

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation on the implementation of the EU Payment Accounts Directive

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Note: *The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received not only from licence holders and other involved parties, but also following the necessary review and vetting by the relevant competent authorities and Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.*

Table of Contents

The subject of this consultation	1
Who should read this?.....	1
Background to the Directive	1
The proposed approach to implementation of PAD	1
The draft regulations	1
Part 1 – Introductory provisions.....	2
Part 2 – Comparability of fees connected with payment accounts	2
A. Comparison of fees and charges	2
B. Comparison websites	3
C. Packaged Accounts	3
Part 3: Switching	4
Part 4 – Access to payment accounts	4
A. Payment accounts with basic features	4
B. Grounds for refusal to open a payment account with basic features or terminate a framework contract for such an account.....	4
Part 5 – The Authority.....	5
Consultation and how to respond.....	5
Annex 1 - Draft Regulations	i

THE SUBJECT OF THIS CONSULTATION

This consultation invites views on the proposed steps that the Malta Financial Services Authority (MFSA) will take in order to make sure that Malta meets its obligation to transpose Directive 2014/92/EU – the Payment Accounts Directive (“PAD” or “Directive”).

WHO SHOULD READ THIS?

This consultation should be read by those who will be affected by the changes proposed. This may include payment service providers (“PSPs”) such as credit institutions, financial institutions, electronic money institutions, consumers and consumer groups and other interested parties.

BACKGROUND TO THE DIRECTIVE

PAD was published in the [Official Journal of the European Union on 28 August 2014](#).

PAD sets common regulatory standards that member states are required to meet in order to:

- improve the transparency and comparability of fees related to payment accounts that are used for day-to-day payment transactions
- facilitate switching of those accounts
- ensure access to bank accounts with basic features

Malta is required to transpose PAD by 18 September 2016 in order to meet its treaty obligations and avoid the risk of facing legal proceedings as a result of infraction.

This requires the government to make new secondary legislation in virtue of enabling powers set out in the Banking Act and the Financial Institutions Act.

THE PROPOSED APPROACH TO IMPLEMENTATION OF PAD

The PAD allows member states certain degree of discretion to limit or extend its application in a number of areas.

Where possible, the wording in the PAD has been replicated in the regulations. Where this is not possible, or appropriate, the text of the Directive has been amended to provide for clarity or amplification.

THE DRAFT REGULATIONS

The following section outlines key and essential aspects arising from the draft regulations (Annex 1). It should not therefore be construed as providing an exhaustive summary of the draft regulations.

These regulations shall be called “*Credit and Financial Institutions (Payment Accounts) Regulations, 2016*”.

Part 1 – Introductory provisions

Article 1(5) of the Directive allows member states to exempt certain entities, such as central banks, from the application of all or part of its provisions. Malta will use this discretion and as a result has carved out the Central Bank of Malta from the application of the draft regulations.

The regulations are intended to enter into force on 18 September 2016. However, the PAD grants derogations for a number of measures (under chapter II of the PAD) to be deferred. The full extent allowed by the Directive is reflected in the draft regulations.

In order to provide for more clarity, additional terms and definitions not provided for in the PAD have been included.

Part 2 – Comparability of fees connected with payment accounts

A. Comparison of fees and charges

PAD is the first attempt by the European Commission to try to minimise the differences between member states to enable easier comparison of fees and charges for consumers in relation to payment accounts and remove a perceived barrier to the completion of the internal market.

The MFSA is clear that consumers must be able to easily access clear and transparent information about the fees and charges that may apply and have a reasonable opportunity to manage their account and control whether or not they incur fees and charges. To this effect, at the initiative of the MFSA, Malta has already implemented a comparative online database of all bank fees and charges through its Mymoneybox consumer portal. The databases are in line with the Authority's function to promote the general interests and legitimate expectations of consumers of financial services, and to promote fair competition practices and consumer choice in financial services.

PAD requires a further series of measures to develop and clarify the information available to consumers:

- First, each member state is to establish a list of the most representative services linked to payment accounts in their territory. This 'provisional national list' must consist of between 10 and 20 services that are subject to a fee, and contain both terms and definitions. The most representative services are to be determined by having regard to the services that are most commonly used by consumers in relation to their payment accounts and to those that generate the highest costs for consumers. The European Banking Authority (EBA) is required to issue guidelines to assist in the application of these criteria. Each member state then submits its list to the European Commission and the EBA. This step has already been surpassed. The request for feedback and the response submitted by the MFSA to the EBA during the last quarter of 2015 are available online.
- The EBA is now developing EU standardised terms and definitions in respect of the services that appear on at least a majority of member states' national lists.
- Following adoption of the EU terms and definitions by the European Commission, each member state must integrate this EU standardised terminology into its provisional national list and publish the resulting final linked services list for use by

PSPs. This will mean that some terms and definitions contained in the provisional national list may have to be replaced, while others will remain unchanged.

- The terms on the final list of services linked to payment accounts, including the EU standardised terms, should be used to compile a **Fee Information Document**, given to consumers free of charge. The criteria relating to the preparation of the fee information document are provided in a schedule (Schedule 1). The EBA will develop a standardised presentation format for the Fee Information Document, and a common symbol to help consumers identify it.
- An annual **Statement of Fees** setting out all the fees incurred and interest rates (as applicable) that applied to the account during the previous year is also required to be provided to the consumer. The criteria relating to the preparation of the statement of fees are provided in a schedule (Schedule 2) The EBA will develop a standardised presentation format for the statement of fees, and a common symbol to help consumers identify it.
- Finally, the terms on the final list of services linked to payment accounts, including the EU standardised terms, should be used alongside brand names in PSP's communications with consumers.

B. Comparison websites

PAD requires that consumers must have access to at least one comparison website that is operationally independent, clearly discloses its owners and the criteria on which comparisons are made, be accurate and up-to-date, and provides a mechanism for consumers to report incorrect information. The MFSA's Mymoneybox portal <http://mymoneybox.mfsa.com.mt/pages/comparativeTables.aspx> precisely fulfils this function. Further, once the list of standardised terms has been agreed and is in place in Malta, the PAD requires the Mymoneybox portal to use the standardised terms where applicable.

C. Packaged Accounts

Packaged accounts are generally understood to be bank accounts (including credit cards) that offer an additional service or services, unrelated to the account (such as travel insurance) for free or for a fee.

Such accounts offer consumers convenience, and may also deliver a saving on the cost of the services if they were purchased separately. However, these practices may also reduce transparency and comparability of prices, and make it less likely that consumers will shop around for the best deal on each service or be willing to switch to another provider who does not offer the same package of services.

The approach set out in the draft regulation addresses in-grained practices where consumers are offered payment accounts bundled with services, some of which may not necessarily be of use to the consumer but in any case, the consumer would still be required to pay for.

