

PAYPAL: THE LEGAL STATUS OF C2C PAYMENT SYSTEMS

Andrés Guadamuz González
Lecturer, University of Edinburgh

Keywords

Electronic commerce, consumer, C2C, eBay, PayPal, intermediary liability, internet auctions, payments, fraud, unfair terms.

Introduction

The area of online payment systems has been the subject of increasing attention for those interested in electronic commerce law. The reason for this is the almost exponential increase in electronic commerce transactions. For example, online retail in the United States accounted for \$35.87 billion USD in 2001 and \$47.98 billion USD in 2002. Online retail in the UK was only 0.4% of total retail in 1999, this figure rose to 4% in 2002.¹

Most of the emphasis in the existing literature has been in regards to “conventional” online payment systems, such as credit and debit cards, and some other non-conventional payment methods such as the increasing legal interest in electronic money schemes.² Nevertheless, there has been minimal interest in one of the fastest growing online payment methods – the popular Consumer-to-Consumer (C2C) model of electronic commerce. With the marked increase in C2C transactions exemplified by auction sites such as eBay, a viable payment method for such operations must receive legal review.

One of the most successful examples of the C2C model can be found in consumer friendly payment systems such as PayPal, which has been acquired recently by auctions site eBay. The relationship between both sites is enforced by the fact that people who are exchanging goods through internet auctions need secure and reliable methods to conduct monetary transactions to pay for their online purchases. PayPal is set to become the standard for online payments between consumers and small businesses in the coming years, and it is at the moment the leader in this field.

The present paper will analyse the C2C payment system exemplified by PayPal, and it will explore some of the most pressing legal questions which need answering, such as the regulatory status of PayPal.

1. A brief look at PayPal

One of the cornerstones of online auction sites such as eBay is the availability of easy to use online payment systems. Since eBay began its functions, the issue of how consumers pay for the goods purchased has been an important part of the success of the system. Because eBay serves as an intermediary, consumers have the responsibility to make sure that the payment reaches the seller in a prompt and straightforward manner, as it is customary in the auction environment that the goods will only be sent once the payment has been received. Consumers use several different methods to pay for their online transactions through eBay, ranging from mailing cheques or cash to the seller, to the use of online C2C payment systems.³

Because of the fast nature of online purchasing, online payment methods are more popular than traditional ones, as they allow for the transaction to be concluded almost immediately, and it has the added benefit that the seller can easily corroborate payment upon delivery. The buyer also has the advantage of being certain that the goods will be sent as soon as possible, reducing the waiting time for the goods. C2C operators usually prefer to manage their own online payment systems. Amazon has started using the C2C model to sell used goods through their website by using their considerable customer base, consumer confidence and existing infrastructure. They have opened Amazon Marketplace,⁴ which uses its own online payment system based on their existing B2C system.

Payment has always been the weakest link in eBay's almost bullet-proof business model. Initially, once a transaction had been concluded the seller had to rely on traditional payment methods to receive the money. eBay was not interested in developing an in-house payment system as they considered it fell outside of their business plan, so they tried to reach agreements for facilitating online payments with external financial institutions, but these efforts did not produce any positive results.⁵ These failures prompted eBay to create their own online payment system, and for that purpose they purchased a small company named Billpoint in 1999 to handle payment of the transactions between their customers.

At the same time, there was another player in the C2C horizon, a company founded in 1998 called PayPal. PayPal has often been called "email money", a name that is increasingly less accurate. A customer can open a PayPal account by giving their

credit card or bank information in a simple transaction that can take up to five minutes. However, the account will not become active until the customer has validated the bank account or credit card used. This is usually performed by a small charge made by PayPal to that account (the amount varies). The consumer then checks the amount and goes back to PayPal to verify it. Another way of verification is a code that shows up on the monthly credit card report, which must be then verified back in PayPal's account management site.

