



JUDGMENT OF THE COURT (Fifth Chamber)

5 September 2019 (*)

(Reference for a preliminary ruling — Technical and business requirements for credit transfers and direct debits in euro — Regulation (EU) No 260/2012 — Single euro payments area (SEPA) — Payment by direct debit — Article 9(2) — Accessibility of payments — Residence condition)

In Case C-28/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 20 December 2017, received at the Court on 17 January 2018, in the proceedings

Verein für Konsumenteninformation

v

Deutsche Bahn AG,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, C. Lycourgos, E. Juhász, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: M. Szpunar,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 30 January 2019, after considering the observations submitted on behalf of:

- the Verein für Konsumenteninformation, by S. Langer, Rechtsanwalt,
- Deutsche Bahn AG, by C. Pöchlhammer and L. Riede, Rechtsanwälte,
- the European Commission, by H. Tserepa-Lacombe and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 May 2019,

gives the following



Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 9(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ 2012 L 94, p. 22).
- 2 The request has been made in proceedings between the Verein für Konsumenteninformation (Consumer Information Association; ‘the VKI’) and Deutsche Bahn AG concerning the fact that it is not possible for passengers who are not resident in Germany to pay for tickets booked on the company’s website by means of direct debit in euros under the EU-wide direct debit scheme (‘SEPA direct debit’).

Legal context

- 3 Recitals 1, 6, 9, 10 and 32 of Regulation No 260/2012 are worded as follows:

‘(1) The creation of an integrated market for electronic payments in euro, with no distinction between national and cross-border payments is necessary for the proper functioning of the internal market. To that end, the single euro payments area (SEPA) project aims to develop common Union-wide payment services to replace current national payment services. As a result of the introduction of open, common payment standards, rules and practices, and through integrated payment processing, SEPA should provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euro. This should apply to SEPA payments within and across national boundaries under the same basic conditions and in accordance with the same rights and obligations, regardless of location within the Union. ...

...

(6) Only rapid and comprehensive migration to Union-wide credit transfers and direct debits will generate the full benefits of an integrated payments market, so that the high costs of running both “legacy” and SEPA products in parallel can be eliminated. Rules should therefore be laid down to cover the execution of all credit transfer and direct debit transactions denominated in euro within the Union. ...

...



- (9) For a credit transfer to be executed, the payee’s payment account must be reachable. Therefore, in order to encourage the successful take-up of Union-wide credit transfer and direct debit services, a reachability obligation should be established across the Union. To improve transparency, it is furthermore appropriate to consolidate that obligation and the reachability obligation for direct debits already established under Regulation (EC) No 924/2009 [of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ 2009 L 266, p. 11)] in a single act. All payee payment accounts reachable for a national credit transfer should also be reachable via a Union-wide credit transfer scheme. All payers’ payment accounts reachable for a national direct debit should also be reachable via a Union-wide direct debit scheme. This should apply whether or not a [payment service provider (PSP)] decides to participate in a particular credit transfer or direct debit scheme.
- (10) Technical interoperability is a prerequisite for competition. In order to create an integrated market for electronic payments systems in euro, it is essential that the processing of credit transfers and direct debits is not hindered by business rules or technical obstacles such as compulsory adherence to more than one system for settling cross-border payments. Credit transfers and direct debits should be carried out under a scheme, the basic rules of which are adhered to by PSPs representing a majority of PSPs within a majority of the Member States and constituting a majority of PSPs within the Union, and which are the same both for cross-border and for purely national credit transfer and direct debit transactions. ...
- ...
- (32) In order to ensure broad public support for SEPA, a high level of protection for payers is essential, particularly for direct debit transactions. The current and only pan-European direct debit scheme for consumers developed by the [European Payments Council (EPC)] provides for a “no-questions-asked”, unconditional refund right for authorised payments during a period of 8 weeks from the date on which the funds were debited, while that refund right is subject to several conditions under Articles 62 and 63 of 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 (OJ 2007 L 319, p. 1)]. In the light of the prevailing market situation and of the necessity to ensure a high level of consumer protection, the impact of those provisions should be assessed in the report that, in accordance with Article 87 of Directive 2007/64/EC, the Commission shall, no later than 1 November 2012, present to the European Parliament, the Council, the European Economic and Social



Committee and the [European Central Bank] accompanied, where appropriate, by a proposal for its revision.’

- 4 Article 1 of Regulation No 260/2012, entitled ‘Subject matter and scope’, provides in paragraph 1:

‘This Regulation lays down rules for credit transfer and direct debit transactions denominated in euro within the Union where both the payer’s payment service provider and the payee’s payment service provider are located in the Union, or where the sole payment service provider (PSP) involved in the payment transaction is located in the Union.’

- 5 Article 2 of that regulation, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation, the following definitions shall apply:

...

(2) “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;

(3) “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;

(4) “payee” means a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction;

(5) “payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

...

(21) “mandate” means the expression of consent and authorisation given by the payer to the payee and (directly or indirectly via the payee) to the payer’s PSP to allow the payee to initiate a collection for debiting the payer’s specified payment account and to allow the payer’s PSP to comply with such instructions;

...

(26) “cross-border payment transaction” means a payment transaction initiated by a payer or by a payee where the payer’s PSP and the payee’s PSP are located in different Member States;



(27) “national payment transaction” means a payment transaction initiated by a payer or by a payee, where the payer’s PSP and the payee’s PSP are located in the same Member State;

...’

6 Article 3 of that regulation, entitled ‘Reachability’, provides in paragraph 2:

‘A payer’s PSP which is reachable for a national direct debit under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for direct debits initiated by a payee through a PSP located in any Member State.’

7 Article 9 of the regulation, entitled ‘Payment accessibility’, states in paragraph 2:

‘A payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.’

The dispute in the main proceedings and the question referred for a preliminary ruling

8 In accordance with Austrian legislation, the VKI has standing to bring an action for the protection of consumers.

9 Deutsche Bahn is a rail transport company with its registered office in Berlin (Germany). It offers consumers the possibility to book international train journeys on its website. For that purpose it concludes contracts with consumers on the basis of its general conditions of carriage.

10 According to one of the clauses in those general conditions of carriage, bookings made on Deutsche Bahn’s website may be paid for by credit card, via PayPal, by credit transfer or under the SEPA direct debit scheme. However, according to that clause, payment by SEPA direct debit is only accepted subject to the observance of several conditions, namely that the payer have a place of residence in Germany, that he consent to the direct debit being taken from an account held with a bank or savings bank that has its registered office in a SEPA-participating State, that he instruct the bank or savings bank to honour the SEPA direct debit and that he register on the Deutsche Bahn website. In addition, in order to activate the SEPA direct debit scheme, the payer must give his consent to undergo a credit check.

11 The VKI brought an action for a prohibitory order before the Handelsgericht Wien (Commercial Court, Vienna, Austria) by which it sought to have Deutsche Bahn ordered to cease using that clause in consumer contracts. In support of that action,



the VKI claimed that the clause at issue in the main proceedings, according to which the payer must inter alia have a place of residence in Germany in order to make a payment by SEPA direct debit, is contrary to Article 9(2) of Regulation No 260/2012 since, first, a consumer's payment account is generally located in the Member State of his residence and, secondly, that clause imposes an even weightier obligation than a condition requiring the payer to open a payment account in Germany.

- 12 Deutsche Bahn contends that since Regulation No 260/2012 is addressed to payment service providers, it aims to protect payments rather than payers. That regulation does not require payees to offer payment by SEPA direct debit to all consumers throughout the European Union. Moreover, other methods of payment are available to consumers for the purpose of purchasing tickets on its website. In any event, the condition regarding the consumer's place of residence is justified. Indeed, in contrast to the situation in relation to other payment procedures, under the direct debit scheme the payee receives no payment guarantee from the payment service provider.
- 13 By judgment of 13 July 2016, the Handelsgericht Wien (Commercial Court, Vienna), allowed the VKI's claim with regard to consumers residing in Austria, having held that the clause was contrary to Article 9(2) of Regulation No 260/2012.
- 14 By judgment of 14 March 2017, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), hearing the case on appeal, set aside that judgment and dismissed the VKI's claim on the ground that, while Article 9(2) of Regulation No 260/2012 ensures that both payers and payees only require a single bank account for both domestic and cross-border payments by direct debit, the regulation does not oblige payees to accept, in all cases, specific payment instruments for the settlement of commercial transactions with consumers.
- 15 The Oberster Gerichtshof (Supreme Court, Austria), which is hearing the VKI's appeal against that judgment, considers that, by prohibiting payers and payees from specifying in which Member State the other party's account must be held, Article 9(2) of Regulation No 260/2012 does not apply to payment service providers but applies to the relationships between payees and payers and, accordingly, aims to protect payers. Whilst it is true that on a literal interpretation that provision only prohibits making the geographical location of the payment account a criterion, nevertheless, a clause, such as that at issue in the main proceedings, which precludes payment by SEPA direct debit when the payer is not resident in the same Member State as that in which the payee has established his place of business, could be contrary to that provision since a payer's payment account is, as a general rule, located in the Member State in which the payer is resident.



