



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2013/0264(COD)

18.12.2013

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013)0547 – C7-0230/2013 – 2013/0264(COD))

Rapporteur: Dimitar Stoyanov

PA_Legam

SHORT JUSTIFICATION

This proposal for a directive aims to assist the development of the European electronic payments market, as the digital economy is replacing traditional commerce and consumers are changing their payment habits. It is based on Article 114 of the Treaty on the Functioning of the European Union.

From the many views and comments on the proposal submitted by interested parties in an information gathering exercise, it is clear that the existing legal framework must be changed, the better to serve the needs of an effective European payments market contributing to a payments environment which nurtures competition, innovation and security.

In the interests of legal certainty and ensuring a level playing field, the current framework for payment services should be updated and supplemented, rules should be introduced to enhance transparency, innovation and security in the field of retail payments, and there should be more consistency among national rules.

The Commission's impact assessment, analysing the potential consequences of not having an integrated European payments market, highlighted problems which had consequences for consumers, merchants, new payment services providers and the payment services market as a whole.

Several ways of improving the situation were identified: establishing a competitive level playing field between incumbents and new providers of card, internet and mobile payments; increasing the efficiency, transparency and choice of payment instruments for payment services users; and ensuring a high level of protection for such users.

The proposed new Directive contains several adaptations to the existing Payment Services Directive and certain new obligations for Member States, allowing them a considerable margin of discretion as to how these obligations are transposed in national law.

The proposed principles, rules, processes and standards must be the subject of a synchronised approach by all the Member States so as to achieve legal certainty and equality of treatment for all participants in the market.

The aims of the proposal are fully in line with EU policies in other areas such as data protection, administrative sanctions and the combating of money laundering and terrorist financing.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Article 4 – point 25

Text proposed by the Commission

25. ‘agent’ means a natural or legal person which acts on behalf of a payment institution in providing payment services;

Amendment

25. ‘agent’ means a natural or legal person which acts on behalf of ***and at the expense of*** a payment institution in providing payment services;

Amendment 2

Proposal for a directive Article 4 – point 28

Text proposed by the Commission

28. ‘durable medium’ means any instrument which enables the payment service user to store information addressed personally to ***of*** that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

Amendment

28. ‘durable medium’ means any instrument which enables the payment service user to store information addressed personally to that payment service user in a way ***easily*** accessible ***to him/her*** for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

Amendment 3

Proposal for a directive Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) a programme of operations, setting out ***in particular the type*** of payment services envisaged;

Amendment

(a) a programme of operations, setting out ***all the types*** of payment services envisaged;

Amendment 4

Proposal for a directive

Article 5 – paragraph 1 – point f

Text proposed by the Commission

(e) a description of the procedure in place to monitor, handle **and** follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the payment institution laid down in Article 86;

Amendment

(e) a description of the procedure in place to monitor, handle, follow up **and resolve** a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the payment institution laid down in Article 86;

Amendment 5

Proposal for a directive

Article 5 – paragraph 1 – point i

Text proposed by the Commission

(i) a description **on** the principles and definitions applied for the collection of the statistical data performance, transactions and fraud;

Amendment

(i) a description **of** the principles and definitions applied for the collection of the statistical data **on** performance, transactions and fraud, **which must be in accordance with the applicable national law and with EU law**;

Amendment 6

Proposal for a directive

Article 9 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) In cases where the funds of payment service users are to be used under a term payment order or direct debit and, before the end of the term or automatic payment, legal proceedings are opened against the user of the funds that result in their being frozen, the funds held by the payment institution may not be blocked if the term

payment order or direct debit has been issued prior to the judicial decision to freeze the funds.

Amendment 7

Proposal for a directive Article 33 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that consumers who use switching services receive information on previous completed transactions from transferring payment service providers upon request, at a reasonable price and on a durable medium.

Amendment 8

Proposal for a directive Article 34

Text proposed by the Commission

Amendment

Member States may stipulate that the burden of proof shall lie with the payment service provider to prove that it has complied with the information requirements set out in this Title.

The burden of proof shall lie with the payment service provider to prove that it has complied with the information requirements set out in this Title.

Justification

The burden of proof in cases of non-compliance with the requirements for the provision of information on payment services should be assumed by the payment service provider. Member States should not have the possibility of stipulating other options.

Amendment 9

Proposal for a directive Article 45 – paragraph 2 – point a

Text proposed by the Commission

(a) a description of the main characteristics of the payment service to be provided;

Amendment

(a) a **clear** description of the main characteristics of the payment service to be provided;

Amendment 10

Proposal for a directive Article 62 – paragraph 1 – point a

Text proposed by the Commission

(a) to make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 61;

Amendment

(a) to make sure that the personalised security features of the payment instrument are **indeed secure and are** not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 61;

Amendment 11

Proposal for a directive Article 66 – paragraph 1 – subparagraph 1

Text proposed by the Commission

By way of derogation from Article 65 the payer may be obliged to bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 50, resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument.

Amendment

By way of derogation from Article 65 the payer may be obliged to bear the losses relating to any unauthorised payment transactions, up to a maximum of EUR 50 **or equivalent**, resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument.

Justification

The amount referred to is only stated in Euros, consideration needs to be given to Member

States with a different currency and an equivalent amount in that Member State's currency should be accepted, as the exchange rates change on a daily basis.