The MFSA is seeking, as part of this consultation, to understand the potential additional costs and burdens to PSPs if such providers are given the option to unbundle their payment account packages and required to provide additional information for such unbundled payment accounts. The MFSA would also welcome views from respondents as to the likely impact on both PSPs and consumer behaviour of providing information to consumers in this way.

Part 3: Switching

If consumers are able to switch their accounts easily and reliably, then consumers are more likely to shop around and choose a new provider if their current provider is not giving them the service they need. It provides the strongest incentive of all for banks to compete, harness new technology and improve services for their consumers.

Anecdotal evidence suggests that Maltese consumers do not switch banks quite often but rather prefer to have one or more accounts with two or more banks. The idea behind switching does make a lot of sense when consumers have direct debits and standing orders in place. In Malta, uptake of the former type of payment service is still nascent.

The switching requirements set out in Articles 9 to 14 of PAD provide member states with a blueprint for a basic switching regime. They place obligations on the transferring service provider (i.e. the old payment service provider) and the receiving service provider (i.e. the new payment service provider). A switch carried out within the timeframe set out in PAD would take twelve working days.

The requirements relating to switching services are outlined in a schedule (Schedule 3).

Part 4 – Access to payment accounts

A. Payment accounts with basic features

Under PAD, consumers legally resident in the EU have a right to open and use a payment account with basic features. This right applies irrespective of the consumer's place of residence. An application for a payment account with basic features should be processed without undue delay, and the account should be opened or refused within 10 working days at the latest after receiving a complete application.

PAD also sets out the characteristics of a payment account with basic features and necessitates a clear legal right of access to such an account, and a route to challenge banks' decisions if such access is not granted.

All credit institutions which operate a network of five or more branches would be required to open a payment account with basic features to consumers. Credit institutions which operate less than five branches would not be required to offer payment accounts with basic features but they may do so voluntarily.

The PAD offers member states the option to require that consumers who wish to open a payment account with basic features in Malta show "a genuine interest" in doing so, provided demonstration of that genuine interest is not made too burdensome or difficult. The draft regulations do not presently include a requirement to demonstrate a genuine interest.

The draft regulations outline the characteristics of a payment account with basic features. Ordinarily, such payment accounts shall be denominated in euro. However, a credit institution may also offer payment accounts with basic features in other currencies.

B. Grounds for refusal to open a payment account with basic features or terminate a framework contract for such an account

PAD specifies that member states shall ensure that credit institutions refuse an application for a payment account with basic features, or close an existing account, where opening the

account or allowing it to remain open would infringe domestic laws implementing EU Directive 2005/60/EC on the prevention of money laundering and the countering of terrorist financing.

Banks may also close an existing account where the consumer has: deliberately used the account for illegal purposes; has not performed a transaction on the account for more than 24 months; has provided incorrect information in order to obtain the account; is no longer resident in the EU; or has opened a second account with at least the same features as a basic bank account.

Member states may also identify limited and specific additional cases where credit institutions may be required or may choose to refuse an application for a payment account with basic features or close an existing one. These cases, which need to be based on local legislation, are outlined in the draft regulations.

Credit institutions shall be precluded from charging fees for a number of services offered with a payment account with basic features. Credit institutions may, however, be able to charge a fee for opening, operating and closing such type of account. In regard to outgoing credit transfers, a minimum number of monthly unique operations have to be provided free of charge. As this is a different approach from the standard manner in which local credit institutions offer bank deposit accounts, the MFSA is seeking, as part of this consultation, to understand the potential impact if payment accounts with basic features and related services are offered in the manner outlined in the draft regulations.

Both the Authority and credit institutions would be required to provide information about access and availability of payment accounts with basic features.

Part 5 – The Authority

This section outlines the monitoring, enforcement and reporting obligations of the Authority in regard to these draft regulations.

CONSULTATION AND HOW TO RESPOND

Feedback on the proposed regulations should reach the Authority by not later than 29 April 2016. Please send your responses by e-mail (consumerinfo@mfsa.com.mt) addressed to Geoffrey Bezzina, Director – Consumer Complaints Unit.

Any queries or requests for clarification in respect of the draft regulations should be addressed to Ms Samantha Sultana (ssultana@mfsa.com.mt).

ANNEX 1 - DRAFT REGULATIONS

**Banking Act (Cap. 371) Financial
Institutions Act (Cap. 376)**

Credit and Financial Institutions (Payment Accounts) Regulations, 2016

IN exercise of the powers conferred by Article 3 of the Banking Act and Article 12 of the Financial Institutions Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority has made the following regulations:

PART 1

Introductory Provisions

Citation, Commencement, and Scope

1. (1) The title of these regulations is the *Credit and Financial Institutions (Payment Accounts) Regulations, 2016*.
- (2) The purpose of these regulations is to implement Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment account with basic features.
- (3) These regulations lay down rules concerning the transparency and comparability of fees charged to consumers on their payment accounts held within a Member State, rules concerning the switching of payment accounts within Member States and rules to facilitate cross-border payment account-opening for consumers.
- (4) These regulations define a framework for the rules and conditions to which Member States are required to guarantee a right for consumers to open and use payment accounts with basic features in a Member State.
- (5) Regulations 8, 10, 12 and 13 shall enter into force on 18 June 2017.

Interpretation

2. (1) For the purposes of these regulations the following definitions shall apply:

“branch” means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;

“bundling” means the offering of one or more ancillary service with a payment account in a package, where the payment account or the ancillary service may also be made available to the consumer separately, but not necessarily on the same terms or conditions as when offered bundled;

“business day” means a day on which the relevant payment service provider is open for business as required for the execution of a payment transaction;

“Charter” means the Charter of Fundamental Rights of the European Union;

“combined account” means a type of account which comprises a payment account, an overdraft and a loan facility simultaneously;

“Consumer Complaints Manager” means the person appointed in terms of Article 20 of the Malta Financial Services Authority Act (Cap. 330);

“consumer” means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

“credit institution” means a credit institution as defined in the Banking Act (Cap. 371);

“credit interest rate” means any rate at which interest is paid to the consumer in respect of funds held in a payment account;

“credit transfer” means a national or cross-border 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;

“creditor-driven direct debit” means a payment service for debiting a consumer’s payment account where the creditor, following receipt of the direct debit mandate from the consumer will be responsible for the storing of such mandate whilst also initiating the payment transaction. The payment service provider does not receive any mandate related information from the consumer and nor is responsible for the verification of the creditor’s right to collect payment;

“Authority” means the Malta Financial Services Authority;

“debit interest rate” means any rate at which interest is charged to the consumer in respect of a payment account being overdrawn;

“debtor-driven direct debit” means a payment service for debiting a consumer’s payment account; where a payment transaction is initiated by the creditor informing the payer’s payment service provider of the consumer’s intention to make payments by direct debit. The mandate issued by the payment service provider following the payer’s authorisation for a direct debit collection stays with the same payment service provider. When the creditor presents a direct debit collection to the payment service provider, the latter may choose to obtain the creditor’s authorisation to collect payment based on the mandate;