16 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 9(2) of Regulation [No 260/2012] be interpreted as meaning that the payee is prohibited from making payment under the SEPA direct debit scheme dependent on the payer’s place of residence being in the Member State in which the payee also has its registered office or residence, if payment in a different way, for example with a credit card, is also allowed?’

Consideration of the question referred

17 By its question, the referring court asks, in essence, whether Article 9(2) of Regulation No 260/2012 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by SEPA direct debit where the payer’s place of residence is not in the same Member State as that in which the payee has established his place of business.

18 As a preliminary point, it must be borne in mind that, as is apparent from recital 1 of Regulation No 260/2012, that regulation was adopted in the context of the project to create SEPA, with the intention of developing, for payments in euros, common Union-wide payment services to replace national payment services.

19 According to Article 1, that regulation aims to lay down rules for credit transfer and direct debit transactions denominated in euros within the Union where both the payer’s payment service provider and the payee’s payment service provider are located in the Union, or where the sole payment service provider involved in the payment transaction is located in the Union.

20 As is apparent particularly from recitals 1 and 6 of that regulation, the technical and business requirements provided for by the regulation apply to national and cross-border payments made under SEPA according to the same basic conditions and in accordance with the same rights and obligations, regardless of location within the Union, in order to ensure a complete migration to Union-wide credit transfers and direct debits and thus to introduce an integrated market for electronic payments in euros in which there is no distinction between national and cross-border payments.

21 In that respect, Article 9(2) of Regulation No 260/2012 provides that a payee who uses a direct debit to collect funds from a payer holding a payment account located within the Union is not to ‘specify’ the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3 of that regulation, given that the term ‘direct debit’ is defined in Article 2(2) of that regulation as 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.

- 22 Pursuant to Article 3(2) of Regulation No 260/2012, a payer's PSP which is reachable for a national direct debit under a payment scheme must be reachable in the same way, as is also apparent from recital 9 of the regulation, for direct debits initiated by a payee in accordance with the rules of a Union-wide payment scheme via a PSP located in another Member State.
- 23 It thus follows from the wording of Article 9(2) of Regulation No 260/2012, read in conjunction with Article 3(2) of that regulation, that a payee receiving a direct debit is prohibited from requiring that the payer's account be located in a particular Member State when that account is reachable for a national direct debit.
- 24 In the present case it is common ground that, although the clause at issue in the main proceedings requires the payer to have his place of residence in the same Member State as that in which the payee has established his place of business, namely Germany, it does not, by contrast, require the payer to have a payment account in a specific Member State. That clause is therefore not explicitly covered by the wording of Article 9(2) of Regulation No 260/2012.
- 25 However, the Court of Justice has consistently held that, in interpreting provisions of EU law, it is necessary to consider not only their wording but also the context in which they occur and the objectives pursued by the rules of which they are part (judgment of 17 October 2018, *Günter Hartmann Tabakvertrieb*, C-425/17, EU:C:2018:830, paragraph 18 and the case-law cited).
- 26 In that regard, the fundamental purpose of Regulation No 260/2012, as was noted in paragraphs 18 to 20 above, is to establish technical and business requirements, as regards direct debits in particular, in order to develop common Union-wide payment services.
- 27 That being said, Article 9(2) of that regulation, in so far as it expressly concerns the specific relationship between the payer and the payee, also contributes to the objective of achieving the high level of consumer protection necessary to ensure broad support for SEPA by those consumers, as is apparent from recital 32 of that regulation.
- 28 That provision allows, as regards payment by direct debit, a single payment account to be used for any transaction within the European Union, thus avoiding costs associated with maintaining several payment accounts, and does so by ensuring, as is apparent from recital 10 of Regulation No 260/2012, that business rules do not have the effect of preventing consumers from making payments, within the context



of an integrated market for electronic payments in euros, to accounts held by payees with PSPs located in other Member States.

- 29 However, it must be noted that a clause, such as the one at issue in the main proceedings, under which a distinction is drawn on the basis of the payer's place of residence, is liable to operate mainly to the detriment of consumers who do not have a payment account in the Member State in which the payee has established his place of business. It is common ground that consumers most often have a payment account in the Member State in which they are resident.
- 30 Such a clause therefore indirectly indicates the Member State in which the payment account must be located, thus producing effects comparable to those resulting from such an indication of a specific Member State.
- 31 In most instances, that residence condition restricts the accessibility of payment by SEPA direct debit only to payers with a payment account in the Member State in which the payee has established his place of business and, accordingly, excludes from this method of payment payers with payment accounts in other Member States.
- 32 Accordingly, that clause reserves this method of payment essentially to national payment transactions within the meaning of Article 2(27) of Regulation No 260/2012, namely those made between a payer and a payee each with a payment account with PSPs located in the same Member State, and to the exclusion, as a result, of most cross-border payment transactions, which involve, in accordance with Article 2(26) of that regulation, PSPs located in different Member States.
- 33 It follows that a clause such as that at issue in the main proceedings is liable to undermine the practical effect of Article 9(2) of Regulation No 260/2012, since it prevents payers from being able to make a direct debit from an account located in the Member State of their choice. That clause therefore frustrates the objective pursued by that provision, that being, as was stated in paragraph 28 above, to prevent business rules from undermining the development of an integrated market for electronic payments in euros, referred to in recital 1 of that regulation.
- 34 In this regard it is irrelevant that the consumer may use alternative payment methods. Although payees remain free either to offer payers the possibility of making payments by SEPA direct debit or not, by contrast, contrary to what Deutsche Bahn maintains, when they do offer such a possibility, those payees may not subject the use of that payment method to conditions which undermine the practical effects of Article 9(2) of Regulation No 260/2012.
- 35 However, according to Deutsche Bahn, it can be inferred from Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on



customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ 2018 L 60 I, p. 1) that Article 9(2) of Regulation No 260/2012 does not relate to a residence condition, such as that at issue in the main proceedings.

- 36 However, aside from the fact that it excludes from its scope transport services, such as those at issue in the main proceedings, and that it only became applicable from 3 December 2018, that is to say after the facts of the main proceedings, it is sufficient to state that Regulation No 2018/302, which specifically concerns geo-blocking, has no effect whatsoever on the interpretation of Article 9(2) of Regulation No 260/2012, as the Advocate General noted in point 39 of his Opinion, in the absence of a cross-reference made by the EU legislature between those two regulations.
- 37 Deutsche Bahn also maintains that a residence condition such as that at issue in the main proceedings is justified by the need to credit-check payers, since the risk of abuse or default on payment is particularly high when, as in the case in the main proceedings, the direct debit follows on from a mandate delivered directly by the payer to the payee without the involvement of either of their payment service providers. In those circumstances, the payee should himself assess the risk of the client defaulting on his payment.
- 38 It must be noted, however, as the Advocate General observed in points 46 and 47 of his Opinion, that neither Article 9(2) of Regulation No 260/2012 nor any other provision of that regulation provide for an exception to the obligation set out therein, the EU legislature having sufficiently taken into consideration the various interests at stake between payers and payees when adopting that provision.
- 39 In any event, as the Commission noted during the hearing, nothing prevents a payee from reducing the risk of abuse or of default on payment by, for example, providing that delivery or printing of tickets will only be possible once the payee has received confirmation that the payment has actually been collected.
- 40 In the light of the foregoing, the answer to the question referred is that Article 9(2) of Regulation No 260/2012 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by SEPA direct debit where the payer does not have his place of residence in the same Member State as that in which the payee has established his place of business.

Costs

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that



court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 9(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by direct debit in euros under the European Union-wide direct debit scheme (SEPA direct debit) where the payer does not have his place of residence in the same Member State as that in which the payee has established his place of business.

[Signatures]

* Language of the case: German.



JUDGMENT OF THE COURT (Tenth Chamber)

21 March 2019 (*)

(Reference for a preliminary ruling — Payment services in the internal market — Directive 2007/64/EC — Article 74(2) — Payment order by credit transfer — Incorrect unique identifier provided by the payer — Execution of the payment transaction on the basis of the unique identifier — Liability of the payee's payment service provider)

In Case C-245/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale Ordinario di Udine (District Court, Udine, Italy), made by decision of 30 March 2018, received at the Court on 9 April 2018, in the proceedings

Tecnoservice Int. Srl, in liquidation,

v

Poste Italiane SpA,

THE COURT (Tenth Chamber),

composed of C. Lycourgos, President of the Chamber, E. Juhász and I. Jarukaitis (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Poste Italiane SpA, by A. Fratini, avvocatessa,
- the Italian Government, by G. Palmieri, acting as Agent, and F. Subrani and A. Collabolletta, avvocati dello Stato,
- the Czech Government, by M. Smolek, J. Vláčil and O. Serdula, acting as Agents,



- the European Commission, by H. Tserepa-Lacombe and V. Di Bucci, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 74 and 75 of 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 (OJ 2007 L 319, p. 1).
- 2 The request has been made in proceedings between Tecnoservice Int. Srl, in liquidation, ('Tecnoservice') and Poste Italiane SpA concerning the payment of a sum of money to the incorrect payee on account of an incorrect unique identifier provided by the payer.

