

# **A summary of responses to the consultation on the Payment Services Directive**

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December 2006



HM TREASURY





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the consultation on the  
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# INTRODUCTION

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**1.1** HM Treasury published a consultation document, “Payment Services Directive”, on 3 July. The consultation period concluded on 25 September 2006.

**1.2** The purpose of the consultation was to seek views on the European Commission’s proposal for a Directive on payment services in the internal market, which was published on 1 December 2005.

**1.3** The Commission’s proposal aims to harmonise the regulatory regime for payment services across Member States in the European Union (EU). It introduces a new EU-wide licensing regime for “Payment Institutions”, allowing non-bank payment service providers to offer their services across the EU on the basis of a licence obtained in any one EU Member State.

**1.4** HM Treasury is participating in the negotiations on the Directive, work on which is currently underway both within the Council of Ministers and the European Parliament.

**1.5** Before publishing its proposal for a Directive on 1 December 2005, the European Commission had consulted on five previous drafts of their proposed Directive. Over a two year period, HM Treasury has sought the views of UK stakeholders at each stage in this process, holding meetings, discussing with different sectors and reviewing written submissions.

**1.6** This document summarises the responses we received, some of which reflect comments and submissions we have already gathered and reviewed over the past two years. These responses will collectively inform the UK’s approach to negotiating the Directive.

- In Chapter 2 we summarise the responses.
- In Chapter 3 we analyse the responses.
- In Chapter 4, we set out the next steps, subject to Parliamentary approval.
- In Annex I we list the consultation respondents.

**1.7** We are grateful to everyone who responded to the consultation document in writing and/or who participated in any of the meetings we held or attended as part of the consultation process.





# 2

## SUMMARY OF RESPONSES

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**2.1** The consultation document welcomed responses related to the European Commission's proposal, the UK's proposed negotiating approach and the partial Regulatory Impact Assessment (RIA).

**2.2** HM Treasury held over 25 stakeholder meetings and received 27 written responses during the consultation period. Respondents represented a broad range of payment service providers, users and payment system proprietors, ranging from credit institutions, E-money issuers, money transfer companies, ATM operators, bill payment service providers, mobile phone operators, credit unions, card issuers and trade associations.

**2.3** We also met with and received submissions from organisations developing new products for the payments market. These stakeholders have helped to provide a view of the proposed Directive from a market entry and future-proofing perspective.

**2.4** Respondents were broadly supportive of the overall purpose of the Directive to open up competition in the EU payments market, increase market transparency, and harmonise the rights and obligations of payment service providers and users with a strong emphasis on customer protection. There was general recognition that the Directive could help to create a dynamic internal market in payments, provided that its provisions are proportionate, workable and do not result unintended consequences.

**2.5** Of the negotiating approaches presented in the partial RIA, the vast majority of respondents were in favour of HM Treasury pursuing Option 3, namely to support the general thrust of the European Commission's proposal but push for changes in some areas. A number of respondents provided detailed comments and drafting suggestions on possible changes, which we analyse in section 3 of this document.

**2.6** The comments we received mainly addressed:

- The proportionality and practicality of the proposed licensing regime for Payment Institutions;
- The workability of the proposed information requirements;
- The applicability of the Directive to different models of payment businesses; and
- The estimated cost and benefits in the partial Regulatory Impact Assessment.

## GOVERNMENT CONCLUSIONS

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**In light of responses to the consultation, we will continue to support the general thrust of the European Commission's proposal for a Directive in payment services, but push for changes where they are justified and appropriate.**



# 3

## ANALYSIS OF RESPONSES

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**3.1** The consultation document set out 13 questions related to key policy issues within the proposed Directive. We asked respondents to substantiate their input with evidence and justification, and where possible, to estimate the costs and/or benefits introduced by the Directive that could affect them.

### QUESTION 1

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**Do companies that would have to become licensed as Payment Institutions believe the licensing regime is appropriate, and do they already have the relevant systems and controls in place to comply with it?**

**3.2** Most respondents that would have to be licensed as Payment Institutions under the new regulatory regime were generally in favour of the UK pushing for a light-touch authorisation regime. The UK's approach has been to ensure that the licensing regime for Payment Institutions matches the level of risks involved in providing payment services, which we believe are different from and much less systemic than those posed by deposit-taking institutions.