“direct debit” means a national or cross-border payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent;

“Directive 2005/60/EC” means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as amended for time to time, and includes any implementing measures that have been or may be issued thereunder;

“Directive 2007/64/EC” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“Directive 2008/48/EC” means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“Directive 2014/92/EU” means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“durable medium” means any instrument which enables the consumer to store information addressed personally to that consumer in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“electronic money” means electronic money as defined in the Third Schedule of the Financial Institutions Act (Cap. 376);

“EBA” means the European Banking Authority established by Regulation (EU) No 1093/2010;

“EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992, as amended by the protocol signed at Brussels on 17th March 1993, and as amended by any subsequent acts;

“EU standardised terminology” means the terms set out in any regulatory technical standards adopted by the European Commission in accordance with regulation 3(1);

“European Union” or “EU” means the European Union as defined in Article 2 of the European Union Act (Cap. 460);

“fees” means all charges, tariffs, and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account;

“fee information document” means a document provided under regulation 8(1);

“financial institution” means financial institution as defined in the Financial Institutions Act (Cap. 376);

“financial services” mean financial services as defined in the Malta Financial Services Authority Act (Cap. 330);

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

“funds” means banknotes and coins, scriptural money and electronic money as defined in the Financial Institutions Act (Cap. 376);

“legally resident in a Member State” means a natural person who has the right to reside in a Member State by virtue of Union or national law, including consumers with no fixed address and persons seeking asylum under the Geneva Convention of 28 July 1951 relating to the Status of Refugees, the Protocol thereto of 31 January 1967 and other relevant international treaties;

“Member State” means a Member State of the European Union and includes an EEA State;

“Minister” means the Minister responsible for finance;

“overdraft facility” means an explicit credit agreement whereby a payment service provider makes available to a consumer funds which exceed the current balance in the consumer’s payment account;

“overrunning” means a tacitly accepted overdraft whereby a payment service provider makes available to a consumer funds which exceed the current balance in the consumer’s payment account or the agreed overdraft facility;

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

“payer” means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer’s payment account, a natural or legal person who makes a payment order to a payee’s payment account;

“payment account” means an account held in the name of one or more consumers which is used for the execution of payment transactions;

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

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

“payment service” means any business activity listed in the Second Schedule of the Financial Institutions Act (Cap. 376);

“payment service provider” means a payment service provider as defined in point (9) of Article 4 of Directive 2007/64/EC;

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

“penalties” means any published or agreed amounts required to be paid as a result of breaching the terms of a contract, including a framework contract, or if a particular payment or performance is not made on time;

“receiving payment service provider” means the payment service provider to which the information required to perform the switching is transferred;

“relevant period” means the period to which the statement of fees relate;

“services linked to the payment account” means all services related to the opening, operating and closing of a payment account, including payment services and payment transactions falling within the scope of point (g) of Article 3 of Directive 2007/64/EC, overdraft facilities and overrunning;

“standing order” means an instruction given by the payer to the payment service provider which holds the payer’s payment account to execute credit transfers at regular intervals or on predetermined dates;

“statement of fees” means a statement provided under regulation 10(1);

“switching” or “switching service” means, upon a consumer’s request, transferring from one payment service provider to another either the information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, or any positive payment account balance from one payment account to the other, or both, with or without closing the former payment account;

“transferring payment service provider” means the payment service provider from which the information required to perform the switching is transferred;

“Tribunal” means the Financial Services Tribunal as established under the Malta Financial Services Authority Act (Cap. 330).

(2) For the purpose of these regulations:

- (a) combined accounts and payment accounts holding electronic money are excluded unless such types of account are used for day-to-day payment transaction; and
- (b) the Central Bank of Malta shall not be deemed to be a payment service provider.

PART 2

Comparability of fees connected with payment accounts

Publication of the list of services linked to payment accounts

3. (1) Following adoption by the European Commission of regulatory technical standards setting out the EU standardised terminology, the Authority shall without delay, and at the latest within three months of entry into force of the EU standardised terminology, publish a list of the most representative services linked to a payment account and subject to a fee.

(2) The list of services linked to the payment accounts shall:

- (a) feature at least 10 and no more than 20 of the most representative services linked to a payment account and subject to a fee offered by at least one payment service provider;
- (b) contain terms and definitions for each of the services identified; and
- (c) where applicable, use the EU standardised terminology.

Information for consumers

4. Where applicable, a payment service provider shall use the terminology set out in the list of services linked to payment accounts in its contractual, commercial and marketing information.

Periodic review of the list of services linked to payment accounts

5. (1) Every four years, following publication of the list of services linked to the payment accounts, the Authority shall assess, and where appropriate, update the list.

(2) The Authority shall notify to the European Commission and to EBA the outcome of its assessment and, where applicable, provide them with the updated list.

Revision of the list of services linked to payment accounts

6. (1) Upon the European Commission adopting any change to the regulatory technical standards setting out the EU standardised terminology, the Authority shall revise the list of services linked to payment accounts to make any consequential amendments thereto.

(2) Payment service providers shall adopt and use such updated regulatory technical standards within three months of their coming into force.

Glossary

7. (1) A payment service provider shall make available to consumers a glossary of at least the terms set out in the list of services linked to payment accounts and the related definitions.

(2) The glossary shall be available in English and Maltese and may also be available in any other language as agreed by the payment service provider and the consumer.

(3) The glossary shall be in a clear, unambiguous and non-technical language and shall not be misleading.

Fee information document

8. (1) Without prejudice to Article 42(3) of Directive 2007/64/EC and Article 7 of the Consumer Credit Regulations (S.L 378.12), a payment service provider shall ensure that before entering into a contract for a payment account with a consumer, it provides the consumer with a fee information document.

(2) The fee information document shall meet the requirements set out in Schedule 1.

Availability of the fee information document and glossary

9. (1) A payment service provider shall ensure that the fee information document and the glossary are:

- (a) made available to consumers at any time;
- (b) provided in an easily accessible manner, including to the general public:
 - (i) in electronic form on the payment service provider's websites where available; and
 - (ii) in the premises of the payment service provider.

(2) The fee information document and glossary shall be provided on paper or another durable medium free of charge upon request.

(3) Without prejudice to the requirements for the provision of the fee information document, payment service providers shall also provide such information and documentation which they may be required to provide in accordance with other legislative acts as may be in force from time to time.

Statement of fees

10. (1) Without prejudice to Articles 47 and 48 of Directive 2007/64/EC and Article 12 of Directive 2008/48/EC, a payment service provider shall provide consumers with an annual or periodic statement of fees free of charge.

(2) The method of communication used to provide the statement of fees shall be agreed with the consumer and the statement of fees shall be provided on paper free of charge upon the request of the consumer.

(3) The statement of fees shall meet the requirements set out in Schedule 2.

