



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 March 2023*

(Reference for a preliminary ruling – Harmonisation of laws – Payment services in the internal market – Directive 2007/64/EC – Article 47(1)(a) – Information for the payer after receipt of the payment order – Articles 58, 60 and 61 – Payment service provider’s liability for unauthorised transactions – Obligation of that service provider to refund unauthorised transactions to the payer – Framework contracts – Obligation of that service provider to provide that payer with information relating to the payee concerned)

In Case C-351/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the justice de paix du canton de Forest (the Magistrate’s Court for the Canton of Forest, Belgium), made by decision of 13 April 2021, received at the Court on 4 June 2021, in the proceedings

ZG

v

Beobank SA,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ZG, by C. Sarli, avocate,
- Beobank SA, by D. Bracke, advocaat,
- the Belgian Government, by M. Jacobs, C. Pochet and L. Van den Broeck, acting as Agents,

* Language of the case: French.

– the Czech Government, by J. Očková, M. Smolek and J. Vláčil, acting as Agents,
– the European Commission, by T. Scharf and H. Tserepa-Lacombe, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 7 July 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 38(a) 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 ZG and Beobank SA, a Belgian banking institution, with which the applicant in the main proceedings holds a bank account, concerning two payment transactions carried out using that applicant's debit card, which the latter considers to be unauthorised transactions.

Legal context

European Union law

- 3 Recitals 1, 21, 23, 27, 40, 43 and 46 of Directive 2007/64 stated:
'(1) 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. ...
...
(21) This Directive should specify the obligations on payment service providers as regards the provision of information to the payment service users who should receive the same high level of clear information about payment services in order to make well-informed choices and be able to shop around within the EU. In the interest of transparency this Directive should lay down the harmonised requirements needed to ensure that necessary and sufficient information is given to the payment service users with regard to the payment service contract and the payment transactions. In order to promote smooth functioning of the single market in payment services, Member States should be able to adopt only those information provisions laid down in this Directive.
...'

- (23) The information required should be proportionate to the needs of users and communicated in a standard manner. However, the information requirements for a single payment transaction should be different from those of a framework contract which provides for the series of payment transactions.
- ...
- (27) The way in which the required information is to be given by the payment service provider to the payment service user should take into account the needs of the latter as well as practical technical aspects and cost-efficiency depending on the situation with regard to the agreement in the respective payment service contract. ...
- ...
- (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.
- ...
- (46) The smooth and efficient functioning of the payment system depends on the user being able to rely on the payment service provider executing the payment transaction correctly and within the agreed time. Usually, the provider is in the position to assess the risks involved in the payment transaction. It is the provider that provides the payments system, makes arrangements to recall misplaced or wrongly allocated funds and decides in most cases on the intermediaries involved in the execution of a payment transaction. In view of all those considerations, it is entirely appropriate, except under abnormal and unforeseeable circumstances, to impose liability on the payment service provider in respect of execution of a payment transaction accepted from the user, except for the payee's payment service provider's acts and omissions for whose selection solely the payee is responsible. However, in order not to leave the payer unprotected in unlikely constellations where it may remain open (*non liquet*) whether the payment amount was duly received by the payee's payment service provider or not, the corresponding burden of proof should lie upon the payer's payment service provider. As a rule, it can be expected that the intermediary institution, usually a 'neutral' body like a central bank or a clearing house, transferring the payment amount from the sending to the receiving payment service provider will store the account data and be able to furnish the latter whenever this may be necessary. Whenever the

payment amount has been credited to the receiving payment service provider's account, the payee should immediately have a claim against his payment service provider for credit to his account.'

4 Under Article 4 of that directive, entitled 'Definitions':

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

...

4. "payment institution" means a legal person that has been granted authorisation in accordance with Article 10 to provide and execute payment services throughout the [European] Community;

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;

...

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) and legal and natural persons benefiting from the waiver under Article 26;

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;

11. "consumer" means a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his trade, business or profession;

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

...'

5 Under the heading "Transparency of conditions and information requirements for payment services", Title III of that directive included Chapter 2, itself entitled 'Single payment transactions'.