**3.3** Many respondents felt that a provision to waive smaller players from the Directive's proposed authorisation regime would be sensible, and support the UK's efforts to safeguard the provision. The waiver (see Question 10) would ensure that smaller providers operating in their own Member State were not subject to regulatory requirements that force them underground and/or out of the market. A few respondents provided data to inform our discussions on the quantitative threshold for the waiver.

**3.4** There was strong consensus among those who would have to be licensed as Payment Institutions that any increase in the regulatory requirements of the authorisation regime would not be justified. Many firms already have systems and controls in place to comply with much of the proposed authorisation regime. Whilst some larger institutions may, if required to, be able to comply with initial capital requirements, small- and medium-sized firms such as money transfer companies and ATM operators believe that capital requirements would pose a financial burden on their businesses. New businesses felt that a relatively robust regulatory regime based on qualitative criteria could allow them to demonstrate compliance to customers, but that the introduction of capital requirements could form a barrier to entry.

**3.5** Existing payment service providers have well-functioning systems in place to separate customers' funds from other types of funds, such as trust accounts. Many firms indicated that any requirements for initial capital would only add to compliance costs and not provide customers with any additional protection for their funds. Moreover, the actual burden of any initial capital would depend on what constitutes capital and whether the funds remain or have to be left off firms' balance sheets.

**3.6** Respondents emphasised the need for any requirements to be flexible towards different business models and not become cumulative in burden in an attempt to capture all regulatory possibilities that apply to Payment Institutions. Whereas initial capital might be workable for certain firms, separation of funds and/other risk management mechanisms would be less burdensome for others.

**3.7** Businesses not requiring a Payment Institution licence also commented on the authorisation regime. They support the Directive’s intention of opening up the payments market to non-banks, but want a level playing field between Payment Institutions and other payment service providers to be maintained.

## Summary

We will continue to oppose any strengthening of the authorisation regime.

## QUESTION 2

**Do the information requirements for the Directive pose any particular problems to specific types of firm, and if so, why?**

**3.8** A few respondents noted that customers should certainly receive relevant and sufficient information before and after a payment transaction. Small business users with suppliers based in other EU Member States saw clear benefits in having transparent information about charges levied for cross-border payments. Some users believed that payment service providers would not need to significantly alter their terms and conditions, as there might be similarities between the information and accountability requirements in the proposed Directive and relevant provisions in the UK credit market.

**3.9** An overwhelming number of respondents felt that mandating payment service providers to provide or make available a large quantity of information could lead to “information overload” and/or more customer confusion. In particular, merchant users of payment services may not wish to receive detailed information on every payment they receive, in the interest of reducing administration and transaction costs.

**3.10** Payment service providers expressed strong concern that the information requirements proposed by the Directive could result in high compliance costs. They questioned whether the requirements, which are more applicable to payments made within a banking context, were as relevant to other payment models, particularly if no gaps in information provision had been identified by consumers or service providers. For example, money remittance services relying on distance communication could face significant administrative costs, particularly if information was to be physically provided to customers after each telephone- or text message-initiated transaction.

**3.11** Some respondents pointed out that any obligation on payment service providers to provide information to customers prior to and after every act of payment could slow down transaction times, reversing any benefits gained by using near-instant technologies such as contact-less cards. This effect is judged to be particularly significant with respect to payments made in a crowded urban environment. In such contexts, it would be preferable to “make available” the information to customers – for example on the Internet – rather than actively “provide” it to the customer.

**3.12** A number of respondents strongly believed that the information requirements proposed by the Directive could form a market entry barrier to developers of more innovative payment instruments designed for low-value transactions. Such instruments typically offer customers the equivalent of cash stored on an electronic medium. Consequently, such products do not typically charge customers for what is essentially

an undifferentiated product. However, developers of such products depend on fees paid by merchants who sign on to accept payment using the instrument. To compete with other card schemes, this new Payment Institution would need to set low operating margins. Any provisions requiring the firm to communicate with customers in a manner other than via Internet or text messaging would radically increase the cost per transaction, potentially pricing their new payment product out of the market.