Provision of information

11. The provisions of this regulation relating to statement of fees and the fee information document shall apply mutatis mutandis in regard to payment accounts with basic features.

Branding

12. (1) A payment service provider may use brand names to designate its services in its contractual, commercial and marketing information to consumers, provided that it clearly identifies, where applicable, the corresponding standardised terms set out in the list of services linked to payment accounts.

(2) A payment service provider may use brand names in the fee information document and the statement of fees, provided such brand names are used in addition to the terms set out in the list of services linked to payment accounts and as a secondary designation of those services.

Comparison websites

13. (1) The Authority shall provide consumers with access, free of charge, to a website comparing fees charged by payment service providers for at least the services included in the list of services linked to payment accounts.

(2) The comparison website shall:

- (a) be operationally independent by ensuring that payment service providers are given equal treatment in search results;
- (b) clearly disclose that it is compiled by the Authority on the basis of information provided by the payment service provider;
- (c) set out clear, objective criteria on which the comparison shall be based;
- (d) use plain and unambiguous language and, where applicable, the terms set out in the list of services linked to payment accounts;
- (e) provide accurate and up to date information and state the time of the last update;
- (f) include a broad range of payment account offers covering a significant part of the market, and where the information presented is not a complete overview of the market, a clear statement to that effect before displaying results; and
- (g) provide an effective procedure to report incorrect information on published fees.

(3) Comparison websites may also be operated and compiled by other entities as long as the minimum criteria laid out in sub-regulation (1) are adhered to. The Authority shall:

- (a) be responsible for supervising the services offered by such comparison websites and shall issue ancillary rules as may be appropriate from time to time; and
- (b) ensure that it publishes online a list of such websites.

(4) The Authority may, in addition to the list of services linked to payment accounts, compile and publish any other comparative information as to products and services offered by payment service providers that shall cooperate, provide and update such information as may be required by the Authority from time to time.

Payment accounts packaged with another product or service

14. (1) Where a payment account is offered as part of a package with another product or service which is not linked to a payment account, the payment service provider shall inform the consumer whether it is possible to purchase the payment account separately from such product or service.

(2) Where a payment service provider informs the consumer in accordance with sub-regulation (1) that it is possible to purchase the payment account from it separately, the payment service provider shall additionally provide the consumer with separate information regarding the costs and fees associated with each of the other products and services offered in the package.

(3) Where a payment service provider does not offer such other products and services separately from the payment account, the payment service provider may unbundle any of such products and services from the package. In such case, the payment service provider shall provide separate information, including any applicable costs and fees, on the payment account as well as on the packaged payment account.

PART 3

Switching

Provision of the switching service

15. (1) A payment service provider shall offer a switching service between payment accounts that are:

- (a) denominated in the same currency; and

(b) opened or held with another payment service provider located in Malta.

(2) A switching service shall be initiated by the receiving payment service provider at the request of the consumer and shall meet the requirements set out in Schedule 3.

(3) The Authority may establish measures alternative to those referred to in Schedule 3, provided that:

- (a) it is clearly in the interest of the consumer;
- (b) there is no additional burden for the consumer; and
- (c) the switching is completed, within, as a maximum, the same overall time-frame as that indicated in Schedule 3.

Facilitation of cross-border account opening for consumers

16. (1) Where a consumer indicates to a payment service provider located in Malta with whom that consumer holds a payment account that the consumer wishes to open a payment account with a payment service provider located outside Malta, but within another Member State, the Maltese payment service provider shall, on a date specified by the consumer:

- (a) provide the consumer free of charge with:
 - (i) a list of all currently active standing orders for credit transfers and debtor-driven direct debit mandates, where available; and
 - (ii) available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account in the previous 13 months.

Provided that there is no obligation on the part of the payment service provider in another Member State to set up services that it does not provide;

- (b) transfer any positive balance remaining on the payment account held with the Maltese payment service provider to the payment account opened or held by the consumer with a payment service provider in another Member State; and
- (c) close the payment account held by the consumer with the Maltese payment service provider.

(2) Without prejudice to Articles 45(1) and 45(6) of Directive 2007/64/EC, the date specified by the consumer referred to in sub-regulation (1) shall be at least six business days after the Maltese payment service provider received the consumer's request, unless otherwise agreed between the consumer and the Maltese payment service provider.

(3) The requirement in sub-regulation (1)(b) shall only apply where:

(a) the consumer has:

(i) requested that the transfer be made;

(ii) provided full details of the account opened or held with another payment service provider in another Member State; and

(b) there are no outstanding obligations on the account.

(4) Where outstanding obligations prevent the Maltese payment service provider from closing the payment account in accordance with sub-regulation (1)(c), it shall immediately inform the consumer.

(5) For the purpose of this regulation, "Maltese payment service provider" means a payment service provider located in Malta with whom the consumer holds a payment account.

PART 4

Access to payment accounts

Non-discrimination in the provision of payment accounts

17. (1) A credit institution shall not discriminate against consumers legally resident in a Member State by reason of their nationality or place of residence or by reason of any other ground referred to in Article 21 of the Charter and in other provisions contained in any other Maltese law, when those consumers apply for or access a payment account.

(2) The conditions applicable to holding a payment account with basic features within the meaning of regulation 19 shall not be discriminatory.

Right of access to a payment account with basic features

18. (1) Credit institutions with a branch network in Malta having five or more branches shall offer access to a payment account with basic features through its entire branch

network and may also offer online accounts with the same basic features. The Authority shall ensure that payment accounts with basic features are not only offered by credit institutions that provide payment accounts with solely online facilities.

(2) Credit institutions with a network of four branches or less may also offer payment account with basic features. Provided that in such case the provisions of these regulations shall apply to such credit institutions *mutatis mutandis*.

(3) It shall be the duty of the Authority to prevent distortions of competition in regard to the manner in which credit institutions grant access to payment account with basic features, and to take action thereupon.

Eligibility criteria

19. (1) In order to be eligible for a payment account with basic features, a consumer shall be legally resident in a Member State, and shall either:

- (a) not hold a payment account with any credit institution licensed in terms of the Banking Act, that has at least the features set out in regulation 25(1); or
- (b) be ineligible for all payment accounts offered by the same credit institution that are not payment accounts with basic features.

(2) For the purposes of sub-regulation (1):

- (a) consumers legally resident in a Member State shall include:
 - (i) consumers with no fixed address;
 - (ii) asylum seekers; and
 - (iii) consumers who have not been granted a residence permit but whose expulsion is impossible for legal or factual reasons;
- (b) a consumer shall not be taken to hold a payment account where that consumer makes a declaration that the credit institution with which the payment account is held has given notice in writing that the payment account shall be closed.

(3) A credit institution may verify whether a consumer falls within sub-regulation (1)(a), or may choose to rely on and accept a declaration of honour signed by the consumer for that purpose.