- 6 Article 38 of that directive, entitled ‘Information for the payer after receipt of the payment order’, provided, in point (a) thereof:

‘Immediately after receipt of the payment order, the payer’s payment service provider shall provide or make available to the payer, in the same way as provided for in Article 36(1), the following information:

(a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;’

- 7 In Chapter 3 of Title III of Directive 2007/64, entitled ‘Framework contracts’, Article 41 thereof, entitled ‘Prior general information’, provided in paragraph 1:

‘... The information and conditions shall be given in easily understandable words and in a clear and comprehensible form, in an official language of the Member State where the payment service is offered or in any other language agreed between the parties.’

- 8 Article 47 of that directive, entitled ‘Information for the payer on individual payment transactions’, provided, in paragraphs 1 and 2 thereof:

‘1. After the amount of an individual payment transaction is debited from the payer’s account or, where the payer does not use a payment account, after the receipt of the payment order, the payer’s payment service provider shall provide the payer without undue delay in the same way as laid down in Article 41(1) with the following information:

(a) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;

(b) the amount of the payment transaction in the currency in which the payer’s payment account is debited or in the currency used for the payment order;

(c) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payer;

(d) where applicable, the exchange rate used in the payment transaction by the payer’s payment service provider, and the amount of the payment transaction after that currency conversion; and

(e) the debit value date or the date of receipt of the payment order.

2. A framework contract may include a condition that the information referred to in paragraph 1 is to be provided or made available periodically at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged.’

- 9 Article 58 of that directive, entitled ‘Notification of unauthorised or incorrectly executed payment transactions’, 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.’

- 10 Under Article 59 of that directive, entitled ‘Evidence on authentication and execution of payment transactions’:

‘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.

2. Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of his obligations under Article 56.’

- 11 Article 60 of Directive 2007/64, entitled ‘Payment service provider’s liability for unauthorised payment transactions’, provides:

‘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.’

- 12 Article 61 of that directive, entitled ‘Payer’s liability for unauthorised payment transactions’, provides in paragraphs 1 to 3 thereof:

‘1. By way of derogation from Article 60 the payer shall bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 150, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from the misappropriation of a payment instrument.

2. The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations under Article 56 with intent or gross negligence. In such cases, the maximum amount referred to in paragraph 1 of this article shall not apply.

3. In cases where the payer has neither acted fraudulently nor with intent failed to fulfil his obligations under Article 56, Member States may reduce the liability referred to in paragraphs 1 and 2 of this Article, taking into account, in particular, the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated.’

- 13 Article 86 of that directive, entitled ‘Full harmonisation’, provides in paragraph 1 thereof that ‘without prejudice to ... Article 61(3), ... 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.’

Belgian law

- 14 Article VII.18(1) of the Code of Economic Law, in the version applicable to the dispute in the main proceedings (‘the Code of Economic Law’), provides:

‘After the amount of an individual payment transaction has been debited from the payer’s account or, where the payer does not use a payment account, after the receipt of the payment order, the payer’s payment service provider shall provide the payer without undue delay and in the manner laid down in Article VII.12[(1)] with the following information:

1 a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee’.

- 15 Article VII.35 of the Code of Economic Law provides that:

‘Without prejudice to the application of Article VII. 33, the payer’s payment service provider must, in the event of an unauthorised payment transaction, after a prima facie check for fraud on the part of the payer, immediately refund to the payer the amount of that unauthorised payment transaction and, where appropriate, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place, together, where appropriate, with interest on that amount.

In addition, the payer’s payment service provider must refund any other financial consequences, in particular the amount of the costs incurred by the account holder in determining the damage to be compensated.’

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

- 16 ZG, a Belgian resident, is the holder of a bank account with Beobank, in Belgium, for which he has a debit card.
- 17 ZG spent the night of 20 to 21 April 2017 in Valencia (Spain). A first payment of EUR 100 was made at 12.35 a.m. by means of his debit card at a business the exact nature of which is disputed between the parties to the main proceedings. Thereafter, two further payments were made with that card and the same mobile payment terminal for the amounts, respectively, of EUR 991 at 1.35 a.m. and EUR 993 at 2.06 a.m. A fourth payment was made at 2.35 a.m. for an amount of EUR 994, but it was declined.
- 18 ZG does not dispute the first payment of EUR 100, but disputes the second and third payments (‘the payments at issue in the main proceedings’). He explains, before the referring court, that he no longer remembers what happened after having a drink in the business concerned. Nor does he remember the name and address of that business and claims to be the victim of fraud facilitated by the administration of a drug.

