

“PAYMENT SYSTEMS”

COM(2003) 718 final Concerning a new legal framework for payments in the internal market Provisional comments from the Belgian authorities

You will find below the principal remarks made by Belgium based on current (and planned) national legislation relating to the matter under examination by the Commission. This document therefore goes back over the initial reactions of our authorities while waiting for, and subject to, new concrete initiatives from the Commission.

As for the document containing the definitions, Belgium must, in view of the series of delays and the necessity of consulting the various national authorities, express its reservations until it has carried out the necessary examinations.

I GENERAL REMARKS

A. Pertinence of the subject

The improvement of a unified payment area for payments other than in cash within the internal market such as is planned by the Commission seems pertinent and responds to the economic interests of our country.

We can furthermore profit from the opportunity to create a more effective framework and better conditions which can only favour the extension of such electronic payments.

This is why Belgium has taken great care over the transposition of the Commission's Recommendation 97/489/CE of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder.

The establishment of the internal market for consumers cannot take place unless the payment systems within the European Union are subject to *noticeable improvement* in terms of efficiency, security, cost and user protection. In this context, we give the Commission's initiative a favourable welcome.

However, we are mindful of the fact that the improvement of cross-border payment systems should *not have negative consequences* for domestic payment systems. We are thinking in particular of the increase in the price of domestic payments the disappearance of certain methods of payment and the reduction, through possible maximum harmonisation, of the level of protection currently enjoyed by consumers within their own country.

We must point out that access to financial services currently constitutes a fundamental right within our society. Belgium has created a legal framework for a universal banking service guaranteeing a series of basic services such as transfers, deposits, withdrawals and provision of statements (see the Belgian law of 24 March 2003 establishing a universal banking service).

Be that as it may, our country hopes to maintain this national legal framework, but remains open to greater harmonisation on a European level. In this respect, it is perhaps desirable that the Commission should enter into consultations and initiate new studies.

B. The European Commission's approach

1. Mutual recognition or harmonisation?

The chosen path is that of harmonisation, which seems to us to be a fortunate choice. Indeed, it might be feared that the unrestricted provision of services on the basis of mutual recognition would not present enough of a guarantee to gain sufficient confidence on the part of consumers and businesses.

2. Choice of legal instrument

Resorting to regulation (an instrument imposing direct restrictions on Member States) is justified by the following considerations: on the one hand, the financial sector is traditionally regulated; on the other, so that there is no restriction on the European market, it is necessary to achieve a high degree of harmonisation.

The principal advantage of regulation is as follows. A high level of harmonisation and legal certainty may be achieved within the European market, without it being necessary to envisage transposition (but it may nevertheless be necessary to adapt our legislation). On the other hand, the path of regulation also presents a risk: it is unlikely that, having adopted a regulation, the EU will be able to back-pedal and treat the same matter in a more flexible way, e.g. by means of a directive.

In general terms, the reasoning justifying the use of a regulation seems acceptable on condition that it provides a *heightened level of consumer protection that does not affect the increased protection introduced at national level*. One might, however, doubt the necessity of going ahead with a regulation on certain specific questions where the Commission currently invites Member States to communicate the results of their studies, where it submits rather diverse or even sometimes rather divergent options to them; in short, where the Commission itself does not seem very sure which measure to adopt. The question of the need for regulation will probably be clarified during the course of negotiations.

In addition, in view of the rapid growth of the payment methods sector, must these regulations regulate everything in detail while at risk of having to be modified on a continual basis?

3. The recipient of the payment service: who should benefit from European rules?

At this stage, the Commission has touched upon a series of questions relating to payments within the EU. Regarding certain points, but not all, it is already submitting preliminary draft regulatory instrument. With regard to other points, the Commission is limiting itself to initiating discussions.

It is therefore premature to settle once and for all the question of knowing who should be able to benefit from these European rules.

Later on, the Commission will probably propose a wording to define the section of the public being targeted. One may suppose that it will at least be targeted at consumers (in the European sense of the term). With regard to this, it seems to us a good opportunity to extend the range of persons so that it covers at least all natural persons, with the purpose of the transaction having little importance: either private or professional requirements. This solution is more certain. Indeed, may we hope that the payment service provider might be encouraged to carry out investigations into the reasons given by the recipients of this service, in order to establish if he has acted with professional intentions or not?