(4) Notwithstanding the provisions of the Professional Secrecy Act (Cap. 377) and other provisions contained in any other Maltese law, credit institutions in Malta may, subject to written consent of the consumer, exchange information which is reasonably

required for the purpose of discharging their obligations to verify information provided by their prospective consumers in terms of sub-regulation (1)(a).

(5) Credit institutions shall not introduce or implement any procedures which may directly or indirectly impose any unnecessary, difficult, or burdensome restrictions or processes to dissuade the consumer from exercising such rights as they arise under this regulation.

Obligation to provide information about the application process

20. All credit institutions shall provide detailed information about the application process for the opening of a payment account with basic features. Such information shall include an application form, as well as a list of any documents required to be submitted with the application. Such information shall be made available online on the credit institution's website and, if so requested by the consumer, on a durable medium free of charge. It shall be the duty of the credit institution to keep such information updated at all times.

Timescale for opening a payment account with basic features

21. Where an application for a payment account with basic features is made by a consumer to a credit institution, the credit institution shall open or refuse to open the account without undue delay, and no later than 10 business days from recorded receipt of the completed application.

Refusal of application

22. A credit institution shall refuse to open a payment account with basic features for a consumer, where to do so would be contrary to:

- (1) the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01);
- (2) the Immigrations Act (Cap. 217);
- (3) the Civil Code (Cap. 16); or
- (4) be in breach of any other applicable and enforceable provisions as laid out in Maltese law.

23. (1) Where an application for a payment account with basic features is refused, the credit institution shall immediately inform the consumer in writing and free of charge of the refusal and of the specific reason for that refusal, unless such disclosure would be contrary to objectives of national security, public policy or Directive 2005/60/EC.

(2) Where notification of the reason for refusal is given in accordance with sub-regulation (1), the credit institution shall advise the consumer of the procedure for

submitting a complaint to it and provide details about the consumer's rights to lodge a complaint with the Consumer Complaints Manager.

24. A credit institution shall ensure that access to and operation of a payment account with basic features is not made conditional on the purchase of any additional services.

Payment account with basic features

25. (1) A payment account with basic features shall be a payment account, denominated in euro, which allows consumers to:

- (a) open, operate, and close the account;
- (b) place funds in the account which may include cash and incoming credit transfers;
- (c) withdraw cash from the account within Member States:
 - (i) at the counter of the publicly accessible premises of:
 - (i.i) the credit institution, whether located in Malta or in any other branch located within Member States; and
 - (i.ii) any relevant third party; and
 - (ii) at automated teller machines through a debit card;
- (d) execute the following payment transactions within Member States:
 - (i) direct debits;
 - (ii) payment transactions through:
 - (i.i) a debit card and
 - (i.ii) a credit card, if additionally offered by the credit institution;
 - (iii) credit transfers, including standing orders, at, where available, terminals and counters and via the online facilities of the credit institution.

(2) For the purposes of sub-regulation (1), “relevant third party” means any other credit institution or financial institution – with which the credit institution offering the payment account with basic features – has agreed arrangements that permit any consumer who holds a payment account with the credit institution to withdraw cash from the publicly accessible premises of that other credit institution or financial institution.

26. Payment accounts with basic features may also be offered in the currency of any other Member State at the sole discretion of the credit institution.

27. A payment account with basic features shall allow consumers to execute an unlimited number of operations in relation to the services set out in regulation 25(1).

28. A credit institution shall allow consumers to manage and initiate payment transactions from the consumer's payment account with basic features:

- (1) at its publicly accessible premises; and
- (2) via online facilities, where available.

29. A credit institution shall take all reasonable steps to prevent consumers from carrying out any payment transaction using a payment account with basic features where executing the transaction would result in overrunning.

Associated Fees

30. (1) With the exception of services offered in regulation 25(1)(a), regulation 25(1)(d)(iii) and for any services which may be executed by a credit card, a credit institution shall not charge any fee for the services set out in regulation 25 when those services are provided as part of a payment account with basic features.

Provided further that in respect of services falling under regulation 25(1)(d)(iii), a credit institution may determine a minimum number of operations, which shall in any case be not less than ten unique operations per calendar month, for which it shall not charge a fee. The fees charged for operations above the credit institution's minimum number of operations shall never exceed the fees charged by the credit institution under its standard pricing policy.

(2) A credit institution, which applies a charge for services offered in regulation 25(1)(a) and for any services which may be executed by a credit card, shall ensure that its fees for such services are reasonable and in any case not higher than those charged under its standard pricing policy.

(3) A credit institution may impose on the consumer a reasonable penalty for any error or omission in regard to the use and operation of a payment account with basic features. Such penalty shall not exceed the average penalty charged by that credit institution for similar errors and omissions in regard to other payment accounts it provides.

(4) A credit institution may apply a reasonable fee for any service set out in regulation 25(1) to a consumer where the payment account with basic features is not denominated in euro. Such reasonable fees shall not exceed the average fees charged by that credit institution for similar services in regard to other similar payment accounts it provides.

(5) When assessing whether charges and penalties levied by a credit institution under this regulation are reasonable, the Authority shall, without prejudice to such other criteria it deems appropriate, take into account national income levels and average fees charged by other credit institutions for similar services.

Framework contracts and termination

31. (1) Without prejudice to sub-regulations (2) and (3), framework contracts for the provision of a payment account with basic features shall comply with the requirements of Directive 2007/64/EC.

(2) A credit institution may only unilaterally terminate a framework contract for the provision of a payment account with basic features where at least one of the following conditions is met:

- (a) the consumer has deliberately used the payment account for illegal purposes;
- (b) there has been no transaction on the account, save for any interest debited or credited from the account, for more than 24 consecutive months;
- (c) the consumer provided incorrect information when applying for the payment account with basic features, and had the correct information been provided, the application would have been refused;
- (d) the consumer is no longer legally resident in a Member State;
- (e) the consumer has subsequently opened a second payment account in Malta which allows for the use of the services listed in regulation 25 (1); and
- (f) the credit institution considers that the consumer's conduct is tantamount to an offence under any applicable and enforceable provisions as laid out in Maltese law. The Authority may, for this purpose, issue guidelines aimed at identifying additional limited and specific cases where a framework contract for a payment account with basic features may be unilaterally terminated by credit institutions.

(3) (a) Where a credit institution terminates a framework contract for a payment account with basic features on one or more of the grounds mentioned in sub-regulation (2)(b), (d) or (e), the credit institution shall inform the consumer of the grounds and the justification for termination:

- (i) at least two months before the termination enters into force;
- (ii) in writing via registered and recorded delivery mail to the last known address; and
- (iii) free of charge.

(b) If attempts by the credit institution to inform the consumer of such termination prove futile or rejected by the consumer, or if the consumer fails to act in terms

of the said notice, the payment service provider has the right to terminate the framework contract within 90 days from the date of the first notice.