**3.13** There was concern that the Directive could have unintended consequences for contractual freedom between payment service providers and their corporate clients if it prescribes limits to notice periods for contract terminations. Bill payment services rely on long-term contracts with clients such as utility companies, in exchange for which their clients typically receive favourable service rates. If the Directive fixes contract periods, these services might be forced to charge higher transaction fees to their clients, or swallow costs by accepting reduced revenue.

## SUMMARY

**We will work to prevent information overload, in favour of a balanced approach to ensuring users are sufficiently well-informed to exercise choice in the payments market.**

## QUESTION 3

**Do the rights and obligations under Title IV of the Directive pose any particular problems for the smooth execution of payments or create any unintended consequences?**

**3.14** There was broad support for the UK's work to ensure Title IV is workable by securing certain changes. However, many respondents believed that the Directive's apparent "one size fits all" approach needs to be re-examined if the drafting continues to proceed along a more prescriptive path. For example, the concept of a user giving "explicit consent" to a payment order works in a banking context, but may require firms to record and store oral conversations in a telephone-initiated payment to demonstrate that they received an equivalent level of consent. Where payment service providers receive cash from customers, the nature of "explicit consent" becomes even more difficult to define.

**3.15** Most payment service providers saw no practical problems with the proposed D+1 maximum execution time for payment transactions. Both providers and users were keen to obtain absolute clarity on when the "D" in D+1 should be deemed to have commenced. Credit institutions were content with the provision but cautioned that it should only apply to payments in Euro across the EU and to domestic payments in the Member States' currency, and not to payments denominated in other currencies. They noted that enforcing a next day execution time for currencies settled outside the EU could impose large systems development costs or result in banks refusing to provide such services, reducing service levels for consumers and business users.

**3.16** A few firms felt that whilst D+1 may be a laudable objective for the payments industry, they have limited control over whether the objective is delivered in practice as they rely on banks to execute and clear payments. Specifically, the "one size fits all" concern was re-iterated in relation to the applicability of D+1 to card transactions. Next

day execution could prove difficult if several different providers are involved along the payment chain underlying a single transaction. If D+1 is a customer-oriented provision to ensure payments are made and received more quickly, it was not clear why a cardholder using a credit or debit card would have an immediate interest in this. In addition, merchants that choose to receive card payments might prefer to prioritise factors other than execution time when aiming to negotiate more favourable payment processing terms with their service provider.

**3.17** Several respondents wanted an assurance that businesses would not be penalised for failing to deliver D+1 if they come under a legal obligation to report a suspicious transaction to domestic law enforcement agencies. The UK has sought to maintain a workable “force majeure” clause under Title IV to cover this and similar scenarios, in line with other Community legislation.

**3.18** The proposed Directive sets minimum liability requirements for consumers in the event their payment instrument, such as a payment card, is lost or stolen. Consumer groups were keen to have an assurance that these provisions would not compromise the UK’s current level of consumer protection, while it was recognised that “over-protection” might encourage carelessness. A few businesses indicated that low liability thresholds might be a precursor to increased fraud, requiring them to take out extra insurance to cover potential losses.

**3.19** There was wide agreement that the rights and obligations contained in Title IV ought to apply to both micro-enterprises and customers, as both categories of users would tend to possess similar levels of information asymmetry vis-à-vis their payment service providers. However, payment service providers should be able to negotiate other terms bilaterally with large corporate users. This upholds contractual flexibility and commercial choice, whilst reducing the risk of moral hazard that could arise if the rights and obligations appropriate to micro-enterprises and customers were also to applied large corporates which are typically able to invest more in payments security. The Directive needs to reflect this point to ensure that electronic banking arrangements used by corporates across the EU are not undermined.

## Summary

**We will continue to test the workability of provisions under Title IV to ensure the text does not deliver any unintended consequences.**

## QUESTION 4

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**Do stakeholders believe the Directive maintains an appropriate balance between user protection and the proportionate regulation of providers?**

**3.20** Respondents mostly maintained that the Directive could strike a better balance between user protection and regulation. Payment service providers saw the information requirements in Title III as potentially too onerous, especially if customers currently do not demand or choose to avail themselves to such an exhaustive list of information when making everyday transactions.

**3.21** Consumer groups, on the other hand, viewed the proposed balance in the Directive as reasonable, but sought greater understanding on how the information requirements would apply to hybrid products such as mobile phone-enabled payments.