Furthermore, it is desirable that the merchant as a natural person should be better protected. An extension of the field of application to legal persons does not seem necessary. This position corresponds to current circumstances in the market and to several pieces of current Belgian legislation (cfr. Art. 2,4°, of the Belgian law of *11 March 2003 on certain legal aspects of the services of the information society*), an extension of the Dutch and German legal framework in terms of protection against unlawful clauses for categories of persons other than private consumers.

4. Information as an instrument of the recipient's confidence

As in other recent legal instruments, the Commission favours the provision of information.

In a field where both European legislation and that of Member States contain imperative measures that aim to protect the consumer, it is important to make sure that the planned regulation does not undermine this protection. Furthermore, relationships between providers and recipients of financial services sometimes have a tendency to become one-sided. For example, the situation arises where service providers give notification of new conditions which are immediately applicable to current contracts, without concerning themselves overmuch with the question of the recipient's actual assent or the balance of rights and obligations between the parties. Without calling into question the usefulness of preliminary information, this solution may not, however, be prejudicial to guarantees in terms of a balance within contractual relationships.

In addition, we can see that several successive European instruments, whether horizontal or vertical, contain measures that aim to impose a duty of information. This has, then, been carried out in successive layers. A minimum level of coordination is obvious, as much to achieve clarity of legislation as from a concern to avoid placing excessive obligations on service providers.

5. Provisional summary

Subject to that which is explained above, and more particularly under points 3 and 4, the Commission's approach is, on the whole, to be welcomed.

II ANNEXES

1. THE RIGHT TO PROVIDE THE PUBLIC WITH PAYMENT SERVICES

The Belgian legislature has applied the dispensations from the "internal market" clause (and thus the law of the country of origin, and the system of mutual recognition is not applicable),

provided for in Article 8(1) of Directive 2000/46/CE on the taking up, pursuit and prudential supervision of the business of electronic money institutions (cfr. Article 4 of the law of 25 February 2003, which transposes Directives 2000/46/CE and 2000/28/CE of 18 September 2003).

With a view to completeness, we must point out that this departs from the principle of ‘country of origin’ advanced in Directive 2000/31/CE of 8 June 2000 on certain legal aspects of information society services and the Belgian law of 11 March 2003 on certain legal aspects of information society services.

The mutual recognition principle should not be employed without establishing harmonised minimum requirements for payment services.

The other two ways forward proposed by the Commission, i.e. introduction of an additional category of licensing for payment activities or transforming the e-money Directive into a Payment Institutions Directive can be the way to proceed, provided that:

1. The supervisory framework for non-bank PSPs is the same as the framework imposed on credit institutions (prudential supervision).
2. All PSPs are subject to supervision by the same national authority.
3. All payment services providers are subject to the same prudential rules and information obligations.
4. All PSPs are subject to the same consumer protection regime.

2. INFORMATION REQUIREMENTS

We must be attentive to the information requirements contained in other directives. For example, it is important to check the compatibility of the wording with other directives. We must ensure, especially if a regulation is used, that the information requirements contained in Directive 2002/65/CE of 23 September 2002 concerning the distance marketing of consumer financial services are repeated, since these information requirements are specific to e-commerce and certain instruments of electronic payment are information society services within the meaning of this law.

Therefore it would be a good thing to make a list of all the information requirements and to coordinate them. There is a lack of coherence as to the content of the regulations that are applicable (e-commerce, distance selling, etc.)

The text proposed by the Commission repeats, as for its content, a major part of the stipulation of its Recommendation 97/489/CE, in particular that part concerning the relationship between issuer and holder (hereafter referred to as “the Recommendation”), and is complemented by the compulsory clauses contained in the Directive on remote financial services with regard, for example, to legislation applicable to the contract and the language in which the service provider undertakes to communicate.

The following elements, which are based on the Belgian law of 17 July 2002 relating to transactions carried out by means of instruments for the electronic transfer of funds, should be **inserted** in the draft:

(3) If the conditions are modified, the user must be alerted and expressly informed of *his option to terminate the contract*.

Such a requirement should arise indirectly from Directive 93/13/EEG on unfair terms.

The user must also be able, at any moment during the life of the contract, to obtain a free hard copy of the information covering conditions. This is also provided for by the Directive on remote financial services.

(4) Information regarding the following elements, which do not appear on list (4) is necessary:

It is necessary to communicate expressly to the user to where he may telephone to report the theft or loss of his payment card, for example. The communication from the Commission clearly stipulates that the service provider is responsible if he does not put in place such a warning system and it is therefore logical to explain it in the preliminary information.