- 19 On 23 April 2017, ZG put a stop on his bank card and, on 29 April of that year, he filed a complaint with the police in Brussels (Belgium) for theft and fraudulent use of that bank card.
- 20 Before the justice de paix du canton de Forest (the Magistrate's Court for the Canton of Forest, Belgium), which is the referring court, the applicant in the main proceedings seeks, in addition to payment of damages in the amount of EUR 500, reimbursement of the payments at issue in the main proceedings, amounting to EUR 1 984, which he maintains were 'unauthorised', within the meaning of Article VII.35 of the Code of Economic Law.
- 21 Beobank disputes the facts as described by ZG and refuses to make that refund, contending that the transactions were authorised or that, at the very least, ZG was grossly negligent.
- 22 According to the referring court, it is important to know who benefited from those payments. As a general rule, fraud committed by a third party by means of the victim's debit card allows the fraudster to make purchases or cash withdrawals. In the present case, according to ZG's claims, the fraud benefited a third party's bank account.
- 23 The referring court states that, following the claim submitted by ZG's counsel, Beobank provided only the digital reference and the geolocation of the payment terminal concerned without stating the identity of the payee of the payments at issue in the main proceedings other than by the following entry: 'COM SU VALENCIA ESP'. The referring court explains that the case in the main proceedings was adjourned following the hearing of the pleadings so as to enable Beobank to provide clarification in that regard, but that Beobank failed to do so, stating that it had received no additional information from ATOS, the manager of that payment terminal. According to Beobank, it is the payee's bank in Spain, Sabadell, which refuses to pass on the information identifying the trader concerned.
- 24 Referring to Article VII.18 of the Code of Economic Law, the referring court considers that it is necessary to establish whether, under that provision, as regards the provision of that information, the banking institution concerned was under an obligation to use best endeavours or an obligation to achieve a certain result. If the Court's interpretation permitted the conclusion that Beobank had failed to fulfil its obligation, it would follow, according to the referring court, that that court 'may draw the appropriate conclusions as to [the bank's obligation] to refund the disputed transactions and/or the damages claim for the lost opportunity to recoup the funds from the third party'.
- 25 Before the referring court, Beobank maintains that Article VII.18 of the Code of Economic Law merely places it under a best endeavours obligation towards the banking institution concerned, requiring it to supply only the information provided by its correspondent, leaving it to the consumer to approach that correspondent in the event that the information is insufficient. In the present case, Beobank invites the referring court, where appropriate, to 'issue a judicial invitation' to Sabadell to produce the documents enabling it to identify the payee of the transaction. If no satisfactory response is received, it would be appropriate, according to Beobank, to order an investigation, under letters rogatory, to hear Sabadell's members. In support of its argument, Beobank relies on the words 'where appropriate' used in the provision concerned. ZG, on the other hand, maintains that Beobank must be held liable for Sabadell's failure to communicate the information.

26 In those circumstances, the justice de paix du canton de Forest (Magistrate’s Court, Forest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Under Article 38(a) of Directive 2007/64, is the [payer’s] payment service provider under a best endeavours obligation or an obligation of result regarding the provision of “information relating to the payee”?’
- (2) Does the “information relating to the payee” referred to in that provision include information from which the natural or legal person that received the payment can be identified?’

Preliminary observations

- 27 In the first place, it should be noted that the request for a preliminary ruling concerns the interpretation of Article 38(a) of Directive 2007/64, a provision forming part of Chapter 2 of that directive, which, in Title III, headed ‘Transparency of conditions and information requirements for payment services’, governed ‘Single payment transactions’.
- 28 As stated in Article 35(1) of Directive 2007/64, Chapter 2 applied to ‘single payment transactions not covered by a framework contract’.
- 29 As is apparent from the request for a preliminary ruling, ZG holds an account with Beobank for which he has a debit card, by which the payments at issue in the main proceedings were made.
- 30 In those circumstances, as Beobank, the Czech Government and the European Commission submit, the payments at issue in the main proceedings do not appear to be ‘single payment transactions’ within the meaning of Chapter 2 of Title III of Directive 2007/64, but as falling within the scope of Chapter 3, entitled ‘Framework contracts’, of Title III of that directive.
- 31 Chapter 3 applied, in accordance with Article 40 of that directive, to payment transactions covered by a framework contract. A ‘framework contract’ was defined, in Article 4(12) of Directive 2007/64, as a ‘payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account’.
- 32 Therefore, it is appropriate to start from the premiss that Article 47(1)(a) of Directive 2007/64 was applicable to the payments at issue in the main proceedings.
- 33 It follows that, in order to give a useful answer to the referring court, those questions must be understood as relating to the interpretation of Article 47(1)(a) of Directive 2007/64 and not to the interpretation of Article 38(a) of that directive.
- 34 In the second place, it should be observed that, before the referring court, ZG seeks, inter alia, a refund of the payments at issue in the main proceedings, which ZG claims to be ‘unauthorised’, following Beobank’s refusal to make that refund, on the ground that, according to that bank, ZG had actually authorised them or, at the very least, had been guilty of ‘gross negligence’.

