
STATUTORY INSTRUMENTS

2009 No. 209

The Payment Services Regulations 2009

PART 6

RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION OF PAYMENT SERVICES

Liability

Incorrect unique identifiers

74.—(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 75 or 76 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) Where the payment service user provides information additional to that specified in regulation 36(2)(a) or paragraph 2(b) of Schedule 4, 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 execution of payment transactions initiated by the payer

75.—(1) This regulation applies where a payment order is initiated 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 70.

(3) The payer's payment service provider must, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

(4) 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.

(5) Where the payer's payment service provider can prove (as set out in paragraph (2)) that the payee's payment service provider received the amount of the payment transaction in accordance with

regulation 70, 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.

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

76.—(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 70(6).

(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, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(5) Where the payee's payment service provider can prove 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 without undue delay—

- (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.

Liability of payment service provider for charges and interest

77. 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 execution of the payment transaction.

Right of recourse

78. Where the liability of a payment service provider ("the first provider") under regulation 75 or 76 is attributable to another payment service provider or an intermediary, 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

79.—(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 Community or national law.