In our Belgian law on electronic payment instruments, it was expressly added during discussions in Parliament (at the request of credit institutions) that the preliminary information for payment cards must mention that the holder has the right to choose the limit according to his own needs. The issuer may, however, set a number of fixed limits from which the holder may choose, and may set maximum amounts as long as the holder is kept adequately informed. The issuer also informs the holder of his right to request modifications to these limits as well as the conditions placed on the exercise of this right.

It is indeed in the interests of both the holder and the issuer to limit as much as possible the risk of an over-large debit when the card has changed hands and the holder does not have a limit on its use, something which is very useful in such cases (see article 4, § 2, 4°, and 6, 6° of the Belgian law of 17 July 2002 relating to transactions carried out by means of instruments for the electronic transfer of funds).

(5) Periodic information obligation

The special characteristic of payment systems is that they concern a series of operations which may be subject to a framework agreement. The term “post-transaction” is in this respect scarcely realistic and, in Belgium, the legislature has decided to use, as an ‘abstract’ criterion for the regularity with which information is to be provided concerning completed transactions, the following wording : ‘in order to allow the holder to keep his expenditure up to date in a reasonable manner’.

It would be advisable to oblige the service provider to provide the holder on a regular basis with prudent advice intended to prevent any unlawful use of his payment instrument (as repeated in article 5, § 2 of the Belgian law of 17 July 2002 relating to transactions carried out by means of instruments for the electronic transfer of funds).

- *Point 4, d, final dash*, of the CE draft (p. 27) mentions the interest rates which may be applied and the method of calculating them. We must make sure that there is compatibility between the proposed European Parliament and Council directive relating to the harmonisation of the legal and administrative provisions of Member States with regard to consumer credit.

If debit interest is charged on a current account, it must be stipulated that the interest rate must be mentioned on the bank statement.

- What about the rules governing contractual constraints on the consumer regarding this subject?
- We must make sure that the communication of information does not allow the service provider, by unilateral tacit agreement, to alter the banking services he provides (see general remarks B 4.).

3. NON-RESIDENT ACCOUNTS

- It is clear that the question of non-resident accounts has a much broader scope than the strict payments field (e.g. taxation). Therefore, we suggest not covering this topic in a payments legal framework. The status of non-resident has no impact on the pricing of a payment transaction. Furthermore, Regulation 2001/2560 ensures that intra-EU payments to and from non-resident accounts are priced like corresponding domestic payments. Additional costs linked to special reporting requirements are considered as account management costs and not charged on a per transaction basis.

Note: It would be useful to have a clear definition of a non-resident (EU, non-EU or both?).

4. VALUE DATES

It would be preferable to carry out a study aimed at achieving a system that is both uniform and transparent. In a case where we are moving towards a regulation, we must take into account the principles contained in Belgian, French and German legislation. We indicate our agreement regarding the observations from the Commission regarding *value dates*; however, the solution proposed remains unsatisfactory if it is not accompanied by restrictive rules concerning *the deadline for the entry in accounts* of transactions (see the Belgian law of 10 July 1997 relating to value dates for bank transactions).

5. PORTABILITY OF BANK ACCOUNT NUMBERS

The economic impact of changing the numbering system will be quite considerable and so we have to ask ourselves if there is an actual business benefit to the customer.

6. CUSTOMER MOBILITY

Improvement in customer mobility is essential and a priority.

The measures proposed are to a large extent insufficient to ensure true customer mobility. This supposes, for example, that:

- It is prohibited to make the acquisition or maintenance of certain services, such as a credit contract, dependent on holding an account with the same institution ;
- There is an obligation to provide information in a transparent manner on the costs of closing an account before the account is opened or, at the latest, at the time it is opened.
- There are no significant penalties (charging excessive fees) for closure of an account or transfer of an account from one bank to another ;
- There is an obligation on the part of the initial bank to supervise the transfer of the account : monitoring of standing orders, transfer of incoming payments during a certain

time in the event of a change and passing on of information on the new account number to persons who have made the deposit or payment.

We can refer to change-of-address systems established or being developed in the various countries.

7. EVALUATION OF THE SECURITY OF PAYMENT INSTRUMENTS AND COMPONENTS

Mutual recognition is similarly not welcome at this stage since there is no national legislation at the moment on this issue and institutions working under stronger security criteria would not wish to be faced with weaker ones.