Once this account is created, the customer can send money to any person giving their email address and placing a money sum in an easy to use online form. Once the recipient receives the email, he must open a PayPal account; the money then is taken from the sender's bank account or credit card and deposited into a new account in PayPal, acting almost like a viral payment system, and explaining the incredible growth of PayPal as a viable online payment method.⁶

Each PayPal consumer can choose to keep their money in an account with the company for further use, or can choose to have that amount of money credited to their bank or credit card account. It is important to point out that PayPal does not disclose the account information of both parts to each other, ensuring the security of the transaction.⁷

PayPal operates by placing a small charge to each online transaction. For customer accounts, the average sum charged for transactions under \$15 USD is \$0.30. For UK personal accounts the transaction is free, but the customer cannot receive credit card payments. For premier and business accounts, the fees vary according to volume of transaction.⁸

Because many customers leave money that they have received as means of payments in their accounts, PayPal appears to operate with these deposits to fund their transactions. According to Peter Thiel, PayPal's chief executive, "*The PayPal account doesn't provide interest, so PayPal can invest any money left there until the user wants to spend it.*"⁹ PayPal places the money deposited by users into a bank account at Wells Fargo Bank and into money market fund managed by them.¹⁰

Because of its adaptable model and the ease of user registration, PayPal has become the most successful online payment system for C2C transactions. PayPal boasts more than 20 million users in 38 countries, with an average of 28,000 new users per day.

This success prompted eBay to purchase the company in 2002, as Billpoint had not proven to be as popular as PayPal was. The move made business sense as it brought together the main two players in the growing C2C e-commerce market, and it allowed eBay to use PayPal's large user base and add it to its own. PayPal and eBay are working very well together, in the third quarter of 2002 eBay expressed that PayPal users had generated \$1.79 billion in Total Payment Volume, representing a 93% increase from the \$925 million generated in the third quarter of the previous year.¹¹

2. Legal issues

There are several interesting legal issues involved with C2C payment systems, and in particular with the business model presented by PayPal.

2.1 Liability

The first issue that must be analysed is that of the possible liability of PayPal as an intermediary system in cases of fraud, money laundering or the use of the system to pay for illegal or restricted goods and/or services. These questions are of vital importance for PayPal and other intermediary payment systems. For example, would PayPal be liable if its system is used to purchase child pornography? Could PayPal be liable if a consumer has paid for an online auction item, but the goods are never delivered?

To understand the possible liability of PayPal, one must understand how the account works, which has been explained in some detail above. Imagine that John Doe wants to sell child pornography to Joe Bloggs using an intermediary payment system. Both have PayPal accounts, Bloggs sends a PayPal email payment to Doe, who upon receipt sends the child pornography via encrypted methods. It would be impossible for PayPal to ascertain what the subject of the payment is in this case, as it could perfectly be for beer, or a collection of vinyl records. In a case brought against PayPal in this instance, it would be very difficult to prove any fault by the intermediary, a position that is increasingly stressed in existing legislation, such as the provisions for the liability of intermediary service providers included in the European Electronic Commerce Directive.¹²

Now, imagine that John Doe is a fraudster. He buys an online auction item initiated by Joe Bloggs using a PayPal account that he created with a stolen credit card. Bloggs sends the item, but then the real owner of the credit card contends the expense, and

the payment is removed from the account. Will PayPal be liable? The answer would appear to be positive. This is the reason why PayPal is taking much greater care in being able to identify that the person that opens an account is indeed the owner by the verification methods described. This is designed to diminish the possible liability by taking extreme care in making sure that the user is who he says he is.

Even with this increased care, there could be situations where PayPal could still be found liable for transactions due to errors or negligence. In these cases PayPal has included in its user agreement an exclusion of liability clause. This says:

We shall not be liable to you for any loss or damage which you may suffer as a result of using the Service including, without limitation, losses resulting from your access to websites other than ours. In no event shall we, our affiliates, subsidiaries, agents, suppliers and/or subcontractors be liable for any direct or indirect loss of profit, goodwill, business or anticipated savings nor for any indirect or consequential loss or damage except in relation to those losses which are reasonably foreseeable when this Agreement starts. Nothing in this Agreement shall limit our liability for death or personal injury resulting from our negligence or our subcontractors' or breach of this Agreement.