They believe that customers should be satisfied that their monies were being moved around within the internal market for payments, and that payment service providers should be willing to invest in ensuring a high level of safety, particularly to prevent payment fraud.

**3.22** More generally, the comments provided on Title III and IV suggest that the balance between protection and regulation is not static and requires differentiation between different types of payment service provider. A “one size fits all” approach drafted prescriptively could have ambiguous results for this balance, especially when applied to varying business models.

**3.23** Some respondents contend that customers using new payment technologies might forgo information and a lower user liability in the event of loss of a payment instrument for quicker transactions and greater convenience. To reflect this, the Directive could apply a lighter regime to companies rolling out nascent low-value/micro-payment technologies/instruments. These companies operate on thin margins, requiring a relatively high number of transactions to establish a sustainable revenue flow. If they are to provide – rather than make available – a large volume of information on every transaction, the margin per transaction could become negligible. This could lead to the retraction of such products from the market, slowing down payments innovation and reducing customer choice.

## Summary

**We will continue to push for regulatory requirements to remain proportionate to the risks involved in the activities of payment services. In light of consultation responses, we will support provisions that lighten the Directive’s regulatory burden on low value / micro payment instruments.**

## QUESTION 5

**Do stakeholders believe having a threshold of EUR 50,000 above which Titles III and IV of the Directive will no longer apply, is appropriate?**

**3.24** Respondents acknowledged the Directive’s intention of introducing contractual flexibility for certain types of payments, but overwhelmingly opposed the imposition of an arbitrary threshold. Many suggested that it was counter-intuitive to diminish customer protection on larger-sized transactions above a certain sum. Setting a quantitative threshold would also seem to work against the future-proofing intent of the proposed Directive, whilst payments denominated in non-Euro EU currencies would fall constantly in and out of the threshold given foreign exchange fluctuations.

**3.25** Such a threshold could also introduce legal uncertainty, as payment service providers and users would not know which conduct of business rules to consult if they process or make transactions larger than EUR 50,000. The market may also become distorted if payment service providers amended their business models to cater more for larger-sized transactions, to avoid the costs of complying with Titles III and IV. The threshold could also have the unintended consequence of increasing the cost of processing smaller payments, disproportionately affecting customers and small businesses that need to make such payments.

## Summary

We will continue to support deletion of the EUR 50,000 threshold.

### QUESTION 6

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**Do stakeholders agree that the Directive, as drafted, will not have a disproportionate impact on small firms?**

**3.26** Relevant stakeholders stressed the importance of the Directive containing an appropriate waiver provision for small Payment Institutions. The UK has been working to maintain this provision, without which we believe that Directive could have a disproportionate cost impact on smaller firms.

**3.27** Respondents also believed that small business users of payment services should be covered by the provisions of Title III and IV, to prevent larger payment service providers from coercing small-scale users into accepting certain exemptions from the Directive. Micro-enterprises should be treated in the same category of payment service user as individual consumers.

**3.28** The consultation document surmised that the Directive's licensing regime would be acceptable to independent cash machine operators as they "tend to be larger than small money transfer companies and generally have more established operating procedures and business plans". One respondent noted that even if this were the case, a licensing regime which included initial capital requirements would greatly increase compliance costs and create a barrier to entry for aspiring market participants. Another stakeholder proposed that small Payment Institutions operating solely in the UK should have the benefit of the waiver as a default position, whilst having the option of a licence should it desire to expand its operations to other EU Member States.

## Summary

We will continue to support an appropriate waiver provision for smaller players. In light of consultation responses, we will favour the application of the Directive's rights and obligations to micro-enterprises as well as consumers.

### QUESTION 7

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**Do respondents agree with our partial assessment of the benefits of the Directive? Are there any other significant benefits that we need to consider? Also, why and to what extent do you think the Directive will achieve its aims of creating an EU internal market in payments and removing legal and technical barriers to SEPA?**

**3.29** Respondents representing payment service providers and users generally agreed with our partial assessment of the benefits of the Directive. They considered the Directive to be an important element in helping achieve a single market for payments across the EU, and in supporting the European payment industry's efforts to deliver a



Single Euro Payments Area (SEPA). The right of firms to offer EU-wide payment services on the basis of a single licence obtained in one Member States – “passporting” – was particularly welcomed, as this could increase overall competition and incentivise innovation. A harmonised regulatory regime for payment services across EU Member States would add operational certainty, resulting in efficiency gains for payment service providers.