Therefore, it would be recommendable that the European System of Central Banks works with the payments industry as stakeholder on a co-ordinated and structured approach of security evaluation.

In this context, harmonization of existing security standards in banking should be encouraged so that all the components of a common European payments system offer the same level of security regardless of where they are used or manufactured. This will make it easier to purchase or use components for payments systems on a cross-border basis. It might prove useful in this context to draw up a joint set of requirements together with representatives from the banking industry and the ESCB.

8. INFORMATION ON THE ORIGINATOR OF A PAYMENT ORDER (SR VII of FATF)

Even if SR VII has been already partly transposed in a general provision of Belgian law, the Belgian credit institutions support the Commission's proposal to transpose SR VII directly through binding Community legislation, in order to ensure consistent and uniform application across Europe of the said rules.

At the time SR VII is transposed, we must ensure that the legislation is not applied to operators of payment systems or payment systems as such (like Target) or to the providers of intermediate services (like SWIFT). It must be applied to bodies that directly receive instructions to make payments, like banks or financial institutions (non-banks).

9. ALTERNATIVE DISPUTE RESOLUTION

- The Commission's proposal for drafting an article on alternative dispute resolution is a positive way forward.
- We must ensure that there is compatibility in terms of the wording of clauses on alternative dispute resolution in other pieces of European legislation.

10. REVOCABILITY OF A PAYMENT ORDER

The working party has already underlined the disparity existing in Belgian legislation. For electronic transfers, a payment order once given is irrevocable (art. 8, § 1st, 1st paragraph), whereas transfers or written payment orders given by legal persons may be revoked by virtue of ordinary law.

Above all, the Commission wants, by means of its Communication, to institute a system of legal certainty and fix the moment starting from which a payment order becomes irrevocable. To this effect, it is based on a twofold distinction: payment order transmitted directly by the originator to the service provider, on the one hand, and payment order transmitted by the originator via the recipient, on the other.

The principle of irrevocability once a payment order is given should be made standard for all types of payment and payment systems. Indeed, payments are being made more and more rapidly and any possible principle of irrevocability up to a certain moment will come to exist more in theory than in practice.

Exception to irrevocability : if the total amount of the transaction is not known when the order is given.

An additional subtle difference may be added for transfers with an order sheet date. In this case, it is advised to provide for a clause allowing the originator to revoke the order up to a certain date.

- it is important to clarify/recall that the rules on irrevocability should not be detrimental to any legal or contractual rights enjoyed by the user of payment services, such as the right to reimbursement in a case where the right of legal retraction is invoked (cooling-off period) or in the event of fraudulent payment by card (Art. 8 of Directive 2002/65/CE of 23 September 2002 concerning the distance marketing of consumer financial services).

- Directive 98/26/EC lays down the principle of settlement finality for payment and security settlement systems. This means that, in any case, the revocability or irrevocability of a payment order could be a matter of debate only prior to settlement finality and therefore only before the customer's order is accepted by his/her bank.

11. ROLE OF THE PAYMENT SERVICE PROVIDER IN THE CASE OF A CUSTOMER/MERCHANT DISPUTE IN DISTANCE COMMERCE

- We must refer to Art. 19 of the proposed European Parliament and Council directive relating to the harmonisation of the legal and administrative provisions of Member States with regard to consumer credit, which has given rise to a debate focusing on the separate treatment of trading services and payment services, except in the case of express financial mediation on the part of the supplier of goods or services on behalf of the lender. Harmonisation with future initiatives in terms of payment systems would then be advisable.

This solution of joint and several liability is an important instrument for reinforcing consumer protection in distance selling, e-commerce and electronic payments within the EU and for gaining the confidence of consumers in this field. On the other hand, according to the payments sector, this solution would involve enormous additional costs for consumers.

We are of the opinion that, with the exception of the case covered by Article 19 of the proposed directive on consumer credit, it is not appropriate to impose further restrictions on the economic market.