Legal context

EU law

- 3 Recitals 40, 43 and 48 of Directive 2007/64 state:
 - '(40) It is essential, for the fully integrated straight-through processing of payments and for legal certainty with respect to the fulfilment of any underlying obligation between payment service users, that the full amount transferred by the payer should be credited to the account of the payee. ...
 - ...
 - (43) In order to improve the efficiency of payments throughout the [European Union], all payment orders initiated by the payer and denominated in euro or the currency of a Member State outside the euro area, including credit transfers and money remittances, should be subject to a maximum one-day execution time. ... In view of the fact that national payment infrastructures are often highly efficient and in order to prevent any deterioration in current service levels, Member States should be allowed to maintain or set rules specifying an execution time shorter than one business day, where appropriate.



...

(48) It should be possible for the payment service provider to specify unambiguously the information required to execute a payment order correctly. On the other hand, however, in order to avoid fragmentation and jeopardising the setting-up of integrated payment systems in the [European Union], Member States should not be allowed to require a particular identifier to be used for payment transactions. However, this should not prevent Member States from requiring the payment service provider of the payer to act in due diligence and verify, where technically possible and without requiring manual intervention, the coherence of the unique identifier, and where the unique identifier is found to be incoherent, to refuse the payment order and inform the payer thereof. The liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user.'

4 Article 4 of the directive provides:

'For the purposes of this Directive, the following definitions shall apply:

...

(5) "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;

...

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

...'

5 Chapter 2, entitled 'Single payment transactions', in Title III of the directive, includes Article 37 of the directive, entitled 'Information and conditions'. Paragraph 1 of that article provides:

'Member States shall ensure that the following information and conditions are provided or made available to the payment service user:

(a) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;



...’

6 Chapter 3, entitled ‘Framework contracts’, in Title III of the directive, includes Article 42 of the directive, entitled ‘Information and conditions’. That article is worded as follows:

‘Member States shall ensure that the following information and conditions are provided to the payment service user:

...

2. on use of the payment service:

...

(b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;

...’

7 Article 74 of Directive 2007/64, entitled ‘Incorrect unique identifiers’, provides:

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

2. If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction.

However, the payer’s payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction.

...

3. If the payment service user provides information additional to that specified in Articles 37(1)(a) or 42(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.’

8 Article 75 of the directive, entitled ‘Non-execution or defective execution’, provides, in essence, in paragraphs 1 and 2, that the liability established by those paragraphs is ‘without prejudice to ... Article 74(2) and (3)’ of the directive.

Italian law



- 9 Directive 2007/64 was transposed into Italian law by decreto legislativo n. 11, recante attuazione della direttiva 2007/64/CE (Legislative Decree No 11 transposing Directive 2007/64/EC) of 27 January 2010 (Ordinary Supplement to the GURI No 36 of 13 February 2010, ‘Legislative Decree No 11/2010’).
- 10 Articles 74 and 75 of Directive 2007/64 were transposed by Articles 24 and 25 of Legislative Decree No 11/2010, the wording of which is almost identical to that of the former provisions.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 11 On 3 August 2015, a debtor of Tecnoservice made an order for payment by means of a bank transfer to that company of a sum to be credited to a current account with Poste Italiane, identified by means of a unique identifier within the meaning of Article 4(21) of Directive 2007/64, that is, by an international bank account number (‘IBAN’). The name of the intended recipient of the transfer, that is, Tecnoservice, was also stated in the transfer order.
- 12 The transfer was made to the account corresponding to that IBAN. However, the holder of that account was an entity other than Tecnoservice, which therefore never received the sum due to it.
- 13 Tecnoservice brought an action against Poste Italiane before the Tribunale ordinario di Udine (District Court, Udine, Italy), the referring court, claiming that Poste Italiane was liable on account of its failure to check whether the IBAN indicated by the payer corresponded to the name of the payee. Thus, it was alleged, Poste Italiane allowed the sum in question to be transferred to the wrong recipient, despite there being sufficient information to establish that the unique identifier was incorrect.
- 14 According to Poste Italiane, it is in no way liable as it credited the account corresponding to the IBAN indicated on the order and is not required to carry out any additional checks whatsoever.
- 15 The referring court observes in that respect that Directive 2007/64 provides, in essence, that a payment order executed in accordance with a unique identifier is deemed to have been executed correctly.
- 16 However, according to that court, Articles 74 and 75 of Directive 2007/64 and, therefore, the relevant provisions of the national legislation, can be interpreted in two ways.



- 17 According to the first interpretation, those articles apply only to the relationship between the payer and his bank, and not to the relationship between the payee's bank and other interested parties, such as the payer, the actual payee or the incorrect payee. In such a case, the second relationship should be subject only to national provisions, which are often based on liability rules that are different and wider in scope than those introduced by the directive.
- 18 According to the second interpretation, the articles apply to the payment transaction viewed as a whole, including, therefore, the conduct of the payee's bank. In such a case, the liability of the payee's payment service provider would also be strictly linked to simple observance of the IBAN indicated by the payer.
- 19 In that regard, the referring court observes that the bodies responsible for resolving disputes out of court as part of the Arbitro Bancario e Finanziario (mediation service for banking and finance disputes, Italy) have adopted differing decisions on this subject, but the authority responsible for coordinating these bodies has indicated that it advocates the second interpretation.
- 20 In those circumstances, the Tribunale ordinario di Udine (District Court, Udine) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Articles 74 and 75 of Directive [2007/64], in the version applicable on 3 August 2015, concerning a payment service provider's obligations and the limitations of such a provider's liability, as transposed into Italian law by Articles 24 and 25 of [Legislative Decree No 11/2010], be interpreted as being applicable only to the payment service provider of the person who ordered the payment, or as being applicable also to the payee's payment service provider?’

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether Articles 74 and 75 of Directive 2007/64 must be interpreted as meaning that, when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, payment service provider liability is limited to the payer's payment service provider alone or that such liability extends to the payee's payment service provider.
- 22 It should be borne in mind that Article 74(1) of Directive 2007/64 provides that ‘if a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier’. The first subparagraph of Article 74(2) states that ‘if the unique identifier provided by the payment service user is incorrect, the



payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction’.

- 23 It should therefore be noted that, as it is apparent from the information in the case file before the Court that the referring court’s doubts relate, in essence, to the interpretation of Article 74(2) of Directive 2007/64, concerning specifically the case where the unique identifier provided by the payment service user is incorrect, it is sufficient to interpret that provision in order to provide that court with a useful answer.
- 24 In accordance with the Court’s settled case-law, when interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (judgments of 2 September 2015, *Surmačs*, C-127/14, EU:C:2015:522, paragraph 28 and the case-law cited, and of 16 November 2016, *DHL Express (Austria)*, C-2/15, EU:C:2016:880, paragraph 19).
- 25 In the present case, it is clear that the wording of the first subparagraph of Article 74(2) of Directive 2007/64, which simply uses the expression ‘payment service provider’, does not distinguish between types of payment service provider. In the light of that wording, the limitation of liability provided for by that article therefore applies to each of the providers involved in the transaction, not to only one of them.
- 26 That literal interpretation is borne out by the context of that provision. First, a ‘payment transaction’ is defined, for the purposes of Directive 2007/64, in Article 4(5) of the directive as being 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. It is thus apparent from that definition that the term ‘payment transaction’ refers to a single act as a whole between the payer and payee, not only each of the relationships of the payer and the payee with their own respective payment service provider.
- 27 Secondly, the second subparagraph of Article 74(2) of Directive 2007/64 requires ‘the payer’s payment service provider’ alone to make reasonable efforts to recover the funds involved in the payment transaction. Thus, if the EU legislature had intended to limit the effects of the first subparagraph of Article 74(2) of Directive 2007/64 to the payer’s payment service provider as regards payments made in accordance with a unique identifier provided by the user, it would have so specified in that article.
- 28 In addition, the interpretation of Article 74(2) of Directive 2007/64, as set out in paragraph 25 above, is also borne out by the objectives of the directive. It must be noted that, according to recital 40 of Directive 2007/64, the directive seeks to



guarantee the fully integrated straight-through processing of transactions and, according to recital 43 of the directive, it seeks to improve the efficiency and speed of payments. Those objectives of straight-through processing and speed of payments are better served by an interpretation of that provision that limits the liability of both the payer's and the payee's payment service provider, which thus relieves those providers of the obligation to check whether the unique identifier provided by the payment service user does in fact correspond to the person named as the payee.

29 Moreover, it should be noted that recital 48 of Directive 2007/64 does, admittedly, state that Member States are not prevented from requiring, where technically possible and without requiring manual intervention, the payment service provider of 'the payer' to act with due diligence. However, that recital does not distinguish between the two types of provider when it states that the liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user.

