STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 7

Rights and Obligations in Relation to the Provision of Payment Services

Liability

Incorrect unique identifiers

90.—(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.

(2) Where the unique identifier provided by the payment service user is incorrect, the payment service provider is not liable under regulation 91 or 92 for non-execution or defective execution of the payment transaction, but the payment service provider—

    (a) must make reasonable efforts to recover the funds involved in the payment transaction; and

    (b) may, if agreed in the framework contract, charge the payment service user for any such recovery.

(3) The payee's payment service provider must co-operate with the payer's payment service provider in its efforts to recover the funds, in particular by providing to the payer's payment service provider all relevant information for the collection of funds.

(4) If the payer's payment service provider is unable to recover the funds it must, on receipt of a written request, provide to the payer all available relevant information in order for the payer to claim repayment of the funds.

(5) Where the payment service user provides information additional to that specified in regulation 43(2)(a) (information required prior to the conclusion of a single payment service contract) or paragraph 2(b) of Schedule 4 (prior general information for framework contracts), the payment service provider is liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

Non-execution or defective or late execution of payment transactions initiated by the payer

91.—(1) This regulation applies where a payment order is initiated directly by the payer.

(2) The payer's payment service provider is liable to the payer for the correct execution of the payment transaction unless it can prove to the payer and, where relevant, to the payee's payment service provider, that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 86(1) to (3) (payment transactions to a payment account).

(3) Where the payer's payment service provider is liable under paragraph (2), it must without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

Document Generated: 2024-04-03

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(4) The credit value date for a credit under paragraph (3) must be no later than the date on which the amount was debited.

(5) If the payer's payment service provider proves that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 86, the payee's payment service provider is liable to the payee for the correct execution of the payment transaction and must—

(a) immediately make available the amount of the payment transaction to the payee; and

(b) where applicable, credit the corresponding amount to the payee's payment account.

(6) The credit value date for a credit under paragraph (5)(b) must be no later than the date on which the amount would have been value dated if the transaction had been executed correctly.

(7) Where a payment transaction is executed late, the payee's payment service provider must, on receipt of a request from the payer's payment service provider on behalf of the payer, ensure that the credit value date for the payee's payment account is no later than the date the amount would have been value dated if the transaction had been executed correctly.

(8) Regardless of liability under this regulation, the payer's payment service provider must, on request by the payer, immediately and without charge—

(a) make efforts to trace any non-executed or defectively executed payment transaction; and

(b) notify the payer of the outcome.

Non-execution or defective or late execution of payment transactions initiated by the payee

92.—(1) This regulation applies where a payment order is initiated by the payee.

(2) The payee's payment service provider is liable to the payee for the correct transmission of the payment order to the payer's payment service provider in accordance with regulation 86(5) (payment transactions to a payment account).

(3) Where the payee's payment service provider is liable under paragraph (2), it must immediately re-transmit the payment order in question to the payer's payment service provider.

(4) The payee's payment service provider must also ensure that the transaction is handled in accordance with regulation 89 (value date and availability of funds), such that the amount of the transaction—

(a) is at the payee's disposal immediately after it is credited to the payee's payment service provider's account; and

(b) is value dated on the payee's payment account no later than the date the amount would have been value dated if the transaction had been executed correctly.

(5) The payee's payment service provider must, on request by the payee and free of charge, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(6) Subject to paragraph (8), if the payee's payment service provider proves to the payee and, where relevant, to the payer's payment service provider, that it is not liable under paragraph (2) in respect of a non-executed or defectively executed payment transaction, the payer's payment service provider is liable to the payer and must, as appropriate and immediately—

(a) refund to the payer the amount of the payment transaction; and

(b) restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(7) The credit value date for a credit under paragraph (6)(b) must be no later than the date on which the amount was debited.

(8) If the payer's payment service provider proves that the payee's service provider has received the amount of the payment transaction, paragraph (6) does not apply and the payee's payment service

provider must value date the amount on the payee's payment account no later than the date the amount would have been value dated if the transaction had been executed correctly.

Non-execution or defective or late execution of payment transactions initiated through a payment initiation service

93.—(1) This regulation applies where a payment order is initiated by the payer through a payment initiation service.

(2) The account servicing payment service provider must refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(3) Paragraph (4) applies if the payment initiation service provider does not prove to the account servicing payment service provider that—

(a) the payment order was received by the payer's account servicing payment service provider in accordance with regulation 81 (receipt of payment orders); and

(b) within the payment initiation service provider's sphere of influence the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the non-execution, defective or late execution of the transaction.

(4) On request from the account servicing payment service provider, the payment initiation service provider must immediately compensate the account servicing payment service provider for the losses incurred or sums paid as a result of the refund to the payer.

Liability of payment service provider for charges and interest

94. A payment service provider is liable to its payment service user for—

(a) any charges for which the payment service user is responsible; and

(b) any interest which the payment service user must pay,

as a consequence of the non-execution or defective or late execution of the payment transaction.

Right of recourse

95. Where the liability of a payment service provider ("the first provider") under regulation 76, 91, 92 or 93 (payment service providers' liability for unauthorised or defective payment transactions) is attributable to another payment service provider or an intermediary, including where there is a failure to use strong customer authentication as required by regulation 100 (authentication), the other payment service provider or intermediary must compensate the first provider for any losses incurred or sums paid pursuant to those regulations.

Force majeure

96.—(1) A person is not liable for any contravention of a requirement imposed on it by or under this Part where the contravention is due to abnormal and unforeseeable circumstances beyond the person's control, the consequences of which would have been unavoidable despite all efforts to the contrary.

(2) A payment service provider is not liable for any contravention of a requirement imposed on it by or under this Part where the contravention is due to the obligations of the payment service provider under other provisions of EU or national law.