Amendment 12

Proposal for a directive Article 66 a (new)

Text proposed by the Commission

Amendment

Article 66a

Payment transactions for which the amount of the transactions is not known in advance

- 1. In the case of payment transactions for which the amount is not known at the time of purchase, Member States should set a reasonable maximum amount of funds that may be blocked from the payment account of the payer, and a maximum time period in which those funds will be blocked by the payee.***
- 2. The payee shall be obliged to inform the payer prior to the payment transaction if funds exceeding the amount of the purchase are to be blocked from the payment account of the payer.***
- 3. If funds exceeding the amount of the purchase are blocked from the payment account of the payer, the payment service provider must inform the payer thereof in a statement of its account.***

Justification

In many cases, the final price of the service provided is not known at the time of the transaction, and merchants such as car hire companies, hotels, etc. block for prolonged periods of time amounts that are higher than those required by the payer's credit or debit card company. Such practices guarantee the merchant payment, but without the consumer being informed before making the payment transaction either by the merchant or by the payment service provider.

Amendment 13

Proposal for a directive Article 89 – paragraph 3

Text proposed by the Commission

3. In the event of infringement or suspected infringement of the provisions of national law adopted pursuant to Titles III and IV, the competent authorities referred to in paragraph 1 of this Article shall be those of the *home* Member State of the payment service provider, ***except for agents and branches conducted under the right of establishment where the competent authorities shall be those of the host Member State.***

Amendment

3. In the event of infringement or suspected infringement of the provisions of national law adopted pursuant to Titles III and IV, the competent authorities referred to in paragraph 1 of this Article shall be those of the *host* Member State of the payment service provider.

Justification

Monitoring of the current operations of payment service providers must be performed by the competent authorities of the host Member State because they are in the best position to do this. The authorities in the host Member State must be able to take direct action when the payment service provider fails to meet its obligations and responsibilities.

Amendment 14

Proposal for a directive Article 90 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that payment service providers put in place adequate and effective consumer complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations arising under this Directive.

Amendment

1. Member States shall ensure that payment service providers put in place ***and apply*** adequate and effective consumer complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations arising under this Directive, ***and shall monitor their performance in that regard.***

Amendment 15

Proposal for a directive

Article 90 – paragraph 4

Text proposed by the Commission

4. The information referred to in paragraph 2 shall be mentioned in ***an easily, directly, prominently and permanently*** accessible way on the ***website of the payment service provider***, where one exists, in the general terms and conditions of ***the contract between the payment service provider and the payment service user and in invoices and receipts relating to such contracts. It shall specify how further information on the out-of-court redress entity concerned and on the conditions for using it can be accessed.***

Amendment

4. The information referred to in paragraph 1 shall be mentioned in ***a clear, comprehensible and easily*** accessible way on the ***trader's website***, where one exists ***and if applicable*** in the general terms and conditions of ***sales or*** service contracts ***between the trader and a consumer.***

Justification

The wording proposed goes further than the wording of the Alternative Dispute Resolution (ADR) Directive by adding requirements to provide this information on all receipts and invoices which could be burdensome for SMEs. It is best here to use the wording of Article 13(2) of the ADR Directive.

Amendment 16

Proposal for a directive Article 91 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between payment service users and payment service providers concerning the rights and obligations arising under this Directive are established according to the relevant national and Union legislation, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable to payment service providers and that they also cover the activities of appointed representatives.

Amendment

1. Member States shall ensure that adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between payment service users and payment service providers concerning the rights and obligations arising under this Directive are established according to the relevant national and Union legislation, using existing ***competent*** bodies where appropriate. Member States shall ensure that such procedures are applicable to ***and accessible by both users of payment services and*** payment service providers and that they also cover the activities of

appointed representatives.

Amendment 17

Proposal for a directive Article 92 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The EBA shall issue guidelines on the sanctions under paragraph 2 and shall ensure that they are effective, proportionate and dissuasive.

Amendment 18

Proposal for a directive Article 94 – paragraph 5

Text proposed by the Commission

Amendment

5. A delegated act adopted pursuant to Article 93 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

5. A delegated act adopted pursuant to Article 93 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Justification

The time limit for making objections needs to be increased, in order to enable Parliament and the Council to examine the delegated act in depth and to assess whether its adoption in that form is fitting and correct.

Amendment 19

Proposal for a directive Article 95 – paragraph 2

Text proposed by the Commission

2. Where a Member State makes use of any of the options referred to in paragraph 1, it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make the information public on a web-site or other easily accessible means.

Amendment

2. Where a Member State makes use of any of the options referred to in paragraph 1, it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make the information public on a web-site or other easily accessible means ***and shall advise Parliament of it at the same time.***

PROCEDURE

Title	Payment services in the internal market
References	COM(2013)0547 – C7-0230/2013 – 2013/0264(COD)
Committee responsible Date announced in plenary	ECON 8.10.2013
Opinion by Date announced in plenary	JURI 8.10.2013
Rapporteur Date appointed	Dimitar Stoyanov 14.10.2013
Discussed in committee	26.11.2013
Date adopted	17.12.2013
Result of final vote	+: 23 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger, József Szájer, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Silvia Costa, Jürgen Klute, Kay Swinburne