- 35 As confirmed in the replies to written questions raised by the Court, the action brought by ZG is based on Article VII.35 of the Code of Economic Law. That article transposes into Belgian law Article 60 of Directive 2007/64, according to which, in the case of an unauthorised payment transaction, the payment service provider of the payer concerned immediately is to refund to the payer the amount of that payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had that payment transaction not taken place. However, in accordance with Article 61(2) of that directive, the payer is to bear all the losses relating to any unauthorised payment transactions if he or she incurred them by acting fraudulently or by failing to fulfil one or more of the payer's obligations under Article 56 of the directive with intent or gross negligence.
- 36 The referring court appears to take the view that, if it were to appear that, in the light of the Court's answers to the questions referred, Beobank failed to fulfil its obligation to provide ZG with the information provided for in Article 47(1)(a) of Directive 2007/64, it may draw conclusions from that, inter alia, as regards Beobank's obligation to refund the payments at issue in the main proceedings.
- 37 In that regard, it must be borne in mind that the Court has held 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. That has the result that both a parallel liability regime in respect of the same operative event and a competing liability regime allowing the payment service user to trigger that liability on the basis of other operative events are incompatible with the directive (see, to that effect, judgment of 2 September 2021, C-337/20, *CRCAM*, EU:C:2021:671, paragraphs 42 and 46).
- 38 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 (judgment of 2 September 2021, C-337/20, *CRCAM*, EU:C:2021:671, paragraph 45).
- 39 As the Advocate General observed in points 53 and 60 of his Opinion, a national court cannot ignore the distinction made in that directive as regards payment transactions, depending on whether or not they are authorised, and therefore cannot rule on a claim for reimbursement of payments such as the payments at issue in the main proceedings without first classifying those payments as authorised or unauthorised. Article 60(1), read in conjunction with Article 86(1) of that directive, precludes a payment service user from being able to hold the provider of those services liable because that service provider has failed to fulfil its obligation to provide information laid down in Article 47(1)(a) of Directive 2007/64, in so far as that liability concerns the refund of payment transactions.
- 40 It follows that, contrary to what the referring court appears to maintain, a possible failure by Beobank to fulfil its obligation to provide the information provided for in Article 47(1)(a) of Directive 2007/64, referred to in the questions referred for a preliminary ruling, cannot, as such, give rise to an obligation to refund the payments at issue in the main proceedings.
- 41 Nevertheless, it is apparent from the information provided by the referring court that it considers that the nature of the establishment which ZG visited and the services provided in that establishment are capable of influencing the assessment of whether or not the payments at issue

in the main proceedings were authorised. The dispute between the parties in that regard could be resolved if the identity of the payee of those payments were known, which means, in short, that is necessary to establish who is under the obligation to provide the necessary information in that regard. It is also apparent from the request for a preliminary ruling that the referring court has received a request from Beobank asking it to adopt measures of organisation of procedure seeking, from the payment service provider of the payee of those payments, certain information relating to that payee.