**3.30** A few stakeholders felt it would be helpful to analyse user benefits in more depth. They were encouraged by the guaranteed minimum level of service for payment service users which the Directive aimed to provide, and believed that increased competition could lead to lower prices for consumers. Small businesses were thought to benefit best from a simple transparency regime that could enable them to easily keep track of their payment costs. However, when firms invest in compliance and security to increase customer protection, it would be equally important to educate consumers on these measures to ensure that firms do not see this investment as just a “sunk cost”, and that consumers are aware of the new benefits offered.

**3.31** Consumer groups wanted to extend the scope of the Directive to cover remittance payments destined for a third country outside the EU since this would enable migrant workers and their families to benefit from the Directive’s protection. Some providers said that firms providing remittance services to countries outside the EU should be subject to the Title II authorisation regime, but cannot foresee how the Directive’s Title III and IV provisions would be enforceable outside the EU. This point was appreciated by one respondent, who indicated that efforts to help developing countries improve their financial sector infrastructure and standards might provide a more realistic solution to tackling regulatory deficiencies in the global remittances market.

**3.32** The European Payments Council (EPC) defines SEPA as an area where citizens, companies and other economic actors will be able to make and receive payments in Euro across the EU, under the same basic conditions, rights and obligations. To the extent that the Directive sets out the legal framework for the delivery of SEPA, comments on initial and projected benefits of the Directive differed somewhat between payment service providers and users. Payment industry respondents note that since work is well underway on the delivery of pan-European credit transfer and direct debit schemes as part of SEPA, any attempt to add to this work could risk the timely delivery of these schemes. However, corporate users felt that benefits to customers and businesses could be significant if the Directive encourages further improvements in the automation of the supply chain, such as e-invoicing.

**3.33** Some respondents noted the benefits of permitting Payment Institutions to access payment systems under Article 23, but highlighted that the introduction of any resulting addition to financial and/or operational instability to the payment systems should be avoided. One respondent suggested that the Directive should clearly distinguish between access to and the operation of payment systems. If rights were established in relation to the latter, Payment Institutions would be required to demonstrate ability to meet credit, liquidity, settlement and other risks, as credit institutions are currently required to do.

## Summary

**We will revise our Regulatory Impact Assessment to reflect the types of benefits identified by respondents.**

## QUESTION 8

**Overall, do you agree with our partial assessment of the costs of the Directive? Are there any significant impacts that we need to consider, other than those that can be smoothed out through drafting changes? If so, are you able to quantify the impact?**

**3.34** Respondents generally found it difficult to accurately assess the costs of the Directive without more detail on the likely shape of the licensing regime for Payment Institutions, and how the Directive will be implemented. In relation to the “one size fits all” issue, there was some concern that if one provision is strengthened to address the particular risks of a specific payment method, the consequent regulatory impact might be disproportionately wide as the Directive applies to all payment services within its scope.

**3.35** Some firms felt relatively neutral towards potential Title III compliance costs, viewing it as a cost of participating in the payments market and/or as an additional step in their ongoing programme of internal systems changes. However, they highlighted potential disbenefits if the information requirements resulted in additional costs to consumer, either through price or by inhibiting a payment service providers’ general ability to provide customers with a better service.

**3.36** Credit unions judged the annual cost of complying with the proposed Directive’s licensing regime as estimated in the consultation document to be excessive, which could lead to the closure of even the larger credit unions. This could generate a significant social cost, impact negatively on the Government’s financial inclusion agenda and greatly reduce the availability of affordable credit. The UK would not want the Directive to limit current and future payment services provided by credit unions, and has been pushing to secure an exemption from the Directive.

**3.37** More fundamentally, one respondent queried whether the Directive intended to capture businesses that have, so far, served customers well without the need to specify terms and conditions of the service in the form of a contract. For example, one UK bill payment company enters into contracts exclusively with payees such as utilities or telecommunications firms, but does not have contractual relationships with individual consumers that make payments via their bill paying outlets. In this respect, the respondent found it difficult to see how the Directive could justify imposing information requirements and accompanying costs on firms if customers have been availing themselves of such a service without reference to a contract.