- To the two solutions proposed we could add a third, which is likely to reinforce confidence and ensure the reimbursement of the consumer in the event of non-delivery or invocation of

the right of retraction (supposing that there had been an early payment) : temporary freezing of the sums involved, to be held by a trustworthy third party, who would be subject to a legal regime comparable to that applicable to providers of certification services in connection with electronic signatures. This regime would oblige the third party offering this service, amongst other things, to offer adequate legal and technical guarantees and to establish a regime presumption of liability on his part. What is more, let us remember that in Belgium the vendor cannot demand payment before the end of the cooling-off period in a case of distance selling. On the other hand, if the vendor uses a trustworthy third party who observes the aforementioned regime, he will have to be able to demand early payment (since in this case the consumer has, if necessary, a guarantee with regard to reimbursement of the sums paid).

12. NON-EXECUTION OR DEFECTIVE EXECUTION

- The clause proposed by the Commission is similar to that provided for in Recommendation 97/489/CE and transposed as such into Belgian legislation.

- One might wonder about the feasibility of an interpretation at European level of the civil law concept of “*force majeure*”.

It does not appear desirable to list cases of *force majeure* that "are objectively out of control" of the service provider's control". *Force majeure* is a concept to be verified on a case-by-case basis and a legal list could result in an unlawful restriction on consumers' rights in certain cases. On this subject, see Directive 93/13/CEE on unfair terms and the “indicative list”, article 1,b) appendix, as well as 32.27 of the Belgian law of 14 July concerning trading practices and informing and protecting the consumer.

13. OBLIGATIONS AND LIABILITIES OF THE CONTRACTING PARTIES RELATING TO UNAUTHORISED TRANSACTIONS

- The clause proposed by the Commission is based on that provided for in Recommendation 97/489/CE, but there are nevertheless some essential remarks to be made :

two additions seem essential to us:

- In the article dealing with obligations, a clause should be added stipulating that the clauses increasing the burden of proof on the user or reducing it on the holder are prohibited and invalid. In other words, the distribution of the burden of proof as it appears, particularly in (3) and (4), is restrictive and contractual infringements are prohibited.

In practice, indeed, service providers generally use presumptions in their conditions of contract and, more often than not, it is impossible for the user to prove the opposite. With a view to preventing this, such a clause has also been inserted in the Belgian law of 17 July 2002 relating to transactions concluded by means of instruments for the electronic transfer of funds (see article 8, § 2, fourth paragraph).

- A highly important clause that is lacking in the article proposed by the Commission with regard to liability concerns the liability in principle of the issuer in a case involving the use of an instrument of payment without physical presentation or electronic identification (on this subject, see Directive on distance contracts and Article 6(3) of Recommendation 97/489).

If, for example, only the card number is communicated to the vendor (for example, Visa card) and there is no electronic identification of the cardholder or physical identification (i.e. cardholder presenting the card), the risk of such a transaction lies with the issuer (see article 8, § 4 of the Belgian law on instruments for the electronic transfer of funds).

Indeed, in such cases, (neither electronic identification nor physical presentation), the risk of fraud, forgery, etc. is very real (cf. the report by the European Commission on fraud, in which it became apparent once more that the counterfeiting of Visa cards poses the most problems). This provision was aimed firstly at encouraging issuers of payment instruments to develop secure payment systems.

- It is important to put the same regime in place, based on Recommendation 97/489/EG, for all cashless payment services (payment by card, on-line banking, etc.).

- *Legal protection for consumers, especially in the event of fraudulent use by a third party*, is an essential factor of their confidence in payment systems. The rules proposed by the Commission concerning the obligations and liabilities of the parties in the case of an unauthorised transaction should be clarified and made complete. Thus, the sending of a payment by any method (when authorised) should take place at the payment service provider's risk. Also, in the same way, the liability of the consumer for unauthorised transactions concluded between the moment when the card is stolen or lost and notification of the same must be limited except in the case of fraud or gross negligence on his part.

14. USE OF "OUR", "BEN" and "SHARE"

- We can agree on a choice of the 'OUR' option, as covered in the text proposed by the Commission. In this proposal, reference is also made to the possibility of providing for another explicit agreement between the beneficiary and his payment service provider. The question then arises as to whether such a measure would give the green light to double pricing. If the proposal is selected, it will be necessary to provide sufficient guarantees and to ensure, for example, that this information is communicated beforehand and that this agreement precedes the payment order given by the originator, in order to preserve contractual freedom.

- Belgium is in agreement with the interpretations and explanations of the various systems as presented in the note "Draft Interpretative Note on certain aspects of implementation of Article 3 of Regulation 2560/2001 and the notion of corresponding payments".