- 42 In that regard, it must be recalled that national courts have the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them and, in particular, that they are free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgment of 14 November 2018, *Memoria and Dall’Antonia*, C-342/17, EU:C:2018:906, paragraph 33 and the case-law cited).
- 43 In that regard, it follows from settled case-law of the Court that it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case in the main proceedings, the relevance of the question which it submits to the Court. Consequently, where the question submitted concerns the interpretation or the validity of a rule of EU law, the Court is, in principle, bound to give a ruling. It follows that questions referred for a preliminary ruling concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 41 and 42).
- 44 In accordance with that case-law, in so far as the referring court considers it necessary, in its assessment of whether or not the payments at issue in the main proceedings are authorised, including as regards measures of organisation of procedure that may be adopted in that context, to know the nature and extent of the information which the payment service provider of the payer concerned must provide to the payer, pursuant to Article 47(1)(a) of Directive 2007/64, the relevance of the questions referred for the resolution of the dispute in the main proceedings cannot be called into question.

Consideration of the questions referred

- 45 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 47(1)(a) of Directive 2007/64 must be interpreted as meaning that a payer’s payment service provider is required to provide that payer with information enabling the natural or legal person who benefited from a payment transaction debited from that payer’s account to be identified and not only the information which that provider, after making its best efforts, has available with regard to that payment.

- 46 In accordance with the Court's settled case-law, in 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 legislation of which it forms part (see, to that effect, in particular, judgment of 12 January 2023, *Nemzeti Adatvédelmi és Információszabadság Hatóság*, C-132/21, EU:C:2023:2, paragraph 32 and the case-law cited).
- 47 As regards the wording of Article 47(1) of Directive 2007/64, it should be noted that that provision provides that, after the amount of an individual payment transaction has been debited from a payer's account or, where the payer does not use a payment account, after receiving a payment order, the payer's payment service provider is to provide the payer with certain information without delay and in accordance with the arrangements laid down in Article 41(1) of that directive.
- 48 In order to comply with that requirement, the payment service provider of the payer concerned is required to transmit, in accordance with Article 47(1)(a) of Directive 2007/64, a reference enabling the payer to identify each payment transaction and 'where appropriate, information relating to the payee'.
- 49 It should be noted that, although the concept of 'payee' in that provision is defined in Article 4(8) of Directive 2007/64 as the natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction, the 'information' which is to be provided, pursuant to Article 47(1)(a), as regards the payee of the payment transaction concerned is not specified further in that directive.
- 50 In particular, the wording of that latter provision does not make it possible to determine, as the referring court observes, whether the obligation to provide that information constitutes an obligation to use best endeavours or an obligation to achieve a certain result, in particular because of the words 'where appropriate' in that provision.
- 51 In those circumstances, it is necessary, in accordance with the case-law recalled in paragraph 46 above, to examine the context of Article 47(1)(a) of Directive 2007/64 and the objectives pursued by that directive.
- 52 In that regard, it must be borne in mind, as regards the relevant context, that, as is apparent from Article 86(1) of Directive 2007/64, that directive, as noted in paragraph 37 above, carries out a full harmonisation, which prevents Member States from maintaining in force or introducing provisions different to those set out in that directive, unless the directive provides otherwise, which is not the case, however, as regards the information obligations provided for in Article 47(1) thereof. Thus, recital 21 of that directive states that it is not open to the Member States to adopt information provisions different from those laid down in that directive.
- 53 In the light of such total harmonisation, it must be held that the information obligations provided for in Article 47(1) of Directive 2007/64 are necessarily obligations which the Member States must implement without being able to derogate from them and without even being able to mitigate them by categorising them as obligations to use best endeavours and not as obligations as to the result to be achieved. There is, moreover, nothing in the scheme of Article 47 that leads to the conclusion that, by providing for obligations which indicate precisely the action to be taken, the EU legislature sought only to ensure that efforts were made in that regard, and not to set concrete results to be achieved.

