/2366.

(2) Until individual account servicing payment service providers comply with the regulatory technical standards referred to in Article 98 of Directive (EU) 2015/2366, account servicing payment service providers shall not abuse their non-compliance to block or obstruct the use of payment initiation and account information services for the accounts that they are servicing.

Entry into force

79. This Directive shall enter into force on the 13th of January 2018.