(c) The credit institution may withhold notification to a consumer of the termination of a framework contract under this regulation if it determines that in doing so would be contrary to the objectives of national security or public policy and any applicable and enforceable provisions as laid out in Maltese law.

(d) The credit institution shall keep proper records of its decision for termination and any notifications thereto.

(4) Any termination in accordance with sub-regulation (2)(a), (c) or (f) shall have immediate effect.

(5) Any notification given by the credit institution under sub-regulation (3) shall advise the consumer of:

- (a) the procedure for submitting a complaint to it against the termination;
- (b) the consumer's right to contact the Consumer Complaints Manager;
and
- (c) the relevant contact details.

General information on payment accounts with basic features

32. (1) The Authority shall raise awareness among the public about:

- (a) the availability of payment accounts with basic features and their general pricing conditions;
- (b) the procedures to be followed in order to exercise the right to access a payment account with basic features; and
- (c) the consumer's right to complain to the Consumer Complaints Manager where the consumer considers that a credit institution has not complied with the requirements of these regulations.

(2) The Authority shall employ sufficient and well-targeted communication media for the purposes of its obligations arising from sub-regulation (1), particularly reaching out to the unbanked, vulnerable and mobile consumers.

(3) Credit institutions shall make available to consumers, free of charge, accessible information and assistance about:

- (a) the specific features of the payment account with basic features on offer; and

(b) the associated fees and conditions of use.

(4) Credit institutions shall ensure that information and assistance provided in accordance with sub-regulation (2) make it clear that the purchase of additional services is not compulsory in order to access a payment account with basic features.

PART 5

The Authority

Competent Authority

33. The Authority shall be fully responsible for the application and enforcement of these regulations. It shall also be the contact point for the purpose of these regulations.

Monitoring and Enforcement

34. (1) The Authority shall maintain arrangements for the purpose of enabling it to determine whether payment service providers upon which requirements are imposed by or under:

- (a) Part 2, 3, and 4; or
- (b) Regulation 38

are complying with those requirements.

(2) The arrangements referred to in sub-regulation (1) may provide for functions to be performed on behalf of the Authority by any person who is, in its opinion, competent to perform them.

(3) The Authority shall also maintain arrangements for enforcing requirements imposed on and taking action against persons other than the Authority by or under these regulations.

Obligation to cooperate

35. (1) Without prejudice to the provisions laid down in Articles 4, 13B, 25 and 25A of the Banking Act and Article 20 of the Financial Institutions Act, the Authority shall:

- (a) cooperate closely with authorities in other Member States for the purpose of carrying out duties under these regulations;

- (b) render assistance to other authorities in other Member States and in particular, it shall exchange information and cooperate in any investigation or supervisory activities; and
- (c) without undue delay supply other authorities in other Member States with the information required for the purpose of carrying out their duties as set out in the measures adopted pursuant to Directive 2014/92/EU, provided that:
 - (i) the Authority indicates that the information being exchanged must not be disclosed without its express agreement; and
 - (ii) in which case, information shall be exchanged solely for the purpose for which the authority gave its agreement;
- (d) transmit the information received to other authorities, which information shall not however be transmitted to other bodies or natural or legal persons without the express agreement of the Authority which has disclosed it, except in duly justified circumstances in which case it shall immediately inform the contact point that supplied the information.

(2) The Authority may refuse to act on a request for cooperation in carrying out an investigation or supervisory activity or to exchange information as provided for in sub-regulation 1 (c) and (d), only where:

- (a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy;
- (b) judicial proceedings have already been initiated in respect of the same actions and the same persons;
- (c) final judgement in respect of the same persons and the same actions has already been delivered.

(3) In the event of refusal in terms of sub-regulation (2), the Authority must notify the requesting authority accordingly whilst providing detailed information as possible.

Settlement of disagreement between authorities

36. The Authority may refer the situation to the EBA where a request for cooperation, in particular, the exchange of information, has been rejected or has not been acted upon within a reasonable time, and may request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

Reporting requirements

37. (1) A payment service provider shall give the Authority such information in respect of its compliance with the requirements imposed on it by these regulations as the Authority may direct.

(2) Information required under this regulation shall be given at such times and in such form, and verified in such manner, as the Authority may direct.

Power to issue directives

38. (1) The Authority may issue a directive to a payment service provider to take such steps as are necessary for the purposes of securing compliance with the requirements as set out in these regulations.

(2) A directive under sub-regulation (1) may, in particular, require the payment service provider to:

- (a) take specified action;
- (b) refrain from taking specified action;
- (c) review or take remedial action in respect of past conduct.

(3) A payment service provider to which a directive under sub-regulation (1) is given shall comply with the directive.

Power to issue directive: procedure

39. (1) A directive given under regulation 39(1) takes effect

- (a) immediately, if the notice given under sub-regulation (2) states that this is the case; or
- (b) on such date as may be specified in the notice.

(2) If the Authority proposes to issue a directive to a payment service provider under regulation 38, or issues a directive with immediate effect, it shall give the payment service provider written notice.

- (3) The notice shall:
- (a) give details of the directive;
 - (b) state the Authority's reasons for giving the directive;

- (c) without prejudice to regulation 38, inform the payment service provider that it may make representations to the Authority within such period as may be specified in the notice;
- (d) inform the payment service provider by when to implement and/or be compliant with the direction;
- (e) inform the payment service provider of the right to refer a matter to the Tribunal in accordance to regulation 40.

(4) The Authority shall give the payment service provider written notice if, having considered any representations made by the same provider, the Authority decides:

- (a) to issue a directive on the way proposed;
- (b) to rescind a directive that has been given and which had immediate effect;
- (c) not to rescind a directive that has been given and which took immediate effect;
- (d) not to give a directive that it had proposed to give; or
- (e) to give a different directive to the one that it had proposed to give.

(5) A notice under sub-regulation (4)(a) or (c) shall inform the payment service provider of its right to refer the matter to the Tribunal in accordance with regulation 40.

(6) A notice given under sub-regulation (4)(e) shall comply with sub-regulation (3).

Right to refer matter to the Tribunal

40. A payment service provider who is aggrieved by the exercise of the Authority's power to issue a directive under regulation 38(1) or any decision taken by the Authority falling within regulation 39(4)(a), (c) or (e) may refer the matter to the Tribunal.

Public notice

41. If the Authority considers that a payment service provider has contravened a requirement imposed upon it by or under these regulations, the Authority may publish a statement to that effect in accordance with Article 4(1)(c) and Article 16(8) of the Malta Financial Services Authority Act (Cap. 330).

Administrative penalties

42. (1) Without prejudice to any other provision of these regulations, the Authority may impose an administrative penalty not exceeding one hundred and fifty thousand euro (€150,000) on a payment service provider that has contravened a requirement imposed upon it by or under these regulations.

(2) A penalty imposed on payment service providers in accordance with sub-regulation (1) shall be a debt due to the Authority and is recoverable accordingly.