### Summary

**We will revise our Regulatory Impact Assessment to reflect the types of costs identified by respondents. We will continue our efforts to gain an exemption from the Directive for credit unions.**

## QUESTION 9

**Are there any groups or sectors that might/will be affected by the Directive that have not been identified in the Partial RIA?**

**3.38** Two respondents observed that the partial RIA did not analyse the Directive's impact according to the economic sector in which a payment is made. For example, it would be useful to evaluate how the Directive might affect the urban transport sector, for which the speed and ease of payment transactions can be just as, if not more essential, than lower liability in the event of a loss of a payment instrument.

**3.39** One response expressed serious concern that the Directive's scope might erroneously be interpreted to capture stored-value mass transit ticketing schemes. If the Directive aims to improve payment services provided by a payment service firm for goods and services sold by third parties, the Directive should not apply to mass transit ticketing instruments, as they do not allow a transfer of such nature to take place. Instead, many mass transit ticketing schemes enable customers to quickly access relevant transportation services using a contact-less card, the value on which would have been paid for in advance using standard payment means such as online credit transfer, debit and credit cards. The respondent argued that it is these standard payment means, rather than the contact-less instrument, which should come under the Directive's scope. Should the Directive be interpreted otherwise, mass transit corporations across the EU will incur massive systems re-engineering costs, especially in compliance with Title III. Moreover, if Title III information requirements are applied each time a customer uses a contact-less card to access transportation services, the objective of speeding up passenger flows through crowded mass transit systems would be undermined, increasing social costs.

**3.40** One respondent urged that the proposed Directive remain neutral towards different payment systems. Whilst it welcomed the exclusion of cash from the scope of the Directive, the respondent wanted to ensure that the Directive was not promoting electronic payments over other types of payment.

### Summary

**We will continue to clarify the scope of the Directive and promote customer choice in the payments market.**

## QUESTION 10

**Do you agree that the provisions establishing a waiver regime (Article 21 of the Directive) mean that any racial equality impacts will be avoided?**

**3.41** Respondents did not add to the points already raised within the consultation document. The waiver regime was deemed to be fundamental in ensuring that money transfer companies providing money remittance services to migrants continue to be registered and visible to appropriate regulators in the UK. Firms were encouraged that the waiver could cater for different types of smaller payment service firms, as migrant workers and other groups are more likely to be clients of smaller firms that target their services at specific transaction corridors or language communities. A few firms noted,

however, that the Directive should not prohibit those eligible for the waiver from applying for a Payment Institution licence, if they have the necessary controls in place.

**3.42** Larger money transfer companies believed a waiver to be acceptable, as long as waived firms provided migrant workers with a level of protection comparable to that provided by licensed firms.

### Summary

**We will continue to favour an appropriate waiver provision for smaller Payment Institutions, such as small money remitters, to ensure they can continue to operate without being subject to additional regulatory requirements.**

## QUESTION 11

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**Question 11: Do you support the proposed negotiating approach set out in the Partial RIA? Why?**

**3.43** As the preceding sections indicate, the vast majority of respondents support HM Treasury's negotiating approach of supporting the general thrust of the European Commission's proposed Directive, but pushing for improvements in some areas to make the regulatory regime more proportionate and better targeted. Many share the Directive's aim of addressing problems with the current state of payment services and systems in the EU, such as inefficient payments, fragmented and non-interoperable national payment systems, and a lack of competition.

**3.44** The partial RIA set out the rationale for why the regulatory regime for Payment Institutions ought to be commensurate with the low level of risks involved in providing payment services, which are different in magnitude and nature to risks incurred by deposit-taking institutions. There was substantial agreement with this line of reasoning. However, one respondent pointed out that whilst Payment Institutions do not take deposits, some will have intra-day exposures from payments received and administered in batches prior to settlement. Where Payment Institutions deal with rejected or misrouted payments, exposures could be overnight or longer. In such cases, the regulatory regime should be proportionate to the extent that such risks, if they arise, can be contained to maintain consumer confidence.