Is this clause valid? The answer would seem to be positive. One of PayPal's clauses has already been struck down in the United States case of *Combe v. PayPal*,¹³ where the court found that the arbitration clause included in the PayPal user agreement was unconscionable (inherently unfair). This case was brought by several PayPal users that were alleging that PayPal had frozen funds in their accounts. PayPal defended the case by saying that this conflict should be taken to arbitration as the parts had signed up to the PayPal user agreement, which contains a similar arbitration clause to that described above. This case has severe implications for clauses such as the above, as the court found that in "click-wrap" adhesion agreements such as PayPal's, there should be much more care in the drafting of the contract to make sure that it does not include unfair terms. The court found that this was an adhesion contract that created an imbalance in the responsibilities and the position of the parts, in particular in the arbitration clause. These were serious enough to find the clause was unfair.

There is a much more restrictive unfair contractual terms regime in the UK, by the existence of the Unfair Contract Term Act 1977 (UCTA) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). UK courts have generally seen this type of exclusion of liability with disfavour.¹⁴ If an American court has already found

parts of the PayPal agreement to be unfair, it is likely that a UK court could possibly view this exclusion clause unfavourably as well, but perhaps not in this case. It is interesting to note that the existing version of PayPal's exclusion of liability is now worded in such a way as to comply with the above mentioned unfair terms legislation, as previous versions had limitation of liability clauses that were considerably more exclusive.

2.2 Liability for misrepresentation

There is an important question about liability of PayPal with regards to misuse and misrepresentation of consumers. Consumers in the UK have the power to sue a credit card company in accordance to Section 75 of the Consumer Credit Act (CCA). This section states that a provider of credit in a tripartite credit agreement (debtor-creditor-supplier) will be liable against the claims of breach of contract or misrepresentation by the supplier of services that fall within certain monetary parameters (the transaction must be between £100-£30,000 GBP). This means that a credit card company can be sued if the supplier has failed to deliver goods or has misrepresented the nature of the goods. The justification behind this rule is that it is easier for a credit card company to recuperate funds from a supplier with whom they have an existing agreement than for a consumer to do the same.¹⁵

The main question would be if PayPal could be considered a creditor in accordance to the CCA, and if they could be sued in those terms. S 75 specifies that the debtor will only be able to sue the creditor if there is an existing restricted or unrestricted credit agreement between the creditor and the supplier to finance a transaction between the debtor and the supplier.¹⁶ It could be argued that PayPal serves as a creditor in this instance as PayPal will indeed pay money into the debtor's account in order to finance a transaction between two parties other than itself. The question will be if this is credit, or if this could be analogous to a debit card transaction or a charge card,¹⁷ which are not regulated by the CCA.

PayPal appears to be one step ahead of the game in this respect, and have pre-empted this debate by creating an advanced system of protections for buyers called the PayPal Buyer Protection, which protects users up to £250 GBP in selected purchases performed in eBay for a number of irregularities, including protection if the purchased goods do not arrive, or if they are not the goods described.¹⁸ By doing this, PayPal has

created a self-regulated system that, although smaller than the protection awarded by s75 CCA, is better than no protection at all, and possibly will be used as an argument demonstrating good faith if a consumer ever attempts to apply s 75 against PayPal.

2.2 Legal status of PayPal

Although there are some problems in regards to liability of PayPal as an intermediary the most important issue is that of the regulatory status of PayPal in regards to European law.

