

DRAFT

POLITICAL COMPROMISES

(to be treated as a package)

Payment Services Regulation (PSR)

Draft report on the proposal for a regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010

26 JANUARY 2024

MAREK BELKA

(Contact person: PAWEŁ WIŚNIEWSKI)

SURCHARGES

Amendments 240-251 (EPP - Fitzgerald, EPP - Pereira, Renew - Kovarik, ECR - Jurzyca) covered

Article 28

Charges applicable

1. The payment service provider shall not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Title, unless otherwise specified in Article 65(1), Article 66(5) and Article 74(4). Those charges shall be agreed between the payment service user and the payment service provider and shall be reasonable and in line with the payment service provider's actual costs.
2. For payment transactions provided within the Union, where both the payer's and the payee's payment service providers are, or the sole payment service provider in the payment transaction is, located in the Union, the payee shall pay the charges levied by his payment service provider, and the payer shall pay the charges levied by his payment service provider.
3. The payee shall not request charges for the use of payment instruments. ~~for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751 and for credit transfers, including instant credit transfers, and direct debit transactions within the Union.~~
4. ~~Member States may extend the prohibition or limit the right of the payee to request charges for the use of payment instruments other than the ones referred to in paragraph 3, taking into account the need to encourage competition and promote the use of efficient payment instruments.~~
4. The payment service provider shall not prevent the payee from *offering* the payer a reduction or otherwise steering the payer towards the use of a given payment instrument.
5. ~~Without prejudice to paragraphs 3 and 4 and for instruments not covered in those paragraphs, the payment service provider shall not prevent the payee from requesting from the payer a charge, offering him a reduction or otherwise steering the payer towards the use of a given payment instrument. Any charges applied shall not exceed the direct costs borne by the payee for the use of the specific payment instrument.~~
6. ~~Member States shall [OP please insert the date = data of application of this Regulation] notify to the Commission the provisions of their law adopted pursuant to paragraph 4. They shall, without delay, notify any subsequent amendment to such provisions.~~

GATEKEEPERS:

Article 33 - paragraph 2 a (new) - deleted from the compromises

SCOPE:

E-wallets not included in the scope, just like in the Commission proposal (also bearing in mind that the review clause on scope stays as in the EC proposal - 3 years).

AUTHORIZATION / AUTHENTICATION

Recital:

With regards to the authorisation of payment transactions, permission should entail the intention of the payer on the basis of full knowledge of relevant facts including amount, recipient and purpose of the transaction. The intention of the payer, based on the full knowledge of relevant facts, at the time of transaction, should be determined pursuant to national law.

Article:

34 a (new) (so directly after the definition of authentication)

"Authorisation" means a procedure where the payment service user freely, conscientiously and intentionally authenticates a given transaction.

ARTICLE 59

Proposal for a regulation

Article 59 – title

Payment service provider's liability for (EPP 392 Pereira) Impersonation fraud

Article 59

Payment service provider's liability for impersonation fraud

1. Where a payment services user who is a consumer was manipulated by a third party pretending to be an employee of the consumer's payment service provider ***or any other relevant entity of public or private nature*** using the name or e-mail address or telephone number of that ***payment service provider entity (Renew 394 Kovařík - partially)*** unlawfully and that manipulation gave rise to subsequent fraudulent authorised payment transactions, the payment service provider shall refund the consumer the full amount of the fraudulent authorised payment transaction under the condition that the consumer has, without any delay, reported the fraud to the police and notified its payment service provider. ***Upon the receipt of the notification, payment service providers shall inform the consumer if a report of the fraud case to the police is required to further process the consumer's claim. (Greens 400 Gruffat, The Left 401 Gusmao)***
2. Within 10 business days after ***noting or (EPP 408 Pereira, ECR 407 Jurzyca)*** being notified of the fraudulent authorised payment transaction ***by the consumer and being presented with the police report, (Renew 406 Kelleher)*** the payment service provider shall do either of the following:
 - (a) refund the consumer the amount of the fraudulent authorised payment transaction;
 - (b) where the payment service provider has reasonable grounds to suspect a fraud or a gross negligence by the consumer, provide ***the relevant documents to the relevant national authority that the consumer has acted fraudulently or with gross negligence and a (Greens 410 Gruffat) substantiated*** justification for refusing the refund and indicate to the consumer the bodies to which the consumer may refer the matter in accordance with Articles 90, 91, 93, 94 and 95 if the consumer does not accept the reasons provided.
3. Paragraph 1 shall not apply if the consumer has acted fraudulently or with gross negligence ***or refuses to comply with the PSP's investigation, providing relevant information on the circumstances of the impersonation. (Renew 412 Nagtegaal, ECR 413 Jurzyca)***
4. The burden shall be on the payment service provider of the consumer to prove that the consumer acted fraudulently or with gross negligence.

5. Where informed by a payment service provider of the occurrence of the type of fraud as referred to in paragraph 1, electronic communications services providers shall cooperate closely with payment service providers and act swiftly to ensure that appropriate organizational and technical measures are in place to safeguard the security and confidentiality of communications in accordance with Directive 2002/58/EC, including with regard to calling line identification and electronic mail address. ***If the electronic communications services providers do not remove the fraudulent or illegal content, after being informed, they shall refund the consumer the full amount of the fraudulent authorised payment transaction under the condition that the consumer has, without any delay, reported the fraud to the police and notified its payment service provider.***
- 5a. ***Electronic communications service providers shall have in place all necessary educational measures, including alerts to their customers via all appropriate means and media when new forms of online scams emerge, taking into account the needs of their most vulnerable groups of customers.***
- Electronic communications service providers shall give their customers clear indications as to how to identify fraudulent attempts and warn them as to the necessary actions and precautions to be taken to avoid falling victim to fraudulent actions targeting them. Electronic communications service providers shall inform their customers of the procedure for reporting fraudulent actions and how to rapidly obtain fraud-related information. (S/D 74 Belka, EPP 423 Fitzgerald, Renew 426 Boyer)***
- 5b. ***By [12 months after the entry in force of this Regulation], EBA shall issue technical guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 regarding the concept of gross negligence in the context of this Regulation and respecting the national legal frameworks on this matter.***