15. EXECUTION TIMES FOR CREDIT TRANSFERS

- The measures proposed concerning execution times for credit transfers are unacceptable : if the Commission wishes to make no distinction between transfers made within the internal market, the execution times for cross-border transfers must be brought in line with current execution times for domestic transfers. For Belgium, these deadlines are currently fixed at 1 day for transfers between two different banks. The Commission's proposal would therefore be a retrograde step for Belgian consumers.

This can be achieved, for example, by a staggered system.

16. DIRECT DEBITING

We prefer to wait until the 'PEDD scheme' is drawn up and finalised, but this needs to be done within a reasonable period of time.

Regulation of this subject is necessary because, currently, the system of 'direct debiting' does not operate on a cross-border basis; this is why we are asking the Commission at least to guarantee that it will produce a report (this obligation could possibly be incorporated in the draft regulation/directive). Points worthy of special attention are : a reasonable verification period (possibly with variations for domestic and foreign payments) and a prohibition of price differences not justified on economic grounds between payments made with or without an automatic payment order.

17. REMOVING BARRIERS TO PROFESSIONAL CASH CIRCULATION

- The Belgian credit institutions welcome the creation by the Commission of a working group with the cash transport industry to look for solutions in order to increase the efficiency of that activity and reduce the cost as for them, as a general principle, there should be no discrimination between cash and non-cash payments.

18. DATA PROTECTION ISSUES

Options 1 and 2 are not sufficient. Option 3 is not realistic in the short term and the directive is horizontal and thus too general.

Option 4 should be explored as this is the option that offers the best chances for short-term harmonisation of the possibilities of exchanging information for fraud prevention purposes between operators and the authorities, as well as between the operators themselves.

It must, however, be noted that, when regulation is in place, this new legal framework will have to conform with, amongst others, the proposed directive on consumer credit (cf. Recommendation of the Social and Economic Committee of 17 July 2003, in which it was stipulated that the protective rules in the basic Directive 95/46/CE are not effective with regard to the registration of bad payers).

19. DIGITAL SIGNATURES

The fact that the ICP application has not managed to establish itself on a large scale can be explained in particular by the fact that there exists no interoperability between the providers of certification (a client of service provider A cannot necessarily enter into a "dialogue" with, and verify the electronic signature of, a client of service provider B). It therefore seems essential that the Commission should make every effort to impose the use of a standard ensuring interoperability between service providers: this should promote competition between the latter and the development of ad hoc IT applications.

The ICP application is meeting with great success in the Belgian inter-bank network, Isabel!

We are surprised that the Commission document raises the problem of the different legal effects that exist between a basic electronic signature and a certified electronic signature! As a reminder, this difference results from Article 5 of the European Directive of 13 December 1999 on a Community framework for electronic signatures, which devotes two clauses (one on non-discrimination and the other on assimilation) that make a clear distinction as to the legal effects. Let us also recall that this directive (as well as Belgian law on proof) is no obstacle to the fact that an agreement proposed by a bank to its client gives full and complete legal value to a “basic electronic signature” (which is generally the case).

One may conclude that Directive 1999/93 hardly poses a problem in practical life. One can therefore observe that, in general, financial establishments do not use digital signatures, which come under non-mandatory law. On the other hand, it is customary to use PIN codes, the legal usage of which has been agreed by contractual means.

However, there is indeed a need for regulation of the technique for saving a digital signature. Practically speaking, this means, e.g., that banks must be certain that any agreement originally signed electronically will keep its probative value.

20. NETWORK SECURITY

We welcome actions and initiatives which make cyber crime a more serious offence and which look at harmonisation in this respect within and across the EU in cooperation with other jurisdictions (e.g. the United States).

The Commission suggests two options in order to put the existing obligations into practice. What are they?

21. BREAKDOWN OF A PAYMENT NETWORK

The provision of a payment network, which is the principal commitment of a Payment Service Provider, constitutes a commitment in terms of investment and not in terms of result. It is evident that a payment network needs periodic maintenance : thus, breakdowns can also be attributed to the provider.

The most harmful clauses are, for example, those pitting a merchant/vendor against a service provider, with the latter not being held responsible for the breakdown. This type of exemption clause may be unlawful, and it is advisable to intervene on this matter.

It is essential that the implications of breakdowns – transactions in which electronic processing is defective, etc. - should not be at the expense of the client or the merchant/vendor. The service provider must assume full responsibility, without prejudice to his right of recourse against third parties such as, for example, the electricity company or the company responsible for maintaining the network.