30 It follows from all the foregoing considerations that the answer to the question referred is that Article 74(2) of Directive 2007/64 must be interpreted as meaning that, when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, the limitation of payment service provider liability, provided for by that article, applies to both the payer's and the payee's payment service provider.

Costs

31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Article 74(2) of 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 must be interpreted as meaning that, when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, the limitation of payment service provider liability, provided for by that article, applies to both the payer's and the payee's payment service provider.

[Signatures]



* Language of the case: Italian.



JUDGMENT OF THE COURT (Tenth Chamber)

11 April 2019 (*)

(Reference for a preliminary ruling — Payment services in the internal market — Directive 2007/64/EC — Articles 2 and 58 — Scope — Payment service user — Meaning — Execution of a direct-debit payment order issued by a third party in respect of an account of which that party is not the holder — No authorisation from the holder of the debited account — Unauthorised payment transactions)

In Case C-295/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação do Porto (Court of Appeal, Oporto, Portugal), made by decision of 21 February 2018, received at the Court on 30 April 2018, in the proceedings

Mediterranean Shipping Company (Portugal) — Agentes de Navegação SA

v

Banco Comercial Português SA,

Caixa Geral de Depósitos SA,

THE COURT (Tenth Chamber),

composed of C. Lycourgos, President of the Chamber, E. Juhász and I. Jarukaitis (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- Mediterranean Shipping Company (Portugal) — Agentes de Navegação SA, by P. Neves de Sousa, advogado,
- Banco Comercial Português SA, by M. Mendes Pereira and N. Carrolo dos Santos, advogados,



- the Portuguese Government, by L. Inez Fernandes, T. Larsen, A. Pimenta and G. Fonseca, acting as Agents,
- the European Commission, by P. Costa de Oliveira and H. Tserepa-Lacombe, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2 and 58 of 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 (OJ 2007 L 319, p. 1).
- 2 The request was made in proceedings between Mediterranean Shipping Company (Portugal) — Agentes de Navegação SA (‘MSC’) and Banco Comercial Português SA (‘BCP Bank’) concerning the reimbursement of certain sums debited from MSC’s account without its consent.

Legal context

EU law

- 3 Directive 2007/64 was repealed and replaced, with effect from 13 January 2018, by Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64 (OJ 2015 L 337, p. 35). However, given the date at which the material facts arose, the dispute in the main proceedings is still governed by Directive 2007/64.
- 4 Recitals 3, 4, 24, 31 and 35 of Directive 2007/64 stated:
 - ‘(3) Several [EU] acts have already been adopted in [the] area [of payment services markets of the Member States] ... These measures continue to be insufficient. The co-existence of national provisions and an incomplete [EU] framework gives rise to confusion and a lack of legal certainty.



- (4) It is vital, therefore, to establish at [EU] level a modern and coherent legal framework for payment services ... which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer cost, safety and efficiency, as compared with the present national systems.

...

- (24) In practice, framework contracts and the payment transactions covered by them are far more common and economically important than single payment transactions. If there is a payment account or a specific payment instrument, a framework contract is required. ...

...

- (31) In order to reduce the risks and consequences of unauthorised or incorrectly executed payment transactions the payment service user should inform the payment service provider as soon as possible about any contestations concerning allegedly unauthorised or incorrectly executed payment transactions provided that the payment service provider has fulfilled his information obligations under this Directive. ...

...

- (35) Provisions should be made for the allocation of losses in the case of unauthorised payment transactions. ...'

5 Article 1(1)(a) of that directive provided:

'This Directive lays down the rules in accordance with which Member States shall distinguish the following six categories of payment service provider:

- (a) credit institutions ...'.

6 Article 2 of that directive provided:

1. This Directive shall apply to payment services provided within the [European Union]. However, with the exception of Article 73, Titles III and IV shall apply only where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in the European Union.

2. Titles III and IV shall apply to payment services made in euro or the currency of a Member State outside the euro area.



3. Member States may waive the application of all or part of the provisions of ... Directive [2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ 2006, L 177, p. 1)] to the institutions referred to in Article 2 of Directive 2006/48/EC, with the exception of those referred to in the first and second indent of that article.'

7 Article 3 of that directive listed transactions and services which were excluded from its scope.

8 For the purposes of Directive 2007/64, Article 4 set out the following definitions:

'...

(3) "payment service" means any business activity listed in the Annex;

...

(5) "payment transaction" means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligation between the payer and the payee;

...

(7) "payer" means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;

(8) "payee" means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;

(9) "payment service provider" means bodies referred to in Article 1(1) ...;

(10) "payment service user" means a person making use of a payment service in the capacity of either payer or payee, or both;

...

(14) "payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

...

(28) "direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider;



...’

- 9 Title III of that directive, which contained Articles 30 to 50, was entitled ‘Transparency of conditions and information requirements for payment services’. Article 42 of that directive, which was part of Chapter 3 of that title, dedicated to framework contracts, laid down the information and conditions which must be provided to the payment service user. According to Article 42(5)(d), those included how and within what period of time that user was to notify the payment service provider of any unauthorised or incorrectly executed payment transaction in accordance with Article 58 of that directive, as well as the payment service provider’s liability for unauthorised payment transactions in accordance with Article 60. Article 37(2) of that directive, which was part of Chapter 2 of the same title, relating to single payment transactions, made provision for a similar obligation where single payment transactions were at issue.
- 10 Title IV of Directive 2007/64, comprising Articles 51 to 83, was entitled ‘Rights and obligations in relation to the provision and use of payment services’. Article 54, which was part of Chapter 2 of that title, concerning the authorisation of payment transactions, was entitled ‘Consent and withdrawal of consent’, and provided the following in paragraphs 1 and 2:
- ‘1. Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. ...
 2. Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider.
- In the absence of such consent, a payment transaction shall be considered to be unauthorised.’
- 11 Article 58 of that directive, entitled ‘Notification of unauthorised or incorrectly executed payment transactions’, provided:
- ‘The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim ... and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Title III.’
- 12 Article 59 of that directive, concerning evidence on authentication and execution of payment transactions, stated in paragraph 1:



‘Member States shall require that, where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.’

- 13 Article 60 of that directive, which dealt with the payment service provider’s liability for unauthorised payment transactions, provided in paragraph 1:

‘Member States shall ensure that, without prejudice to Article 58, in the case of an unauthorised payment transaction, the payer’s payment service provider refunds to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.’

- 14 The annex to Directive 2007/64 listed the payment services referred to in Article 4(3). Point 3 of that annex stated:

‘Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider:

- execution of direct debits, including one-off direct debits,
- ...’

Portuguese law

- 15 Directive 2007/64 was transposed into Portuguese law by Decreto-Lei No 317/2009 (Decree-Law No 317/2009) of 30 October 2009 (*Diário da República*, 1st series, No 211, of 30 October 2009), approving, in Annex I, the legal arrangements governing access to the activity of payment institutions and to the provision of payment services.
- 16 In the version applicable to the main proceedings, Article 2 of those arrangements (‘the RJSP’) laid down definitions which reproduced, in essence, those set out in Article 4 of Directive 2007/64. In particular, Article 2(i), (j) and (m) reproduced the definitions set out in Article 4(7), (8) and (10) of that directive, and Article 69 of the RJSP corresponded, in essence, to Article 58 of that directive.

The dispute in the main proceedings and the questions referred for a preliminary ruling



- 17 MSC holds an overnight deposit account with BCP Bank. Following an audit conducted in 2014, MSC discovered that that account was being regularly debited by way of direct debits in favour of a third party ('the principal') with whom it had no relationship and without it having given any authorisation to BCP Bank to that effect.
- 18 By letter of 17 November 2014, MSC asked BCP Bank to cancel those direct debits, to reimburse it for the amounts withdrawn and to send it a copy of the documents authorising those direct debits. Following some exchanges between the two entities, BCP Bank cancelled the direct debits and repaid the sum of EUR 683.48, corresponding to the direct debit payments made in October and November 2014.
- 19 In the course of those exchanges, a copy of the payment authorisation for the direct debits at issue was obtained from Caixa Geral de Depósitos SA where the account which received those direct debits was held ('the principal's bank'). BCP Bank was then able to see that that authorisation had not been given by the holder of the debited account, MSC, but by the principal, a third company, for the purpose of making payments to that principal by direct debit from an account, with the result that that authorisation highlighted the existence of a discrepancy between the account number shown and the bank identification number which was MSC's bank identification number with BCP Bank.
- 20 On 10 December 2014, MSC contacted BCP Bank again reiterating that its account had been wrongly debited. By letter of 16 December 2014, BCP Bank confirmed that MSC had not given any such authorisation, or that it was at least improper, and that MSC was accordingly entitled to be reimbursed for direct debits executed up to the legal limit of 13 months laid down in Article 69 of the RJSP, that is to say, a sum equivalent to the direct debits made from October 2013 to December 2014. Therefore, the bank ordered that that sum be reimbursed.
- 21 Subsequently, MSC found that, between May 2010 and September 2013, direct debits had been paid from its account on the basis of that authorisation for a total sum of EUR 8 226.03 ('the direct debits at issue'). By letter of 3 August 2016, it made a request to BCP Bank that it also be reimbursed for that sum, which request the bank refused.
- 22 MSC then brought an action before the Tribunal Judicial da Comarca do Porto (District Court, Oporto, Portugal) for an order that BCP Bank repay to MSC the sum corresponding to those direct debits. Since that action — in which BCP Bank summonsed the principal's bank so as to ensure the possibility of bringing an action for redress — was dismissed as unfounded, MSC brought an appeal before the Tribunal da Relação do Porto (Court of Appeal, Oporto), the referring court.
- 23 Before that court, MSC argues, inter alia, that the Tribunal Judicial da Comarca do Porto (District Court, Oporto) misinterpreted and misapplied Article 2(i), (j) and (m),



and Article 69 of the RJSP, since MSC cannot be classified as a ‘payment service user’, for the purposes of those provisions, nor can it be regarded as such. As a result, the time limit laid down in Article 69 does not apply. In that regard, it submits that it never concluded any contract with BCP Bank, or gave it any order whatsoever authorising the automatic debiting of its account for sums corresponding to the invoices issued by the principal. BCP Bank contends that the appeal should be dismissed.

