

97/489/EC: Commission Recommendation of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder (Text with EEA relevance)

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COMMISSION RECOMMENDATION of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder (Text with EEA relevance) (97/489/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 155, second indent, thereof,

(1) Whereas one of the main objectives of the Community is to ensure the full functioning of the internal market of which payment systems are essential parts; whereas transactions made by electronic payment instruments account for an increasing proportion of the volume and the value of domestic and cross-border payments; whereas, given the current context of rapid innovation and technological progress, this trend is expected to accelerate notably as a consequence of the wide array of innovative businesses, markets and trading communities engendered by electronic commerce;

(2) Whereas it is important for individuals and businesses to be able to use electronic payment instruments throughout the Community; whereas this recommendation seeks to follow up progress made towards the completion of the internal market, notably in the light of the liberalization of capital movements, and will also contribute to the implementation of economic and monetary union;

(3) Whereas this recommendation covers transactions effected by electronic payment instruments; whereas, for the purposes of this recommendation, these include instruments allowing for (remote) access to a customer's account, notably payment cards and phone- and home-banking applications; whereas transactions by means of a payment card shall cover electronic and non-electronic payment by means of a payment card, including processes for which a signature is required and a voucher is produced; whereas, for the purposes of this recommendation, means of payment instruments also include reloadable electronic money instruments in the form of stored-value cards and electronic tokens stored on network computer memory; whereas reloadable electronic money instruments, because of their features, in particular the possible link to the holder's account, are those for which the need for customer protection is strongest; whereas, as far as electronic money instruments are concerned, coverage under this recommendation is therefore limited to instruments of the reloadable type;

(4) Whereas this recommendation is intended to contribute to the advent of the information society and, in particular, electronic commerce by promoting customer

confidence in and retailer acceptance of these instruments; whereas, to this end, the Commission will also consider the possibility of modernizing and updating its recommendation 87/598/EEC (1), with a view to establishing a clear framework for the relationship between acquirers and acceptors in respect of electronic payment instruments; whereas, in line with those objectives, this recommendation sets out minimum information requirements which should be contained in the terms and conditions applied to transactions made by electronic payment instruments, as well as the minimum obligations and liabilities of the parties concerned; whereas such terms and conditions should be set out in writing, including where appropriate by electronic means, and maintain a fair balance between the interests of the parties concerned; whereas, in compliance with Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (2), such terms and conditions should in particular be in an understandable and comprehensible form;

(5) Whereas, with a view to ensuring transparency, this recommendation sets out the minimum requirements needed to ensure an adequate level of customer information upon conclusion of a contract as well as subsequent to transactions effected by means of a payment instrument, including information on charges, exchange rates and interest rates; whereas, for the purpose of informing the holder of the manner of calculation of the interest rate, reference is to be made to Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (3), as amended by Directive 90/88/EEC (4);

(6) Whereas this recommendation sets out minimum requirements concerning the obligations and liabilities of the parties concerned; whereas information to a holder should include a clear statement of the extent of the customer's obligation as holder of an electronic payment instrument enabling him/her to make payments in favour in third persons, as well as to perform certain financial transactions for himself/herself;

(7) Whereas, to improve customer's access to redress, this recommendation calls on Member States to ensure that there are adequate and effective means for the settlement of disputes between a holder and an issuer; whereas the Commission published on 14 February 1996 a plan of action on consumer access to justice and the settlement of consumer disputes in the internal market; whereas that plan of action includes specific initiatives to promote out-of-court procedures; whereas objective criteria (Annex II) are suggested to ensure the reliability of those procedures and provision is made for the use of standardized claims forms (Annex III);

(8) Whereas this recommendation seeks to ensure a high level of consumer protection in the field of electronic payment instruments;

(9) Whereas it is essential that transactions effected by means of electronic payment instruments should be the subject of records in order that transactions can be traced and errors can be rectified; whereas the burden of proof to show that a transaction was accurately recorded and entered into the accounts and was not affected by technical breakdown or other deficiency should lie upon the issuer;

(10) Whereas, without prejudice to any rights of a holder under national law, payment instructions given by a holder in respect of transactions effected by means of an electronic payment instrument should be irrevocable, except if the amount was not determined when the order was given;

(11) Whereas rules need to be specified concerning the issuer's liability for non-execution or for defective execution of a holder's payment instructions and for transactions which have not been authorized by him/her, subject always to the holder's own obligations in the case of lost or stolen electronic payment instruments;

(12) Whereas the Commission will monitor the implementation of this Recommendation and, if it finds the implementation unsatisfactory, it intends to propose the appropriate binding legislation covering the issues dealt with in this recommendation,

HEREBY RECOMMENDS:

SECTION I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Recommendation applies to the following transactions:

(a) transfers of funds, other than those ordered and executed by financial institutions, effected by means of an electronic payment instrument;

(b) cash withdrawals by means of an electronic payment instrument and the loading (and unloading) of an electronic money instrument, at devices such as cash dispensing machines and automated teller machines and at the premises of the issuer or an institution who is under contract to accept the payment instrument.