- 54 That conclusion is confirmed by the fact that certain other provisions of Directive 2007/64 are worded in terms from which it is clear that the deployment of efforts is sufficient to comply with the requirements laid down in those provisions. That is the case, in particular, of the second subparagraph of Article 74(2) or the fourth subparagraph of Article 75(1) of that directive, under which a payer's payment service provider must make 'reasonable efforts' or 'immediate efforts' to recover funds or trace a non-executed or incorrectly executed payment transaction. It may therefore logically be presumed that the legislature used terms similar to Article 47(1)(a) of that directive although the mere deployment of efforts seeking to provide the payer with the information relating to the payee of a payment were sufficient to comply with the obligation laid down in that provision.
- 55 As regards the phrase 'where appropriate' in Article 47(1)(a) of Directive 2007/64, in the light of the considerations set out above, that wording cannot be understood as meaning that the payment service provider must provide the payer with information enabling the identification of the payee of a payment transaction only if, after making efforts in that regard, he or she has that information.
- 56 By contrast, that phrase must be understood as meaning, in that context, that the information relating to the payee of a payment transaction which the payment service provider must provide to the payer concerned, after the amount of a payment transaction has been debited from that payer's account or at the time agreed in accordance with Article 47(2) of that directive, includes information which that payment service provider has or should have at its disposal in accordance with EU law.
- 57 That interpretation is supported by the objective pursued by Directive 2007/64, as is apparent from recitals 1, 21, 23, 40 and 43 thereof, which consist, inter alia, in order to ensure smooth functioning of the single market in payment services, to ensure that the users of those services can easily identify payment transactions by having 'the same high level of clear' information, both necessary and sufficient with regard to the payment service contract and the payment transactions themselves and which is proportionate to the needs of those users and communicated in a standard manner, in order, first, to guarantee the fully integrated and straight-through processing of the operations concerned and, secondly, to improve the efficiency and speed of payments (see, to that effect, judgment of 21 March 2019, *Tecnoservice Int.*, C-245/18, EU:C:2019:242, paragraph 28).
- 58 It thus follows that Directive 2007/64 sought to establish a high 'standard' as regards the information that payment service providers are required to transmit to users.
- 59 In order to meet the requirements set out in paragraph 57 above, the information which the payment service provider had to provide to the payer concerned, pursuant to Article 47(1)(a) of Directive 2007/64, had to be sufficiently accurate and meaningful. In the absence of such a description, the payer would not be able, with the help of that information, to identify with certainty the payment transaction concerned. In addition, the provision of the other information required in Article 47(1) of that directive, such as the amount of the transaction concerned, the value date or the date of receipt of that transaction and, as the case may be, the charges and exchange rate applied, are of no interest to the payer, since he would not be able to link that information to a specific payment transaction.

- 60 In so far as the ‘reference enabling the payer to identify each payment transaction’, referred to in the first part of the sentence in Article 47(1)(a) of Directive 2007/64, consists of a combination of letters and/or figures, the choice of which corresponds mainly to IT needs, so that, although that reference is suitable for integrated automated processing, it does not put the payer concerned in a position to link that reference to a specific payment transaction, it is necessarily in the context of the additional element referred to in the second limb of Article 47(1)(a), namely the ‘information relating to the payee’, that the payment service provider of the payer concerned had to provide to the payer the information necessary to meet fully the requirements stemming from that provision.
- 61 It should be recalled in that regard that, in accordance with recital 27 of Directive 2007/64, the manner in which the payment service provider was required to provide the required information to the user of those services had to take into account, inter alia, the user’s needs.
- 62 Furthermore, as stated in recital 46 of Directive 2007/64, it is the payer’s payment service provider that provides the payments system, makes arrangements to recall misplaced or wrongly allocated funds and decides in most cases on the intermediaries involved in the execution of a payment transaction. That control which the payment service provider exercises throughout the various stages of the execution of a payment transaction also enables it to request intermediaries to provide it with appropriate information regarding the payee concerned, in particular where, as in the present case, that payment transaction is carried out by means of technical infrastructure owned by such an intermediary.
- 63 In addition, as is also noted in recital 46 of Directive 2007/64, it can be expected that the intermediary institution, usually a ‘neutral’ body like a central bank or a clearing house, transferring the payment amount concerned from the sending to the receiving payment service provider will store the account data concerned and be able to furnish that account data whenever that may be necessary.
- 64 In the light of all the foregoing considerations, the answer to the questions referred is that Article 47(1)(a) of Directive 2007/64 must be interpreted as meaning that a payer’s payment service provider is required to provide that payer with information enabling the natural or legal person who benefited from a payment transaction debited from that payer’s account to be identified and not only the information which that provider, after making its best efforts, has available with regard to that payment transaction.

Costs

- 65 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 47(1)(a) 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 a payer’s payment service provider is required to provide that payer with information enabling the natural or legal person who benefited

from a payment transaction debited from that payer's account to be identified and not only the information which that provider, after making its best efforts, has available with regard to that payment transaction.

[Signatures]