(3) Where an administrative penalty has been imposed by the Authority in terms of this regulation, an appeal shall lie to the Tribunal in accordance with the articles 10 and 35A of the Banking Act and article 21 of the Financial Institutions Act.

Complaints

43. (1) The Authority shall maintain arrangements designed to enable consumers and other interested parties to submit complaints to it that a requirement imposed by or under these regulations has been breached by a payment service provider.

(2) Further to any rules which the Authority may issue from time to time, payment service providers shall have their own internal complaints-handling procedures-which should be made available to their consumers.

(3) Following the investigation of the complaint by the payment service provider, the final response should be provided to the consumer within two months after receipt of the complaint.

(4) In the event that the consumer does not accept the redress proposed by the payment service provider or where a complaint has not been upheld, the payment service provider is required to notify the consumer of the right to lodge a complaint in writing with the Authority's Consumer Complaints Manager.

(5) Where it considers it appropriate, the Consumer Complaints Manager is required to advise the consumer of the right to seek independent professional advice especially if the consumer is not satisfied with the outcome of the complaint.

Evaluation

44. The Authority shall provide the European Commission with information on the following for the first time by 18th September 2018 and thereafter at intervals not exceeding two years:

(1) compliance by payment service providers with regulations 4, 7 to 10, and 12;

- (2) compliance by the same Authority with the requirements of regulation 13;
- (3) the number of payment accounts that have been switched;
- (4) the proportion of applications for switching that have been refused;
- (5) the number of credit institutions offering payment accounts with basic features;
- (6) the number of payment accounts with basic features that have been opened and closed; and
- (7) the proportion of applications for payment accounts with basic features that have been refused.

Power to issue rules

45. (1) The Authority may issue rules to payment service providers for the purpose of these regulations.

(2) Such rules may contain such incidental, supplementary and consequential provisions as appear to the Authority to be expedient for the purpose of these regulations.

SCHEDULE 1

Regulation 8(2)

Content and presentational format of the fee information document

Compliance with implementing technical standards

1. The fee information document shall comply with the requirements of any implementing technical standards adopted by the European Commission in accordance with Article 4(6) of Directive 2014/92/EU regarding a standardised presentational format of the fee information document and its common symbol, as amended from time to time in accordance with Article 4(7) of the same Directive.

Content

2. (1) The fee information document shall use the terms contained in the list of services linked to payment accounts;

(2) Where the payment service provider offers any service featured in the list of services linked to payment accounts, quote the corresponding fee for that service.

(3) The fee information document may also include a list of penalties which may be incurred by the consumer for the use of a payment account.

Packages of services

3. Where one or more services featured in the list of services linked to payment accounts are offered as part of a package of services, the fee information document shall disclose:

(a) the fee for the entire package;

(b) the services included in the package and their quantity; and

(c) the additional fee for any service that exceeds the quantity covered by the package fee.

Presentational format

4. The fee information document shall:

(a) be provided on paper or another durable medium;

(b) be a short and stand-alone document;

(c) be presented and laid out in a way that is clear and easy to read using characters of a reasonable size;

- (d) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- (e) be written in Maltese and English or, if agreed by the consumer and payment service provider, in another language;
- (f) be accurate, not misleading, and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency of the European Union;
- (g) contain the title “Fee Information Document” at the top of the first page next to the common symbol referred to in sub-regulation 1 to distinguish the fee information document from other documentation; and
- (h) include a statement that it contains fees for the most representative services related to the payment account, any penalties which may be incurred for the use of the payment account, and that complete pre-contractual and contractual information on all the services is provided in other documents.

5. The fee information document shall be provided separately from information required to be provided pursuant to other European Union or national legislative acts on payment accounts and related services on the condition that the requirements in paragraph 4(b) are met.

Content and presentational format of the statement of fees**Compliance with implementing technical standards**

1. The statement of fees shall comply with the requirements of any implementing technical standards regarding a standardised presentational format of the statement of fees and its common symbol adopted by the European Commission under Article 5(4) of the Directive 2014/92/EU).

Content

2. (a) The statement of fees shall:

- (i) state all fees incurred during the relevant period for services linked to a payment account;
- (ii) where applicable, use the terms set out in the list of services linked to payment accounts; and
- (iii) be accurate, not misleading, and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency.

(b) The statement of fees shall also include all penalties incurred related to the use of a payment account.

Mandatory information

3. The statement of fees shall specify at least the following information:

- (a) the unit fee charged for each service and the number of times the service was used during the relevant period;
- (b) where the services are combined in a package:
 - (i) the fee charged for the package as a whole;
 - (ii) the number of times the package fee was charged during the relevant period; and
 - (iii) the additional fee charged for any service exceeding the quantity covered by the package fee;
- (c) the total amount of fees incurred during the relevant period for:

- (i) each service;
 - (ii) each package of service provided;
 - (iii) services exceeding the quantity covered by the package fee;
- (d) the overdraft facility interest rate or rates applied to the payment account during the relevant period, where applicable;
- (e) the total amount of interest charged relating to the overdraft facility during the relevant period, where applicable;
- (f) the credit interest rate or rates applied to the payment account during the relevant period;
- (g) the total amount of interest earned during the relevant period; and
- (h) the total amount of fees charged for all services provided during the relevant period.

Presentational format

- 4.** (a) The statement of fees shall:
- (i) be presented and laid out in a way that is clear and easy to read, using characters of a reasonable size;
 - (ii) contain the title “statement of fees” at the top of the first page of the statement next to the common symbol referred to in sub-regulation 1 to distinguish the document from other documentation; and
 - (iii) be written in Maltese and English, or if agreed by the consumer and the payment service provider, in another language.
- (b) The statement of fees shall be provided separately from information required pursuant to other European Union or national legislative acts on payment accounts and related services on the condition that the requirements in paragraph 4(a)(i) are met.

Switching service**Authorisation**

1. (a) The receiving payment service provider shall perform the switching service upon receipt of the authorisation from the consumer, which shall be in such form as may be suggested by the receiving payment service provider.

(b) In the case of two or more holders of the account, authorisation shall be obtained from each of them.

(c) The authorisation shall be drawn up in Maltese or in any other language agreed between the parties.

(d) The authorisation shall allow the consumer to:

(i) provide specific consent to the performance by the transferring payment service provider of each of the tasks set out in paragraph 2 (a) to (f);

(ii) provide specific consent to the performance by the receiving payment service provider of each of the tasks referred to in paragraph 4(a)(i) to (vii);

(iii) specifically identify incoming credit transfers, standing orders for credit transfers and direct debit mandates that are to be switched; and

(iv) specify the date from which standing orders for credit transfers and direct debits are to be executed from the payment account opened or held with the receiving payment service provider.

(e) The date specified in accordance with sub-paragraph (d)(iv) shall be at least six business days after the date on which the receiving payment service provider receives the documents transferred from the transferring payment service provider in accordance with paragraph 3(a)(i).