2.2.1 Is it a bank?

From reading the PayPal business operation model presented in the last section, any person who is even slightly familiar with commercial law will immediately ask the question of whether or not what PayPal does is similar to a credit institution as defined by various European directives. This person would certainly be right in posing such a question, as there appears to be a clear similarity with the way in which PayPal operates and the functions performed by a bank. Indeed, Directive 2000/12/EC on credit institutions states that “*credit institution' shall mean an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.*”¹⁹

Deposit has been defined by the Directive 94/19/EC as a credit balance that results from funds entered into an account and which the credit institution must pay back.²⁰ This is a rather straightforward definition of what a deposit is, but differs slightly from the definition in effect in the UK through the Regulated Activities Order 2001 (RAO), which defines a deposit in two different ways:

*(a) money received by way of deposit is lent to others; or (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.*²¹

This is interesting because of the “or”. If a person accepts deposits and uses them to finance any of its activities, the letter of the law clearly implies that this would be considered as a regulated deposit-taking activity.

The above definitions would seem to indicate that PayPal acts as a deposit-taking institution, and therefore should be considered as a bank for all regulatory purposes. However, and contrary to some of the earlier opinions already quoted by people

related to the company, PayPal argues that it does not make any use of the deposits in the user accounts it holds. In fact, PayPal's user agreement states that "*PayPal will at all times hold your funds separate from its corporate funds, will not use your funds for its operating expenses or any other corporate purposes, and will not voluntarily make funds available to its creditors in the event of bankruptcy or for any other purpose.*"²² This paragraph poses an interesting conundrum, as PayPal claims not to use the funds in the accounts held by the customers for operational expenses, a practice that would clearly indicate that they are indeed a financial institution as defined.

Grossman agrees that PayPal is not a financial institution because the money received in an account is not deposited by the account holder but by third parties, and because it does not lend money out and keeps it in separate bank accounts.²³ The first assumption does not appear to be correct. After all, large amounts of money that goes into people's bank accounts are deposited by third parties, such as employers, and there is no requirement in the existing legislation that a deposit needs to be made by the account holder to be considered such. The second objection requires closer examination by the UK's Financial Services Authority (FSA).

In the United States, the Federal Deposit Insurance Corporation (FDIC) did not consider PayPal to be a bank in accordance to US regulations because it did not physically handle or hold the money placed in the customer's accounts. The FDIC also ruled that PayPal should not be considered a bank because it did not have a bank charter, which is one of the legal requirements in US legislation.²⁴ This would seem to be circular reasoning from the American regulators, but regardless of this the opinion of the FDIC should not bear too much importance in Europe as the regulatory regimes are dissimilar. Besides, there appears to be a small discrepancy in the FDIC's opinion, as they have also held that deposits made to PayPal will be subject to federal deposit insurance, which is usually given only to banking institutions.²⁵

In the end, why should it be important to determine if PayPal conducts itself as a bank or not? The answer is simple, financial services institutions are heavily regulated and must be authorised to operate by a governmental body. In the UK, this responsibility falls unto the FSA, which is the only body that can authorise deposit-taking and credit-giving institutions to operate.²⁶ An institution that undertakes these services will be prohibited to operate at all without said authorisation.²⁷ If one considers

PayPal to be a deposit-taking institution as defined by the cited legislation, then it should require authorisation. Because PayPal is now operating in the UK by means of the recent creation of PayPal Europe plc, then they are operating outside the regulatory scheme.

The financial implication for PayPal of being considered a bank or not would be substantial, as they would have to comply with a strict regulatory scheme that includes restrictions on the initial capital required, the own-funds that it must have at all times, the solvency ratio and restrictions on holdings in other undertakings.²⁸ The reason for this strict regime is the nature of a bank, it acts as a depository of other people's money, so the liabilities and securities that it must provide are higher than to other institutions because there is a considerable public interest in making sure that only trustworthy undertakings will be subject to it.