- 24 The referring court states that it has been established that BCP Bank periodically sent MSC statements for its account. In addition, that court observes that, since MSC holds a bank account with BCP Bank, a contractual relationship between the two parties, to be understood as the bank framework contract, was created when that account was opened. It adds that MSC did not, however, conclude any contract with that bank authorising the automatic debiting of its account for the amounts contained in the invoices issued by the principal.
- 25 Referring to the various definitions set out in the RJSP, the national court states that the use of a payment service by means of a payment account presupposes the conclusion beforehand of a framework contract or, in the case of a single payment transaction, the conclusion of a single payment service contract. It considers that, in the present case, in view of the successive transactions that were carried out, their completion necessarily required the conclusion of a framework contract between MSC and BCP Bank and that, in order for BCP Bank to be able to rely on the RJSP, it must adduce evidence of the conclusion of such a contract, which it has not done. That court observes, however, that the RJSP also governs the execution of unauthorised payment transactions, by offering payment service users protection in accordance with Article 69 thereof.
- 26 Noting that the dispute before it concerns the implementation of direct debits by a credit institution, within the meaning of Article 1(a) of Directive 2007/64, the referring court considers it necessary to determine whether the scope of that directive encompasses circumstances such as those at issue before it and, in the event that it does, whether MSC may be regarded as a ‘payment service user’ for the purposes of Article 58 of that directive.
- 27 In those circumstances, the Tribunal da Relação do Porto (Court of Appeal, Oporto) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - ‘(1) Must Article 2 of Directive [2007/64] be interpreted to the effect that the scope of that directive, as defined in that article, includes the execution of a direct-debit payment order issued by a third-party on an account which it does not hold, where the holder of that account has not entered into a payment service



contract for a single transaction, or a framework contract for the provision of payment services with that credit institution?

- (2) If the answer to question 1 is in the affirmative, in those circumstances, can that account holder be considered to be a payment service user for the purposes of Article 58 of that directive?

Consideration of the questions referred

28 As a preliminary point, it should be noted that, in the wording of its first question, which is also relevant for the examination of the second question, the national court refers to a situation in which a direct-debit payment order issued by a third-party was executed on an account ‘where the holder of that account has not entered into a payment service contract for a single transaction, or a framework contract for the provision of payment services with that credit institution’.

29 However, it is apparent from the file before the Court, first, that MSC, the account holder in question in the main proceedings, holds an overnight deposit account, and therefore a payment account within the meaning of Article 4(14) of Directive 2007/64, with BCP Bank. As the referring court states and as is apparent from recital 24 of that directive, the existence of such an account implies that a framework contract, such as the ones referred to in Title III, Chapter 3 of that directive, was concluded between those two parties. Secondly, the account holder disputes that it is possible for the national provision transposing Article 58 of that directive to be pleaded against it, not because there is no contractual relationship between it and that bank, but because there is no authorisation for the direct debits at issue, whether under such a framework contract or as single payment transactions such as those referred to in Title III, Chapter 2 of that directive.

30 When it states that there is no contractual relationship between MSC and BCP Bank, the referring court is merely indicating that the direct debits at issue were not authorised by MSC with that bank.

31 In addition, it is clear from the order for reference that MSC did not authorise those direct debits by one of the other routes provided for in Article 4(28) of Directive 2007/64 and that the principal was also the payee of those direct debits, within the meaning of Article 4(8) of that directive.

32 Therefore, the issue in the main proceedings concerns direct debits initiated by the payee, which were executed on a payment account of which that payee is not the holder, in a situation where the holder of that account did not consent in any way to those direct debits.



33 The questions referred must be examined in the light of those considerations.

The first question

34 Although in its first question the referring court seeks an interpretation of Article 2 of Directive 2007/64 concerning the scope of that directive, it is nevertheless apparent from the order for reference that only one of the conditions determining that scope is at issue in the main proceedings, that is to say, the one in the first sentence of paragraph 1 of that article, according to which the directive applies to ‘payment services’ provided within the European Union.

35 In those circumstances, and in the light of the preliminary considerations set out in paragraphs 28 to 32 above, by its first question, the referring court asks, in essence, whether Article 2(1) of Directive 2007/64 must be interpreted to the effect that the notion of ‘payment services’, for the purposes of that provision, includes the execution of direct debits, initiated by the payee, on a payment account of which it is not the holder, where the holder of the account thus debited does not consent to those direct debits.

36 In accordance with the settled case-law of the Court, in order to interpret a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 4 October 2018, *ING-DiBa Direktbank Austria*, C-191/17, EU:C:2018:809, paragraph 19 and the case-law cited).

37 For the purposes of Directive 2007/64, the notion of ‘payment services’ is defined in Article 4(3) as relating to ‘any business activity listed in the Annex’. Point 3 of that annex states that that notion covers the execution of ‘payment transactions’, which in accordance with Article 4(5) of that directive are acts, 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. In accordance with the first indent of point 3 of that annex, those transactions include the execution of direct debits, including one-off direct debits. A ‘direct debit’ is defined in Article 4(28) of that directive, in essence, as ‘a 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’ and the notion of ‘payer’ is defined in Article 4(7), *inter alia*, as ‘a natural or legal person who holds a payment account and allows a payment order from that payment account’.

38 It follows from those provisions that the execution of direct debits initiated by the payee on an account of which it is not the holder comes within the notion of ‘payment services’ in Article 2(1) of Directive 2007/64, even in the absence of any underlying obligations between the payer and the payee, where the payer, as holder of the



payment account thus debited, consented to those direct debits. However, those provisions do not in themselves, in the absence of any reference to that effect, make it possible to establish clearly whether the execution of direct debits by the payee on an account of which it is not the holder also comes within that notion where the holder of the debited account did not consent to those direct debits.

- 39 In those circumstances, it is appropriate to consider the context surrounding the notion of ‘payment services’ and the objectives pursued by that directive.
- 40 With regard to the context, it must be stated that the execution of direct debits on a payment account in the absence of the consent of the holder of that account is not among the payment transactions which Article 3 of Directive 2007/64 excludes from the scope of that directive.
- 41 In addition, it should be pointed out that a number of provisions in Directive 2007/64 are intended to govern ‘unauthorised payment transactions’, a concept which, in accordance with Article 54(1) and (2) of that directive, covers transactions executed in the absence of the payer’s consent. The same is true as regards Article 42(5)(d) of that directive which states that the information and conditions which must be provided to the payment service user when a framework contract is concluded include how and within what period of time that user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction as well as information on the payment service provider’s liability for unauthorised payment transactions, and a similar obligation to provide information is, moreover, laid down by Article 37(2) of that directive for single payment transactions.
- 42 Similarly, first of all, Article 58 of Directive 2007/64 relates to the notification of unauthorised or incorrectly executed payment transactions. Next, Article 59 of that directive concerns, in essence, the allocation of the burden of proof where a payment service user denies having authorised a payment transaction which has been executed. Finally, Articles 60 and 61 of that directive deal respectively with the liability of the payer’s payment service provider and the payer’s own liability in the event of unauthorised payment transactions.
- 43 If the fact that the holder of the debited payment account did not consent to the execution of a direct debit on that account meant that such a transaction could be excluded from the notion of ‘payment services’ in Article 2(1) of Directive 2007/64 and, consequently, from the scope of that directive, those provisions, in so far as they concern unauthorised payment transactions, would be devoid of any meaning or practical effect.
- 44 It is apparent from the context surrounding that notion that it must be interpreted to the effect that it includes the execution of direct debits initiated by the payee on an



account of which it is not the holder, even where the holder of the debited account did not consent to those direct debits.