(f) The receiving payment service provider shall require the authorisation from the consumer to be in writing and that a copy of the authorisation be provided to the consumer.

Request from the receiving payment service provider

2. Within two business days from receipt of the authorisation referred to in paragraph 1, the receiving payment service provider shall request that the transferring payment service provider carry out each of the following tasks, if provided for in the consumer's authorisation:

(a) transmission to the receiving payment service provider and, if specifically requested by the consumer, to the consumer, of a list of the existing standing

orders for credit transfers and available information on direct debit mandates that are being switched;

- (b) transmission to the receiving payment service provider and, if specifically requested by the consumer, to the consumer, of the available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account during the previous 13 months;
- (c) where the transferring payment service provider does not provide a system for automated redirection of the incoming credit transfers and direct debits to the payment account held by the consumer with the receiving payment service provider, stop accepting direct debits and incoming credit transfers with effect from the date specified in the authorisation;
- (d) cancellation of standing orders with effect from the date specified in the authorisation;
- (e) transfer of any remaining positive balance to the payment account opened or held with the receiving payment service provider on the date specified by the consumer; and
- (f) closure of the account held by the consumer with the transferring payment service provider on the date specified by the consumer.

Tasks for the transferring payment service provider

3. (a) Upon receipt of a request from the receiving service provider, the transferring payment service provider shall carry out the following tasks, if provided for in the consumer's authorisation:

- (i) send the receiving payment service provider the information described in paragraphs (2)(a) and (b) within five business days;
- (ii) where the transferring payment service provider does not provide a system for automated redirection of incoming credit transfers and direct debits to the payment account held or opened by the consumer with the receiving payment service provider, stop accepting incoming credit transfers and direct debits on the payment account with effect from the date specified in the authorisation;
- (iii) cancel standing orders from the date specified in the authorisation;
- (iv) transfer any remaining positive balance from the payment account to the payment account opened or held with the receiving payment service provider on the date specified in the authorisation;
- (v) without prejudice to Article 45(1) and (6) of Directive 2007/64/EC, close the payment account on the date specified in the authorisation if the

consumer has no outstanding obligations on that payment account and the actions described in sub-paragraphs (i), (ii), and (iv) have been completed.

(b) Where any outstanding obligations on the payment account prevent closure of the account in accordance with sub-paragraph (a)(v), the transferring payment service provider shall immediately inform the consumer that this is the case.

(c) Where the transferring payment service provider stops accepting incoming credit transfers and direct debits in accordance with sub-paragraph (a)(ii), it shall inform the payer and the payee within five business days of the reason for not completing the payment transaction in writing.

Tasks for the receiving payment service provider

4. (a) Within five business days of receipt of the information requested from the transferring payment service provider as referred to in paragraph 2, the receiving payment service provider shall, if provided for in the authorisation and to the extent that the information provided by the transferring payment service provider or the consumer enables the receiving payment service provider to do so, carry out the following tasks:

- (i) set up the standing orders for credit transfers requested by the consumer and execute them with effect from the date specified in the authorisation;
- (ii) make any necessary preparations to accept direct debits and accept them with effect from the date specified in the authorisation;
- (iii) where relevant, inform consumers of their rights in accordance with Article 5(3)(d) of Regulation (EU) 260/2012 which establishes technical and business requirements for credit transfers and direct debits in euro;
- (iv) inform payers specified in the authorisation and making recurrent incoming credit transfers into a consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and transmit to the payers a copy of the consumer's authorisation;
- (v) where the receiving payment service provider does not have all the information it needs to complete the task referred to in sub-paragraph (iv), ask the consumer or the transferring payment service provider to provide the missing information;
- (vi) inform payees specified in the authorisation and using a direct debit to collect funds from the consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and the date from which direct debits are to be collected from that payment account and transmit to the payees a copy of the consumer's authorisation;
- (vii) where the receiving payment service provider does not have all the information that it needs to inform the payees, it shall ask the consumer or

the transferring payment service provider to provide the missing information.

(b) Where the consumer chooses to personally provide the information referred to in sub-paragraph (a)(iv) or (vi) to the payers or payees rather than provide specific consent in accordance with paragraph 2 allowing the receiving payment service provider to do so, the receiving payment service provider shall provide the consumer with standard letters providing details of:

- (i) the payment account; and
- (ii) the starting date specified in the authorisation within the deadline referred to in paragraph (1)(d)(iv).

(c) Any requirements imposed on the receiving payment service provider shall start to apply when such payment service provider has all information and documentation necessary to discharge its duties under this section.

(d) Without prejudice to Article 55(2) of Directive 2007/64/EC, the transferring payment service provider shall not block any payment instrument before the date specified in the consumer's authorisation.

Fees connected with the switching service

5. (a) At the request of a consumer, transferring and receiving payment service providers shall provide the consumer with access free of charge to details of any standing orders and direct debits applicable to the accounts the consumer holds with them.

(b) The transferring payment service provider shall not charge the consumer or the receiving payment service provider for the provision of information requested from it by the receiving payment service provider in accordance with paragraphs 2(a) and (b).

(c) Any fee payable by the consumer applied by the transferring payment service provider in respect of the termination of the framework contract for the payment account held with the transferring payment service provider shall be determined in accordance with Article 45(2), (4) and (6) of Directive 2007/64/EC.

(d) Transferring or receiving payment service providers may charge the consumer a fee for any service referred to in paragraphs 2 to 4 – other than those referred to in sub-paragraphs (a) to (c) – provided that any such fee is:

- (i) reasonable; and
- (ii) in line with the actual costs to the payment service provider of providing the relevant service.

Financial loss for consumers

6. (a) Subject to sub-paragraph (b), where a consumer suffers any financial loss as a direct result of the non-compliance of a payment service provider with any requirement

provided for in paragraphs 2 to 4, the payment service provider shall reimburse the full extent of the loss without delay.

(b) The duty to reimburse provided for in sub-paragraph (a) shall not apply in the case of unavoidable losses arising as a result of:

- (i) abnormal and unforeseeable circumstances beyond the control of the payment service provider; or
- (ii) the payment service provider's compliance with any statutory obligation.

Information about the switching service

7. (a) Payment service providers shall make available to consumers the following information about the switching service:

- (i) the roles of the transferring and receiving payment service provider as provided for in this Schedule;
- (ii) the time limits that apply to the completion of the tasks provided for in this Schedule;
- (iii) any fees that shall be charged for the switching process;
- (iv) details of any information that the consumer is required to provide;
- (v) details of the complaints arrangements maintained under regulation 44.

(b) The information referred to in sub-paragraph (a) shall be made available:

- (i) free of charge on paper or another durable medium at all premises of the payment service provider accessible to consumers; and
- (ii) in electronic form on the payment service provider's website at all times.

(c) Payment service providers shall also make available such information required pursuant to other European Union or national legislative acts on payment accounts and related services.