2. By way of derogation from paragraph 1, Article 4 (1), the second and third indents of Article 5 (b), Article 6, Article 7 (2) (c), (d) and the first indent of (e), Article 8 (1), (2) and (3) and Article 9 (2) do not apply to transactions effected by means of an electronic money instrument. However, where the electronic money instrument is used to load (and unload) value through remote access to the holder's account, this Recommendation is applicable in its entirety.

3. This recommendation does not apply to:

(a) payments by cheques;

(b) the guarantee function of certain cards in relation to payments by cheques.

Article 2

Definitions

For the purpose of this recommendation, the following definitions apply:

(a) 'electronic payment instrument` means an instrument enabling its holder to effect transactions of the kind specified in Article 1 (1). This covers both remote access payment instruments and electronic money instruments;

(b) 'remote access payment instrument` means an instrument enabling a holder to access funds held on his/her account at an institution, whereby payment is allowed to be made to a payee and usually requiring a personal identification code and/or any other similar proof of identity. This includes in particular payment cards (whether credit, debit, deferred debit or charge cards) and phone- and home-banking applications;

(c) 'electronic money instrument` means a reloadable payment instrument other than a remote access payment instrument, whether a stored-value card or a computer memory, on which value units are stored electronically, enabling its holder to effect transactions of the kind specified in Article 1 (1);

(d) 'financial institution` means an institution as defined in Article 4 (1) of Council Regulation (EC) No 3604/93 (5);

(e) 'issuer` means a person who, in the course of his business, makes available to another person a payment instrument pursuant to a contract concluded with him/her;

(f) 'holder` means a person who, pursuant to a contract concluded between him/her and an issuer, holds a payment instrument.

SECTION II

TRANSPARENCY OF CONDITIONS FOR TRANSACTIONS

Article 3

Minimum information contained in the terms and conditions governing the issuing and use of an electronic payment instrument

1. Upon signature of the contract or in any event in good time prior to delivering an electronic payment instrument, the issuer communicates to the holder the contractual terms and conditions (hereinafter referred to as 'the terms`) governing the issue and use of that electronic payment instrument. The terms indicate the law applicable to the contract.

2. The terms are set out in writing, including where appropriate by electronic means, in easily understandable words and in a readily comprehensive form, and are available at

least in the official language or languages of the Member State in which the electronic payment instrument is offered.

3. The terms include at least:

(a) a description of the electronic payment instrument, including where appropriate the technical requirements with respect to the holder's communication equipment authorized for use, and the way in which it can be used, including the financial limits applied, if any;

(b) a description of the holder's and issuer's respective obligations and liabilities; they include a description of the reasonable steps that the holder must take to keep safe the electronic payment instrument and the means (such as a personal identification number or other code) which enable it to be used;

(c) where applicable, the normal period within which the holder's account will be debited or credited, including the value date, or, where the holder has no account with the issuer, the normal period within which he/she will be invoiced;

(d) the types of any charges payable by the holder. In particular, this includes where applicable details of the following charges:

- the amount of any initial and annual fees,
- any commission fees and charges payable by the holder to the issuer for particular types of transactions,
- any interest rate, including the manner of its calculation, which may be applied;

(e) the period of time during which a given transaction can be contested by the holder and an indication of the redress and complaints procedures available to the holder and the method of gaining access to them.

4. If the electronic payment instrument is usable for transactions abroad (outside the country of issuing/affiliation), the following information is also communicated to the holder:

(a) an indication of the amount of any fees and charges levied for foreign currency transactions, including where appropriate the rates;

(b) the reference exchange rate used for converting foreign currency transactions, including the relevant date for determining such a rate.

Article 4

Information subsequent to a transaction

1. The issuer supplies the holder with information relating to the transactions effected by means of an electronic payment instrument. This information, set out in writing, including where appropriate by electronic means, and in a readily comprehensible form, includes at least:

(a) a reference enabling the holder to identify the transaction, including, where appropriate, the information relating to the acceptor at/with which the transaction took place;

(b) the amount of the transaction debited to the holder in billing currency and, where applicable, the amount in foreign currency;

(c) the amount of any fees and charges applied for particular types of transactions.

The issuer also provides the holder with the exchange rate used for converting foreign currency transactions.

2. The issuer of an electronic money instrument provides the holder with the possibility of verifying the last five transactions executed with the instrument and the outstanding value stored thereon.

SECTION III

OBLIGATIONS AND LIABILITIES OF THE PARTIES TO A CONTRACT

Article 5

Obligations of the holder

The holder:

(a) uses the electronic payment instrument in accordance with the terms governing the issuing and use of a payment instrument; in particular, the holder takes all reasonable steps to keep safe the electronic payment instrument and the means (such as a personal identification number or other code) which enable it to be used;

(b) notifies the issuer (or the entity specified by the latter) without delay after becoming aware of:

- the loss or theft of the electronic payment instrument or of the means which enable it to be used,

- the recording on his/her account of any unauthorized transaction,

- any error or other irregularity in the maintaining of that account by the issuer;

(c) does not record his personal identification number or other code in any easily recognizable form, in particular on the electronic payment instrument or on any item which he/she keeps or carries with the electronic payment instrument;

(d) does not countermand an order which he/she has given by means of his/her electronic payment instrument, except if the amount was not determined when the order was given.