- 45 That interpretation is supported by the objectives pursued by Directive 2007/64. Thus recitals 3 and 4 of that directive state, in essence, that the coexistence of national provisions and an incomplete EU framework in the area of the payment services markets of the Member States give rise to confusion and a lack of legal certainty, for which reasons it is vital to establish at EU level a modern and coherent legal framework for payment services, which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward, in particular in terms of safety and efficiency, as compared with the present national systems.
- 46 In that sense, recital 31 of that directive states, in essence, that, in order to reduce the risks and consequences of unauthorised or incorrectly executed payment transactions, the payment service user should inform the payment service provider as soon as possible about any contestations concerning such transactions. Recital 35 of that directive also states that provisions should be made for the allocation of losses in the case of unauthorised payment transactions.
- 47 If unauthorised payment transactions, such as the direct debits at issue in the main proceedings, were excluded from the scope of Directive 2007/64, not only would part of those recitals be meaningless, but the achievement of the objectives pursued by that directive, in those recitals, would also be undermined. Such an exclusion would deprive market players of the protection which that directive, by introducing provisions laying down uniform rules at EU level for certain consequences of unauthorised payment transactions, is specifically intended to offer them where such payment transactions are at issue.
- 48 In the light of all the foregoing considerations, the answer to the first question is that Article 2(1) of Directive 2007/64 must be interpreted to the effect that the notion of ‘payment services’, for the purposes of that provision, includes the execution of direct debits, initiated by the payee, on a payment account of which it is not the holder, where the holder of the account thus debited does not consent to those direct debits.

The second question

- 49 By its second question, the referring court asks, in essence, whether Article 58 of Directive 2007/64 must be interpreted to the effect that the notion of ‘payment service user’, for the purposes of that article, includes the holder of a payment account on which direct debits were executed without its consent.



- 50 Article 58 provides, in essence, that the payment service user must obtain rectification from the payment service provider only if it notifies its payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, and no later than 13 months after the debit date, subject to the condition — which is not at issue in the main proceedings — that the payment service provider has complied with certain obligations to provide information.
- 51 For the purposes of Directive 2007/64, Article 4(10) defines the term ‘payment service user’ as covering ‘a natural or legal person making use of a payment service in the capacity of either payer, payee or both’.
- 52 Thus, it is true that, in view of the wording of that provision alone, read in conjunction with Article 4(7) and (8) of that directive concerning the terms ‘payer’ and ‘payee’, the holder of a payment account which was debited without its consent does not appear to come within that notion of ‘payment service user’. However, first, as was noted in essence in paragraph 48 above, the execution of direct debits on a payment account, to which the holder of the debited account did not consent, comes within the notion of ‘payment services’ in Article 2(1) of that directive. Secondly, it is clear from the actual wording of Article 58 and its title that it is specifically intended to apply in particular to unauthorised payment transactions.
- 53 In those circumstances, the notion of ‘payment service user’ must be interpreted to the effect that it includes the holder of a payment account on which direct debits have been executed without its consent. Moreover, for the same reasons as those set out in paragraph 47 above, such an interpretation is consistent with the aims pursued by Directive 2007/64, as set out in paragraphs 45 and 46 above.
- 54 In the light of the foregoing considerations, the answer to the second question is that Article 58 of Directive 2007/64 must be interpreted to the effect that the notion of ‘payment service user’, for the purposes of that article, includes the holder of a payment account on which direct debits were executed without its consent.

Costs

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:



- 1. Article 2(1) of 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, must be interpreted to the effect that the notion of ‘payment services’, for the purposes of that provision, includes the execution of direct debits, initiated by the payee, on a payment account of which it is not the holder, where the holder of the account thus debited does not consent to those direct debits.**

- 2. Article 58 of Directive 2007/64 must be interpreted to the effect that the notion of ‘payment service user’, for the purposes of that article, includes the holder of a payment account on which direct debits were executed without its consent.**

[Signatures]

* Language of the case: Portuguese.



JUDGMENT OF THE COURT (Fourth Chamber)

2 September 2021 (*)

(Reference for a preliminary ruling – Approximation of laws – Payment services in the internal market – Directive 2007/64/EC – Articles 58 and 60 – Payment service user – Notification of unauthorised payment transactions – Liability of the payment service provider for those transactions – Action for liability brought by the guarantor of a payment service user)

In Case C-337/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 16 July 2020, received at the Court on 23 July 2020, in the proceedings

DM,

LR

v

Caisse régionale de Crédit agricole mutuel (CRCAM) – Alpes-Provence,

THE COURT (Fourth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, N. Piçarra, D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the French Government, by N. Vincent and E. de Moustier, acting as Agents,
- the Czech Government, by M. Smolek, J. Vláčil and J. Očková, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by F. Meloncelli, avvocato dello Stato,



– the European Commission, by H. Tserepa-Lacombe and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 July 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 58 of 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 (OJ 2007 L 319, p. 1).
- 2 The request has been made in proceedings between, on the one hand, DM, as manageress of the company Groupe centrale automobiles ('GCA'), and LR, as joint and several guarantor of GCA, and, on the other hand, the caisse régionale de Crédit agricole mutuel d'Alpes-Provence ('CRCAM') concerning the application of the latter's contractual liability under the general law for breach of its duty of care.

Legal context

European Union law

- 3 Recital 1 of Directive 2007/64 stated as follows:

'It is essential for the establishment of the internal market that all internal frontiers in the [European Union] be dismantled so as to enable the free movement of goods, persons, services and capital. The proper operation of the single market in payment services is therefore vital. At present, however, the lack of harmonisation in this area hinders the operation of that market.'

- 4 Recital 4 of that directive states:

'It is vital, therefore, to establish at [EU] level a modern and coherent legal framework for payment services, whether or not the services are compatible with the system resulting from the financial sector initiative for a single euro payments area, which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer cost, safety and efficiency, as compared with the present national systems.'



5 Recital 31 of Directive 2007/64 was worded as follows:

‘In order to reduce the risks and consequences of unauthorised or incorrectly executed payment transactions the payment service user should inform the payment service provider as soon as possible about any contestations concerning allegedly unauthorised or incorrectly executed payment transactions provided that the payment service provider has fulfilled his information obligations under this Directive. If the notification deadline is met by the payment service user, he should be able to pursue those claims within the prescription periods pursuant to national law. This Directive should not affect other claims between payment service users and payment service providers.’

6 Recital 47 of that directive stated as follows:

‘The payer’s payment service provider should assume liability for correct payment execution, including, in particular, the full amount of the payment transaction and execution time, and full responsibility for any failure by other parties in the payment chain up to the account of the payee. As a result of that liability the payment service provider of the payer should, where the full amount is not credited to the payee’s payment service provider, correct the payment transaction or without undue delay refund to the payer the relevant amount of that transaction, without prejudice to any other claims which may be made in accordance with national law. This Directive should concern only contractual obligations and responsibilities between the payment service user and his payment service provider. ...’

7 Article 1(2) of Directive 2007/64 provided:

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

8 Article 2 of that directive was worded as follows:

‘1. This Directive shall apply to payment services provided within the [European Union]. However, with the exception of Article 73, Titles III and IV shall apply only where both the payer’s payment service provider and the payee’s payment service provider are, or the sole payment service provider in the payment transaction is, located in the [European Union].

2. Titles III and IV shall apply to payment services made in euro or the currency of a Member State outside the euro area.

3. Member States may waive the application of all or part of the provisions of this Directive to the institutions referred to in Article 2 of Directive 2006/48/EC [of the



European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ 2006 L 177, p. 1)] with the exception of those referred to in the first and second indents of that article.’

9 Article 4 of Directive 2007/64 provided:

‘For the purposes of this Directive, the following definitions shall apply:

...

7. “payer” means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;

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

...

10. “payment service user” means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

...’

10 Article 51(1) of that directive provided:

‘Where the payment service user is not a consumer, the parties may agree that Article 52(1), Article 54(3), and Articles 59, 61, 62, 63, 66 and 75 shall not apply in whole or in part. The parties may also agree on a time period different from that laid down in Article 58.’

11 Article 58 of Directive 2007/64 was worded as follows:

‘The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, including that under Article 75, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Title III.’

12 Article 59(1) of that directive provided:

‘Member States shall require that, where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his payment service provider to prove that the



payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

...’

13 Article 60 of that directive was worded as follows:

‘1. Member States shall ensure that, without prejudice to Article 58, in the case of an unauthorised payment transaction, the payer’s payment service provider refunds to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

2. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his payment service provider.’

14 The first and second subparagraphs of Article 75(1) of that directive provided:

‘1. Where a payment order is initiated by the payer, his payment service provider shall, without prejudice to Article 58, Article 74(2) and (3), and Article 78, be liable to the payer for correct execution of the payment transaction, unless he can prove to the payer and, where relevant, to the payee’s payment service provider that the payee’s payment service provider received the amount of the payment transaction in accordance with Article 69(1), in which case the payee’s payment service provider shall be liable to the payee for the correct execution of the payment transaction.

Where the payer’s payment service provider is liable under the first subparagraph, he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.’