2.2.2 Is PayPal electronic money?

Once again, PayPal lawyers may have pre-empted all sort of debate about its legal status by cleverly reading existing legislation and accommodating it to their needs. In June 2003, PayPal Europe filed a request to the UK's FSA to be included as an electronic money institution²⁹ in accordance to the Electronic Money Institutions European Directive (EMI Directive),³⁰ and they were granted EMI status by the UK's Financial Services Authority (FSA) in February 2004.³¹ But what is electronic money? The EMI Directive defines electronic money as:

... 'electronic money' shall mean monetary value as represented by a claim on the issuer which is: (i) stored on an electronic device; (ii) issued on receipt of funds of an amount not less in value than the monetary value issued; (iii) accepted as means of payment by undertakings other than the issuer.³²

Giving a first glance at this definition, it would seem that PayPal could not be considered electronic money because PayPal does not issue value in the sense that the Directive seems to indicate; it draws monetary value from an existing bank account or credit card and stores it in a user PayPal account, which can then be transferred to other users with PayPal accounts, regardless of whether they are transferring the money to pay for goods or services, although they often are. This would appear to negate the main requirement for the definition of PayPal as an electronic money issuer, but it would seem that PayPal acts like a credit institution, and hence subject to

be treated as a credit institution, as described in the previous section. Nevertheless, PayPal has changed their user agreement to say that they are an EMI, saying that:

The Service is an e-money payment service rather than a banking or escrow service, and we are not acting as a trustee with respect to balances that you choose to keep in your account. We are acting only as an issuer of electronic money (stored value). You are not required to maintain a balance in order to use the Service to make payments although a balance will be created whenever you use the Service to make a payment funded from your bank or card.³³

The problem here is that even if one argues that PayPal is only storing electronic value into an account, this is almost undistinguishable from what takes place in a bank, other than the fact that the deposited money does not gain interest. The fact also remains that an electronic money scheme must be capable of being used as a means of payment by undertakings other than the issuer in accordance to the EMI Directive, yet in the case of PayPal, one has to remember that the usefulness of the account is not only to make payments, but very often to receive them from other users with a PayPal account.

Just by looking at the letter of the EMI Directive, one has to come to the conclusion that account-based programmes should not be considered electronic money institutions, but the FSA evidently disagrees. Unfortunately, the reasoning behind the FSA's decision regarding PayPal has not been published at the time of completing this article, so other explanations for the reasons behind the FSA decision will be useful.

The first reason behind the decision may simply be a pragmatic one. One of the stated goals of the EMI Directive was to present a technology neutral definition of electronic money in order to accommodate future technological innovations and new payment systems.³⁴ However, it is evident that this objective was soon defeated by the emergence of payment methods analogous to electronic money that are not covered by the supposedly "technology-neutral" definitions. This was caused because the EMI Directive seems to have been drafted with a very specific type of electronic money called a smart-card³⁵ in mind, paying little attention to other technologies. Regulators then are presented with a serious interpretation task to try to accommodate new payment systems into the existing definition. The UK Treasury expressed some serious concerns with the definition of an electronic money institution included in the

Directive, and decided to favour a wide interpretation of the EMI definition. They stated that:

There is a wide range of schemes that could be considered as e-money and whether the Directive catches any given scheme will depend on the application of the definition to the details of a particular case. Given the emergent nature of the e-money industry, we do not believe it is possible to elaborate on this definition in such a way as to legislate explicitly for all the different types of scheme that might be developed.³⁶

The FSA appears to have taken this recommendation to heart, as they are clearly thinking of electronic money institutions in a much wider way than the parameters set in the Directive. This is evidenced by the FSA's own guidelines with regards to electronic money institutions. These guidelines include the question of whether or not account-based payment schemes such as PayPal will be considered electronic money. The FSA reached a decision analysing existing consultation papers,³⁷ and they decided that an account-based payment scheme can be electronic money, but that this would have to be determined on a case-by-case basis, otherwise all electronic storage of monetary value ever devised would have to be considered electronic money, including banks. The FSA designed a set of questions to decide whether or not an account is a deposit-taking scheme or electronic money.³⁸ The test says that an account will be considered electronic money if it is designed to pay for goods and services, if the account operates even without money in it, and if the service is advertised and offered as an electronic money system.