Article 6

Liabilities of the holder

1. Up to the time of notification, the holder bears the loss sustained in consequence of the loss or theft of the electronic payment instrument up to a limit, which may not exceed ECU 150, except where he/she acted with extreme negligence, in contravention of relevant provisions under Article 5 (a), (b) or (c), or fraudulently, in which case such a limit does not apply.

2. As soon as the holder has notified the issuer (or the entity specified by the latter) as required by Article 5 (b), except where he/she acted fraudulently, he/she is not thereafter liable for the loss arising in consequence of the loss or theft of his/her electronic payment instrument.

3. By derogation from paragraphs 1 and 2, the holder is not liable if the payment instrument has been used, without physical presentation or electronic identification (of the instrument itself). The use of a confidential code or any other similar proof of identity is not, by itself, sufficient to entail the holder's liability.

Article 7

Obligations of the issuer

1. The issuer may alter the terms, provided that sufficient notice of the change is given individually to the holder to enable him/her to withdraw if he/she so chooses. A period of not less than one month is specified after which time the holder is deemed to have accepted the terms if he/she has not withdrawn.

However, any significant change to the actual interest rate is not subject to the provisions of the first subparagraph and comes into effect upon the date specified in the publication of such a change. In this event, and without prejudice to the right of the holder to withdraw from the contract, the issuer informs the holder individually thereof as soon as possible.

2. The issuer:

(a) does not disclose the holder's personal identification number or other code, except to the holder;

(b) does not dispatch an unsolicited electronic payment instrument, except where it is a replacement for an electronic payment instrument already held by the holder;

(c) keeps for a sufficient period of time, internal records to enable the transactions referred to in Article 1 (1) to be traced and errors to be rectified;

(d) ensures that appropriate means are available to enable the holder to make the notification required under Article 5 (b). Where notification is made by telephone, the issuer (or the entity specified by the latter) provides the holder with the means of proof that he/she has made such a notification;

(e) proves, in any dispute with the holder concerning a transaction referred to in Article 1 (1), and without prejudice to any proof to the contrary that may be produced by the holder, that the transaction:

- was accurately recorded and entered into accounts,
- was not affected by technical breakdown or other deficiency.

Article 8

Liabilities of the issuer

1. The issuer is liable, subject to Article 5, Article 6 and Article 7 (2) (a) and (e):

(a) for the non-execution or defective execution of the holder's transactions referred to in Article 1 (1), even if a transaction is initiated at devices/terminals or through equipment which are not under the issuer's direct or exclusive control, provided that the transaction is not initiated at devices/terminals or through equipment unauthorized for use by the issuer;

(b) for transactions not authorized by the holder, as well as for any error or irregularity attributable to the issuer in the maintaining of the holder's account.

2. Without prejudice to paragraph 3, the amount of the liability indicated in paragraph 1 consists of:

(a) the amount of the unexecuted or defectively executed transaction and, if any, interest thereon;

(b) the sum required to restore the holder to the position he/she was in before the unauthorized transaction took place.

3. Any further financial consequences, and, in particular, those concerning the extent of the damage for which compensation is to be paid, are borne by the issuer in accordance with the law applicable to the contract concluded between the issuer and the holder.

4. The issuer is liable to the holder of an electronic money instrument for the lost amount of value stored on the instrument and for the defective execution of the holder's transactions, where the loss or defective execution is attributable to a malfunction of the instrument, of the device/terminal or any other equipment authorized for use, provided that the malfunction was not caused by the holder knowingly or in breach of Article 3 (3) (a).

SECTION IV

NOTIFICATION, SETTLEMENT OF DISPUTES AND FINAL PROVISION

Article 9

Notification

1. The issuer (or the entity specified by him) provides means whereby a holder may at any time of day or night notify the loss or theft of his/her electronic payment instrument.

2. The issuer (or the entity specified by him), upon receipt of notification, is under the obligation, even if the holder acted with extreme negligence or fraudulently, to take all reasonable action open to him to stop any further use of the electronic payment instrument.

Article 10

Settlement of disputes

Member States are invited to ensure that there are adequate and effective means for the settlement of disputes between a holder and an issuer.

Article 11

Final provision

Member States are invited to take the measures necessary to ensure that the issuers of electronic payment instruments conduct their activities in accordance with Articles 1 to 9 by not later than 31 December 1998.

Done at Brussels, 30 July 1997.

For the Commission

Mario MONTI

Member of the Commission

- (1) OJ No L 365, 24. 12. 1987, p. 72.
- (2) OJ No L 95, 21. 4. 1993, p. 29.
- (3) OJ No L 42, 12. 2. 1987, p. 48.
- (4) OJ No L 61, 10. 3. 1990, p. 14.
- (5) OJ No L 332, 31. 12. 1993, p. 4.

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