15 Article 86(1) of Directive 2007/64 provided:

‘Without prejudice to Article 30(2), Article 33, Article 34(2), Article 45(6), Article 47(3), Article 48(3), Article 51(2), Article 52(3), Article 53(2), Article 61(3), and Articles 72 and 88 in so far as this Directive contains harmonised provisions, Member States shall not maintain or introduce provisions other than those laid down in this Directive.’

16 Directive 2007/64 was replaced by Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU



and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35, and corrigendum OJ 2018 L 102, p. 97).

- 17 Article 71(1), Article 73(1), Article 89(1) and Article 107(1) of Directive 2015/2366 correspond, respectively and in essence, to Article 58, Article 60(1), the first and second subparagraphs of Article 75(1) and Article 86(1) of Directive 2007/64.

French law

- 18 Article L. 133-18 of the Code monétaire et financier (Monetary and Financial Code), in the version resulting from Order No 2009-866 of 15 July 2009 on the conditions governing the supply of payment services and creating payment institutions (JORF of 16 July 2009, text No 13) ('the Monetary and Financial Code'), provides:

'In the case of an unauthorised payment transaction reported by the user under the conditions prescribed in Article L. 133-24, the payment service provider shall refund to the payment service user forthwith the amount of the unauthorised payment transaction and, where applicable, shall restore the payment account that had been debited with that amount to the situation that would have existed if the unauthorised payment transaction had not taken place.

The payer and his payment service provider may decide on additional compensation on a contractual basis.'

- 19 Article L. 133-24 of the Monetary and Financial Code is worded as follows:

'The payment service user shall notify his payment service provider without undue delay of any unauthorised or incorrectly executed payment transactions and no later than 13 months after the debit date, failing which he or she will be time-barred, unless the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Book III, Title I, Chapter IV.

Except where the user is a natural person acting otherwise than for business or professional purposes, the parties may decide to derogate from this article.'

- 20 Article 1147 of the Civil Code, in the version applicable to the dispute in the main proceedings ('the Civil Code') states:

'The party on whom an obligation is imposed shall be ordered, when appropriate, to pay damages, either by reason of the non-performance of the obligation, or because of delayed performance, whenever he or she cannot demonstrate that the cause of non-performance is external and cannot be attributed to him or her, and that there was no bad faith on his or her part.'



21 Article 2313 of the Civil Code provides:

‘A guarantor may raise, as against the creditor, all defences which are available to the principal debtor and are inherent in the debt;

However, a guarantor may not raise defences which are purely personal to the debtor.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 On 22 December 2008, the CRCAM granted GCA a current account credit facility guaranteed by a joint and several guarantee provided by LR.

23 After terminating this credit facility, the CRCAM brought proceedings against LR, as guarantor, for payment. LR maintained that, by making transfers to third parties without the authorisation of GCA, the CRCAM had breached its duties and that the amount of those transfers should be deducted from the sums claimed from him.

24 On the basis of Article L. 133-24 of the Monetary and Financial Code, the Cour d’appel d’Aix-en-Provence (Court of Appeal, Aix-en-Provence, France) considered that LR’s objections were inadmissible, since he had not respected the 13-month period laid down for that purpose under that provision, and that they were time-barred in respect of those challenges.

25 In the appeal brought before the Cour de cassation (Court of Cassation, France), LR notes that, pursuant to Article L. 133-24 of the Monetary and Financial Code, he is barred from challenging those transfers, since he did not respect the 13-month period laid down in that regard.

26 Nevertheless, he maintains that the immediate repayment of unauthorised payment transactions reported by the user of a payment service to a bank, laid down in Article L. 133-18 of the Monetary and Financial Code, does not preclude that bank from being held liable under the general law where it has breached its duty of care.

27 According to LR, the transfers at issue in the main proceedings made by the CRCAM without GCA’s authorisation constitute a breach of contract, which must be remedied on the basis of Article 1147 of the Civil Code, since the objection which he thus raises is not personal to that company, but also concerns him directly.

28 LR takes the view that the Cour d’appel d’Aix-en-Provence (Court of Appeal, Aix-en-Provence) infringed, inter alia, Article 1147 of the Civil Code by holding that his challenges to the sums, which were the subject of the transfers at issue in the main proceedings, were inadmissible as being time-barred, on the ground that the



operation of the account at issue in the main proceedings was governed by the provisions of the Monetary and Financial Code.

29 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is Article 58 of Directive 2007/64 ... to be interpreted as establishing a liability regime for unauthorised or incorrectly executed payment transactions made by payment service providers, precluding any action under the ordinary rules of civil liability in respect of the same acts for breach by that provider of the obligations imposed on him or her by national law, in particular where the payment service user fails to inform the payment service provider of the unauthorised or incorrectly executed payment transaction within 13 months of the date of debit?
- (2) If the answer to the first question is in the affirmative, does that same article preclude the payment service user’s guarantor from invoking the ordinary rules of civil liability in respect of the same facts against the payment service provider, beneficiary of the guarantee, in order to challenge the amount of the secured debt?’

Consideration of the questions referred

The first question

- 30 By its first question, the referring court asks, in essence, whether Article 58 and Article 60(1) of Directive 2007/64 must be interpreted as precluding a payment service user from being able to trigger the liability of the provider of those services on the basis of a liability regime other than that provided for by those provisions, in the case where that user has failed to fulfil his or her obligation to notify laid down in that Article 58.
- 31 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part. The origins of a provision of EU law may also provide information relevant to its interpretation (judgment of 24 March 2021, *MCP*, C-603/20 PPU, EU:C:2021:231, paragraph 37 and the case-law cited).
- 32 In the first place, as regards, first, the wording of paragraph 1 of Article 60 of Directive 2007/64, under the heading ‘Payment service provider’s liability for unauthorised payment transactions’, it must be stated that it provides that Member



States must ensure that, without prejudice to Article 58 of that directive, in the case of an unauthorised payment transaction, the payment provider refunds to the payer immediately the amount of that transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

- 33 Second, Article 58 of that directive, to which reference is made in Article 60(1) thereof, imposes on the payment service user a general obligation to notify any unauthorised or incorrectly executed transaction. Thus, the rectification of such a transaction is possible only if the user reports that transaction to his or her payment service provider no later than 13 months after the relevant debit date.
- 34 Accordingly, it follows from the reference made by Article 60(1) of Directive 2007/64 to Article 58 thereof, and from recital 31 of that directive, that the regime governing liability of the payment service provider in the case of unauthorised payment is subject to notification, by the user of those services, of any unauthorised transaction to that service provider.
- 35 In that regard, the expression ‘without prejudice to Article 58’ appearing in Article 60(1) of Directive 2007/64 means, as the Advocate General observed in point 40 of his Opinion, that Article 58 of that directive should not be undermined, which means that the liability of the payment service provider for unauthorised transactions cannot arise beyond the time limit laid down in that Article 58.
- 36 It follows that a user who has not reported to his or her payment service provider an unauthorised transaction, within 13 months after the debit of that transaction, cannot trigger the liability of that service provider, including on the basis of the general law and, therefore, cannot obtain repayment of that unauthorised transaction.
- 37 In the second place, the contextual interpretation of Article 60(1) of Directive 2007/64 confirms the literal interpretation of that provision.
- 38 First of all, Article 58 and Article 60 of that directive form part of Chapter 2, under the heading ‘Authorisation of payment transactions’, of Title IV, itself entitled ‘Rights and obligations in relation to the provision and use of payment services’, which comprises five chapters, and the procedure for notification within a maximum period of thirteen months applies both in the case of unauthorised transactions, referred to in Article 60 of that directive, and in the case of non-executed or defectively executed transactions, referred to in Article 75 of that directive.
- 39 In the broad logic of that liability regime, the obligation of the payment service user to notify any unauthorised transaction is the condition for that regime to be able to apply for the benefit of the user, otherwise referred to as the payer in certain provisions of Directive 2007/64.



- 40 Next, Article 59 of that directive includes, in the regime liability in the case of unauthorised transactions, a mechanism for the burden of proof which is favourable to the payment service user. In essence, the burden of proof lies with the payment service provider, who must prove that the transaction has been authenticated, accurately recorded and entered in the accounts. In practice, the system of proof set by that Article 59 leads, once the notification laid down in Article 58 of that directive has been carried out within the period prescribed therein, to make the payment service provider subject to an immediate repayment obligation, in accordance with Article 60(1) of that directive.
- 41 It should be noted that Article 86 of Directive 2007/64, under the heading ‘Full harmonisation’, provides that ‘without prejudice to [several provisions of that directive which it sets out] in so far as this Directive contains harmonised provisions, Member States shall not maintain or introduce provisions other than those laid down in this Directive’. None of Articles 58, 59 and 60 of that directive is among the provisions in respect of which Article 86 grants Member States freedom of action in their implementation.
- 42 It follows that the liability regime for payment service providers laid down in Article 60(1) of Directive 2007/64 and in Articles 58 and 59 of that directive has been the subject of full harmonisation, with the result that the Member States cannot maintain a parallel liability regime in respect of the same operative event.
- 43 In the third place, the teleological interpretation of Article 58 and of Article 60(1) of Directive 2007/64 supports the literal and contextual interpretations of those provisions.
- 44 As the Advocate General observed in point 58 of his Opinion, it is apparent in particular from recitals 1 and 4 of that directive that the EU legislature sought to create a single market for payment services by replacing the 27 existing national systems, the coexistence of which gave rise to confusion and suffered from a lack of legal certainty, with a harmonised legal framework defining the rights and obligations of payment service users and payment service providers.
- 45 The harmonised liability regime for unauthorised or incorrectly executed operations established by Directive 2007/64 could be placed in competition with an alternative liability regime laid down under national law, based on the same facts and the same basis, only on condition that the regime thus harmonised is not adversely affected and the objectives and effectiveness of that directive are not undermined.
- 46 It follows that a competing liability regime which would allow the payment service user to trigger the liability of the provider of such services for that transaction beyond the period of 13 months and without having notified the unauthorised transaction concerned would be incompatible with Directive 2007/64.