Furthermore, the FSA has said that “*a deposit involves the creation of a debtor-creditor relationship under which the person who accepts the deposit stores value for eventual return. E-money, in contrast, involves the purchase of a means of payment.*”³⁹ It would seem that the FSA believes that PayPal's main use is for payments, hence their decision. However, the European Commission does not appear to share this opinion. In a statement about future development in payment systems in Europe, the Commission considered the perceived lack of regulation of new payment schemes, and started to discuss the implementation of a possible new directive regulating new schemes. With regards to PayPal, the Commission considered that PayPal was closer to a credit token⁴⁰ than to electronic money. In fact, the paper states:

However, payment services do exist, which may be regarded as not being covered by the E-Money Directive and which could have a potential to become EU-wide schemes in fulfilling some payment needs, such as micro payments in the internet or in wireless communication services. Some payment products on the market, such as mobile operator accounts and virtual accounts (e.g. PayPal), are closer to credit transfers in a centralised account system than real bearer instruments.⁴¹

It is perhaps unfortunate that the Commission decided to regulate electronic money before other methods of consumer-to-consumer electronic payment had evolved, which would have solved some of the inconsistencies highlighted in this section. Nevertheless, with the FSA's decision to grant PayPal EMI status, this debate is probably academic.

Conclusion

The C2C electronic payment systems constitute a novel and interesting manner of making online payments, in particular in consumer transactions.

It is evident that there is some room for regulatory involvement in this area. In this line, the most pressing regulatory question is the legal status of intermediary online payment systems such as PayPal. It is the author's opinion that PayPal operates as a bank despite it recently being granted the status of electronic money.

There are also some interesting legal questions in the area of the eventual liability of these payment systems, and it will be interesting to see what further developments in the area of regulation and litigation bring to this arena. With the C2C model being inexorably pushed by the popularity of sites like PayPal and eBay, it is possible that the legal questions surrounding these sites will become more important. This paper serves therefore as an introduction and as an invitation to more research in the field.

¹ For more e-commerce figures, see: <<http://cyberatlas.internet.com/>>

² Evidenced by the implementation of regulation of this method, such as the Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions. O.J.E.C. L275/39, 27/10/2002.

³ For more of these methods, see: Sorkin, D. E. "Payment Methods for Consumer-to-Consumer Online Transactions", 35 *Akron Law Review* 1, 2001.

⁴ <<http://www.amazon.com/marketplace>>

⁵ Cohen, A. *The Perfect Store: Inside eBay*, Boston: Little, Brown & Co; 2002, pp.229-230.

⁶ Sapsford, J. "PayPal Sees Torrid Growth With Money-Sending Service", *The Wall Street Journal*, February 16, 2000. @: <<http://www.paypal.com/html/ws3.html>>