### Summary

**We will continue to support the general thrust of the European Commission's proposal but push for changes where they are necessary.**

## QUESTION 12

**If you support the proposed approach, which changes do you think would be appropriate and what would be the costs and benefits of these changes?**

**3.45** We are thankful to respondents who provided detailed suggestions on changes or negotiating approaches which would aim to maximise benefits to the UK from the Directive. The suggestions largely matched those identified within the consultation document:

- Clarifying the scope of the Directive;
- Seeking an exemption for credit unions;
- Ensuring a proportionate regulatory regime for Payment Institutions in Title II;
- Maintaining the waiver provision in Article 21;
- Supporting access to payment systems in Article 23;
- Re-examining provisions under Title IV to ensure they are workable;
- Removing the EUR 50,000 threshold, transaction sizes beyond which the conduct of business rules in the Directive will not be applicable; and
- Amending provisions on maximum execution time to ensure next day execution is not mandatory on transactions other than Euro payments across the EU and/or domestic payments in the currency of an EU Member State.

**3.46** The responses received also requested other substantial changes which we agree to be justified and appropriate:

- Rationalising the list of information requirements in Title III, rejecting information overload in favour of a balanced approach to ensuring customers are sufficiently informed to exercise choice;
- Favouring drafting that that will allow users larger than a micro-enterprise to agree alternative contractual arrangements with their provider; and
- Supporting appropriate derogations for low-value/micro-payments.

**3.47** Respondents did not deliberately seek to quantify the costs and benefits of their proposed changes. However, many provided case studies and background information to demonstrate how their suggestions could provide greater legal certainty, help to resolve practical problems posed by certain provisions and ensure the Directive can genuinely contribute to the creation of an internal market in payments in the EU.

## Summary

**We will take into account drafting changes reflecting the objectives stated above.**

### QUESTION 13

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**Are you able to provide information on costs and benefits in areas where we have requested it?**

**3.48** Respondents who provided information on the estimated costs and benefits of the Directive did so tentatively on the basis that a costing exercise is a resource intensive one that might be better undertaken once the final shape of the Directive is clearer and when the implementing competent authority or authorities has/have been identified.

**3.49** The estimates provided have been incorporated into HM Treasury's revised Regulatory Impact Assessment for the proposed Payment Services Directive, published alongside this document and available on HM Treasury's website.

### Summary

**A revised regulatory impact assessment is available alongside this document.**

# 4

## NEXT STEPS

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- 4.1** HM Treasury will use the responses received to inform its ongoing negotiating strategy for the proposed Directive.
- 4.2** Once adopted, the Directive will need to be implemented in the UK.
- 4.3** After adoption, HM Treasury will launch a consultation process on the issues around implementation including enforcement, sanctions and monitoring.





# A

## LIST OF CONSULTATION RESPONDENTS (MEETINGS AND WRITTEN SUBMISSIONS)

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American Express  
Association of British Credit Unions Ltd  
Association of Corporate Treasurers  
Association of Payment and Clearing Services (APACS) whose members are  
Abbey  
ABN Amro  
Alliance and Leicester  
Bank of America  
Bank of England  
Bank of Scotland  
The Bank of Tokyo-Mitsubishi  
Barclays  
Capital One  
Citigroup  
Cooperative  
DnB NOR  
Deutsche Bank  
Egg  
GE  
HSBC  
HFC  
JP Morgan  
MBNA  
Morgan Stanley  
National Australia Group  
Nationwide  
Northern Rock  
Royal Mail  
RBS  
Standard Chartered  
Wachovia  
Banking Code Standards Board  
British Security Industry Association  
BT Click and Buy  
Cardpoint  
Citigroup  
Citizens Advice  
Department for International Development (DFID)  
Earthport  
Factors and Discounters Association

Financial Ombudsman Service  
International Association of Money Transfer Networks  
Irish League of Credit Unions  
JP Morgan  
LINK  
Matrix International Holdings  
Mobile Broadband Group whose members include  
    3  
    O2  
    Orange  
    T Mobile  
    Vodafone  
    Virgin Mobile  
National Consumer Council  
PayPal Ltd Europe  
PayPoint  
Federation of Small Businesses  
Group 4 Securicor  
sQuid  
Transaction Workflow Innovation Standards Team (TWIST)  
Transport for London  
Travelex Money Transfer Ltd  
UK CreditUnions Ltd  
UK Money Transmitters Association  
VISA Europe  
Western Union  
Which?



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