- 47 In the fourth place, the background to Directive 2007/64 reinforces the interpretation which follows from a literal, contextual and teleological interpretation of Article 60(1) of that directive.
- 48 As the Advocate General observed in points 44 to 46 of his Opinion, it soon became apparent, during the legislative process which led to the adoption of Directive 2007/64, that the introduction of a uniform period for notification by the payment service user, in the event of unauthorised transactions or non-executed or incorrectly executed transactions, was indispensable in order to guarantee legal certainty for the user of those services and their provider.
- 49 In this respect, both the Presidency of the Council of the European Union, by its proposals made on 15 June 2006 (8623/06 ADD), and the European Parliament, in particular in its report of 20 September 2006 on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market, amending Directives 97/7/EC, 2000/12/EC and 2002/65/EC (COM(2005) 603 – C6-0411/2005 -2005/0245(COD)), and the European Economic and Social Committee, in its Opinion of 23 December 2006 on the matter of ‘Implementing the Community Lisbon programme: Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 97/7/EC, 2000/12/EC and 2002/65/EC’ (COM(2005) 603 final), demonstrated the need to ensure such legal certainty and, to that end, to provide that the payment transaction must be definitive upon expiry of the period for notification by the payment service user.
- 50 The EU legislature therefore chose to introduce the obligation to notify unauthorised or incorrectly executed transactions into a separate provision, in this case Article 58 of Directive 2007/64, which imposes a maximum period of 13 months, and to provide, in the provision relating to the liability of the payment service provider, namely Article 60 of that directive, an express reference to that obligation.
- 51 In that way, the EU legislature made, in as clear a manner as possible, the link between the liability of the payment service provider and the observance by the user of those services of the maximum period of 13 months to notify any unauthorised transaction in order to be able, therefore, to trigger the liability of that service provider. In so doing, it also made the unequivocal decision not to allow that user, upon expiry of that period, to bring an action for liability against that provider in the case of an unauthorised transaction.
- 52 It follows from all of the foregoing that the answer to the first question is that Article 58 and Article 60(1) of Directive 2007/64 must be interpreted as precluding a payment service user from being able to trigger the liability of the provider of those



services on the basis of a liability regime other than that provided for by those provisions, in the case where that user has failed to fulfil his or her obligation to notify laid down in that Article 58.

The second question

- 53 By its second question, the referring court asks, in essence, whether, if the answer to the first question is in the affirmative, Article 58 and Article 60(1) of Directive 2007/64 must be interpreted as precluding the guarantor of a payment service user from relying, by reason of the failure of the payment service provider to fulfil his or her obligations relating to an unauthorised transaction, on the civil liability of such a provider, the beneficiary of the guarantee, in order to challenge the amount of the guaranteed debt, in accordance with a national contractual liability regime under the general law.
- 54 It should be noted, first, that Article 1(2) of Directive 2007/64 states that that directive lays down the respective rights and obligations of payment service users and payment service providers in relation to the provision of such services as a regular occupation or business activity, in accordance with recital 47 thereof, according to which that directive concerns only ‘contractual obligations and responsibilities between the payment service user and his payment service provider’.
- 55 Second, according to Article 2 of that directive, the latter is applicable to payment services provided within the European Union, it being specified that Title IV of that directive, which contains Articles 58 to 60 thereof, is to apply only where both the payer’s payment service provider and that of the beneficiary are, or the sole payment service provider intervening in the payment transaction is, located in the European Union.
- 56 It is thus apparent from those provisions that Directive 2007/64 concerns the relationship between the payment service user and the provider of those services, without any provision of that directive referring to the guarantor of a payment service user.
- 57 In that regard, Article 4.10 of that directive defines the payment service user as a natural or legal person making use of a payment service in the capacity of either payer or payee, or both. For their part, points 7 and 8 of that article define ‘payer’ and ‘payee’ as, respectively, a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order, and a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction.



- 58 A contract of guarantee is a separate contract from that which binds the creditor and the debtor, by which the guarantor, who is a third party to that contractual relationship, has, as his or her role, to guarantee to the creditor, in this case, the payment service provider, payment of what the debtor, in this case, the payment service user, may have to pay to the latter, under the guaranteed obligation, which consists of the debt owed by the debtor to the creditor.
- 59 In this respect, the guarantor is not covered by the concept of ‘payment service user’, his or her role not being even close to that of a ‘payer’ or to that of a ‘payee’ within the meaning of Article 4.7 and 4.8 of Directive 2007/64.
- 60 Thus, that directive imposes rights and obligations only with regard to the payment service providers and the users of such services and does not cover the situation of the guarantor of such users.
- 61 As regards the regime for the liability of the payment service provider laid down in Article 60(1) of Directive 2007/64, that provision refers to the payer only, as the beneficiary of the repayment of an unauthorised transaction.
- 62 For its part, Article 58 of that directive imposes the obligation of notification provided by it on the payment service user alone, provided that, in accordance with Title III of that directive, the payment service provider has provided or made available to that user the information on the unauthorised or incorrectly executed payment transaction.
- 63 Thus, as the Advocate General observed, in essence, in point 86 of his Opinion, the liability regime provided for in Article 60(1) of Directive 2007/64 is based on a balance between the obligation to provide information, which is borne by the payment service provider, and the obligation to notify any unauthorised transaction within a period of 13 months, which is imposed on the payment service user, which makes it possible to trigger the strict liability of that service provider, with no requirement for that user to prove fault or negligence.
- 64 Consequently, in order to trigger the liability of a payment service provider by reason of unauthorised transactions by the user of such services, the guarantor of a user cannot benefit from the liability regime provided for in Article 60(1) of Directive 2007/64, but must have recourse to the possibilities afforded to him or her under national law. Accordingly, the guarantor cannot be required to comply with the obligation to notify such operations laid down in Article 58 of that directive.
- 65 The view of the French and Czech Governments that there would be a risk that the provisions of Directive 2007/64 might be circumvented if the obligation to notify unauthorised transactions was not imposed on the guarantor of a payment service user cannot be accepted.



- 66 As is apparent from paragraphs 58 to 60 of this judgment, a contract of guarantee between a payment service provider and a guarantor is not governed by the provisions of Directive 2007/64 or, indeed, by those of any other instrument of EU law. Such a contract continues therefore to be subject to the rights and obligations established under the applicable national law.
- 67 As the Advocate General observed in point 94 of his Opinion, if the applicable national law so provides, the payment service provider may be held liable for his or her negligence in the execution of a payment transaction, in particular if he or she has failed to verify that that transaction has in fact been authorised by the payment service user, in so far as such negligence has caused loss to a third party, such as the guarantor.
- 68 In that regard, the possibility for the guarantor to rely on the provisions of national law to reduce his or her obligations toward the creditor benefiting from the guarantee, in the event of negligence on the part of that creditor in the execution of a payment transaction, does not affect in any way the contractual relationship established between the creditor and the debtor, respectively, the payment service provider and the user of such services, which, for its part, is governed by the provisions of Directive 2007/64.
- 69 It follows from the foregoing that the answer to the second question is that Article 58 and Article 60(1) of Directive 2007/64 must be interpreted as not precluding the guarantor of a payment service user from relying, by reason of a failure on the part of the payment service provider to fulfil its obligations relating to an unauthorised transaction, on the civil liability of such a provider, which is entitled to the guarantee, in order to challenge the amount of the guaranteed debt, in accordance with a contractual liability regime under the general law.

Costs

- 70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. Article 58 and Article 60(1) of 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 must be interpreted as precluding a payment service user from being able to trigger**



the liability of the provider of those services on the basis of a liability regime other than that provided for by those provisions, in the case where that user has failed to fulfil his or her obligation to notify laid down in that Article 58.

- 2. Article 58 and Article 60(1) of Directive 2007/64 must be interpreted as not precluding the guarantor of a payment service user from relying, by reason of a failure on the part of the payment service provider to fulfil its obligations relating to an unauthorised transaction, on the civil liability of such a provider, which is entitled to the guarantee, in order to challenge the amount of the guaranteed debt, in accordance with a contractual liability regime under the general law.**

[Signatures]

* Language of the case: French.