-
- ⁷ Sorkin, op cit; pp.11-12.
- ⁸ For more on their fees, see: <<http://www.paypal.com/cgi-bin/webscr?cmd=p/gen/fees-outside>>
- ⁹ Thiel, P; cited by Sapsford, op. cit.
- ¹⁰ Grossman, W. "Online payment systems: Easy money?" *The Independent*, September 9, 2002. @: <<http://news.independent.co.uk/digital/features/story.jsp?story=331757>>
- ¹¹ For more financial reports from eBay, see: <<http://www.shareholder.com/ebay/releases-earnings.cfm>>
- ¹² See Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178/1, Section 4.
- ¹³ *Craig Comb, et al. v. PayPal, Inc.* Cases No. C-02-1227 and C-02-2777 JF (N.D. Cal., August 30, 2002).
- ¹⁴ For more on this subject, see: Lawson, R.G. *Exclusion clauses and unfair contract terms*, 6th edition, London: Sweet & Maxwell, 2000.
- ¹⁵ For more on the application of s.75 of the CCA, see: Ellinger, E. P; Lomnicka, E. and Hooley, R. *Modern Banking Law*, Oxford: Oxford University Press, 2002, pp. 532-536.
- ¹⁶ This is in accordance to ss. 11 and 12 of the CCA.
- ¹⁷ Charge cards are cards that are not entitled to the same regime as credit cards as they are not considered credit in the legal sense because the user is supposed to clear the account almost immediately (such as Diners Club or American Express). See Ellinger, Lomnicka and Hooley, op cit.
- ¹⁸ For more on this programme, see: <<http://www.paypal.com/>>
- ¹⁹ Directive 2000/12/EC of the European Parliament and of the Council of Europe of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, OJ L 126/1, 2000, Art. 1; implemented in the UK by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO), SI 2001-544.
- ²⁰ Directive 94/19/EC of the European Parliament and of the Council of Europe of 16 May 1994 on deposit-guarantee schemes, OJ L 135, 1994, Art. 1.1.
- ²¹ ROA, s.5(1).
- ²² *PayPal user agreement*, para 2.1.
- ²³ Grossman, op cit.
- ²⁴ Wolverton, T. "PayPal not a bank", *CNet News*, March 12, 2002. @: <<http://news.com.com/2100-1017-858264.html?tag=bplst>>
- ²⁵ Bureau of National Affairs. "Electronic Payments: Paypal Funds Eligible for Pass-Through Insurance From FDIC as Deposits by Agent", *BNA Newsletter*, Vol 7 No. 12, March 20, 2002, p.254.
- ²⁶ Financial Services and Markets Act 2000 (FSMA), ss.33-39.
- ²⁷ FSMA, s.19.
- ²⁸ Ellinger, Lomnicka and Hooley, op cit; Ch. 2.
- ²⁹ PayPal Europe, N. Naraine, "PayPal Readies European Subsidiary", *Internet News*, January 5, 2004. @: <<http://www.internetnews.com/ec-news/article.php/3295181>>
- ³⁰ Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions. O.J.E.C. L275/39, 27/10/2002, Art.1.3(b).
- ³¹ R. Kavanagh, "PayPal launch European service", *ITVibe*, February 11, 2004. @: <<http://itvibe.com/default.aspx?NewsID=1270>>. It is rather ironic that the author of this small news item calls PayPal an "electronic bank".
- ³² EMI Directive, Art.1.3(b).
- ³³ PayPal Europe User Agreement, s.2.
- ³⁴ EMI Directive, para (5).
- ³⁵ A smart-card is "a plastic rectangle containing an electronic chip, and holding a certain amount of readable data." See: Newman, S. "Introduction: Smart Cards", *Smart Cards*, S. Newman editor (ECLIP II, IST Project Report 1999), p.3.
- ³⁶ HM Treasury, *Implementation of the Electronic Money Directive: A consultation document*, op cit.
- ³⁷ *Ibid.* Here they say that "The Treasury believes the Directive's definition includes both e-money schemes in which value is stored on a card that is used by the bearer to make purchases, and account-based e-money schemes where value is stored in an electronic account that the user can access remotely."
- ³⁸ Financial Services Authority. *Guidance on the scope of the regulated activity of issuing e-money* (2004), Appendix 3.3.20. @: <http://www.fsa.gov.uk/handbook/BL3AUTHpp/AUTH/Appendix_3.pdf>

³⁹ Ibid.

⁴⁰ Credit token is defined in s.14 of the CCA as any card, check, voucher, coupon, stamp, form, booklet or other document that is given to an individual, who will be able to purchase goods and services when shown to the issuer or to an authorised third party.

⁴¹ Commission of the European Community, *Communication from the Commission to the Council and the European Parliament concerning a New Legal Framework for Payments in the Internal Market*, COM(2003) 718 final, 2/12/2003.