

Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)

TITLE IV

RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES

CHAPTER 3

Execution of payment transactions

Section 3

Liability

Article 88

Incorrect unique identifiers

1 If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

2 If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 89 for non-execution or defective execution of the payment transaction.

3 However, the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction. The payee's payment service provider shall cooperate in those efforts also by communicating to the payer's payment service provider all relevant information for the collection of funds.

In the event that the collection of funds under the first subparagraph is not possible, the payer's payment service provider shall provide to the payer, upon written request, all information available to the payer's payment service provider and relevant to the payer in order for the payer to file a legal claim to recover the funds.

4 If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

5 If the payment service user provides information in addition to that specified in point (a) of Article 45(1) or point (2)(b) of Article 52, the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

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Article 89

Payment service providers' liability for non-execution, defective or late execution of payment transactions

1 Where a payment order is initiated directly by the payer, the payer's payment service provider shall, without prejudice to Article 71, Article 88(2) and (3), and Article 93, be liable to the payer for 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 Article 83(1). In that case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

Where the payer's payment service provider is liable under the first subparagraph, it shall, 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.

The credit value date for the payer's payment account shall be no later than the date on which the amount was debited.

Where the payee's payment service provider is liable under the first subparagraph, it shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

The credit value date for the payee's payment account shall be no later than the date on which the amount would have been value dated, had the transaction been correctly executed in accordance with Article 87.

Where a payment transaction is executed late, the payee's payment service provider shall ensure, upon the request of the payer's payment service provider acting on behalf of the payer, that the credit value date for the payee's payment account is no later than the date the amount would have been value dated had the transaction been correctly executed.

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, the payer's payment service provider shall, regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome. This shall be free of charge for the payer.

2 Where a payment order is initiated by or through the payee, the payee's payment service provider shall, without prejudice to Article 71, Article 88(2) and (3), and Article 93, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 83(3). Where the payee's payment service provider is liable under this subparagraph, it shall immediately re-transmit the payment order in question to the payment service provider of the payer.

In the case of a late transmission of the payment order, the amount shall be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

In addition, the payment service provider of the payee shall, without prejudice to Article 71, Article 88(2) and (3), and Article 93, be liable to the payee for handling the payment

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transaction in accordance with its obligations under Article 87. Where the payee's payment service provider is liable under this subparagraph, it shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account. The amount shall be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

[^{X1}In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under the first and third subparagraphs, the payer's payment service provider shall be liable to the payer.] Where the payer's payment service provider is so liable he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. The credit value date for the payer's payment account shall be no later than the date the amount was debited.

The obligation under the fourth subparagraph shall not apply to the payer's payment service provider where the payer's payment service provider proves that the payee's payment service provider has received the amount of the payment transaction, even if execution of payment transaction is merely delayed. If so, the payee's payment service provider shall value date the amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly.

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, the payee's payment service provider shall, regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome. This shall be free of charge for the payee.

3 In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective, including late, execution of the payment transaction.

Editorial Information

X1 Substituted by [Corrigendum to Directive \(EU\) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation \(EU\) No 1093/2010 and repealing Directive 2007/64/EC \(Official Journal of the European Union L 337 of 23 December 2015\)](#).

Article 90

Liability in the case of payment initiation services for non-execution, defective or late execution of payment transactions

1 Where a payment order is initiated by the payer through a payment initiation service provider, the account servicing payment service provider shall, without prejudice to Article 71 and Article 88(2) and (3), 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.

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The burden shall be on the payment initiation service provider to prove that the payment order was received by the payer's account servicing payment service provider in accordance with Article 78 and that within its sphere of competence 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.

2 If the payment initiation service provider is liable for the non-execution, defective or late execution of the payment transaction, it shall immediately compensate the account servicing payment service provider at its request for the losses incurred or sums paid as a result of the refund to the payer.

Article 91

Additional financial compensation

Any financial compensation additional to that provided for under this Section may be determined in accordance with the law applicable to the contract concluded between the payment service user and the payment service provider.

Article 92

Right of recourse

[^{X1} Where the liability of a payment service provider under Articles 73, 89 and 90 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under Articles 73, 89 and 90. That shall include compensation where any of the payment service providers fail to use strong customer authentication.]

2 Further financial compensation may be determined in accordance with agreements between payment service providers and/or intermediaries and the law applicable to the agreement concluded between them.

Editorial Information

- X1** Substituted by [Corrigendum to Directive \(EU\) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation \(EU\) No 1093/2010 and repealing Directive 2007/64/EC \(Official Journal of the European Union L 337 of 23 December 2015\).](#)

Article 93

Abnormal and unforeseeable circumstances

No liability shall arise under Chapter 2 or 3 in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by Union or national law.