



The Consumer Voice in Europe

Proposal for a revised Payment Services Directive

BEUC position

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Summary

BEUC welcomes the Commission proposal for a revised Payment Services Directive, which aims at adapting the legislation to new market developments, fostering competition through creating a level playing field for all payment services providers, and improving consumer rights and protection.

BEUC's main requests are as below:

- Member States should be able to adopt stricter rules with regard to the negative scope.
- Electronic money should be included in the list of payment services regulated by the PSD.
- The account servicing PSPs should provide consumers with separate personal security features which should be used exclusively for payment initiation through TPPs.
- BEUC is in favour of an EU-wide ban on surcharges on any means of payment.
- Consumer's PSP should refund to the consumer the amount of the unauthorised payment transaction on the same day it has been made aware of the transaction.
- There is a need to provide clear definition of 'gross negligence' in the revised PSD.
- For payment transactions where the transaction amount is not known in advance, set the maximum amount of funds which may be blocked on the consumer's payment account and maximum time limits for which the funds may be blocked by the payee.
- Consumers should be granted an unconditional refund right for direct debit transactions.
- PSPs should be required to regularly provide data on fraud related to different means of payment to national competent authorities and to the European Banking Authority (EBA).
- Host state authorities should be given supervisory powers over PSPs who originate from other countries.
- The EBA should be in charge of issuing guidelines to ensure sanctions are effective, proportionate and dissuasive.
- PSPs should be required to adhere to one or more alternative dispute resolution (ADR) bodies.

BEUC welcomes the Commission proposal for a revised Payment Services Directive (PSD) published on 24 July. The PSD provides the legal foundation for the creation of an EU-wide single market for payments, including the SEPA project. The Commission proposal for PSD II, together with the proposed Regulation on interchange fees for card-based payment transactions, aims at adapting the legislation to new market developments, fostering competition through creating a level playing field for all payment services providers, and improving consumer rights and protection.

As the Commission puts it, *"While the review of the Payment Services Directive confirmed that the existing PSD is generally fit for purpose, it revealed that some of its provisions needed to be modernised to take account of new types of payment services...At the same time, certain rules set out in the PSD, such as the exemptions of a number of payments related activities from the scope of the Directive (payment services provided within a "limited network" or through mobile phones or other IT devices) have been transposed or applied by Member States in different ways leading to regulatory arbitrage and legal uncertainty and in a number of areas to impaired consumer protection and competitive distortions."*¹

The PSD contains important provisions related to consumer rights and protection. Although the Commission proposal goes in the right direction, it needs some adjustments in order to remedy shortcomings identified in PSD I, including payments security, adapt to changes and innovation in the payments area, better respond to consumer demand and needs, and align to best practices.

Facilitating the market entry for alternative and innovative PSPs is a welcome move towards more competition and better prices for consumers. This should not, however, lead to lowering the security standards, as consumer confidence in payment systems is capital.

BEUC's detailed position on the Commission draft proposal is as below:

Scope: BEUC welcomes the Commission proposal to extend the provisions on transparency and information requirements (Title III of the PSD) to one-leg transactions. Currently in many Member States, when consumers transfer money to or from outside the EU, the PSD rules on information transparency do not apply, which results in non-sufficient information on charges applicable.

Negative scope: We welcome the proposal to narrow down the negative scope concerning ATMs, payment transactions involving commercial agents, limited networks and telecoms. Member States should be able to adopt stricter rules with regard to the negative scope. Notably, the proposed telecom exemption thresholds of EUR 50 and EUR 200 seem to be excessively high.

Payment services listed in Annex 1: BEUC requests that electronic money as defined in Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions is included in the list of payment services regulated by the PSD.

¹ Payment Services Directive and Interchange fees Regulation: frequently asked questions: [http://europa.eu/rapid/press-release MEMO-13-719_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-13-719_en.htm?locale=en)

Payment initiation services provided by third-party PSPs (TPPs): BEUC welcomes the Commission's decision to bring TPPs under the scope of the revised PSD because at this moment those TPPs are not regulated. Overall, BEUC supports the Commission proposals related to registration and licensing of TPPs, strong customer authentication rules, TPP authentication vis-à-vis the account servicing PSPs, and consumer-friendly liability safeguards. That said, BEUC is concerned about the business model, where TPPs come into possession of the consumer's personal security features to access his bank account. This threatens consumer security and privacy and by far exceeds the objective – receive payment authorisation and payment guarantee for a specific payment transaction. With that being said, BEUC proposes that the account servicing PSPs provide consumers with separate personal security features which should be used exclusively for payment initiation through TPPs.

Small payment institutions waiver: The Commission proposes to decrease the threshold from EUR 3 million to EUR 1 million. According to the study conducted by London Economics/iff, the waiver option is used only in 9 EEA States. Some Member States apply a much lower waiver threshold, e.g. EUR 100 000 per annum in Slovenia. The Commission considers the threshold of EUR 3 million is too high and is likely being used by PSPs in some Member States to be partly exempted from regulation, where multiple different entities remain under the threshold, e.g. in Latvia². BEUC supports the Commission proposal to lower the threshold.

Termination of framework contracts: PSPs should not charge fees for termination of a framework contract even during the 1st year of the contract (see PSD I). Currently in some Member States the PSPs cannot charge fees on consumers for the switching service. For example, UK and Austrian account switching service currently imposes no fees on consumers to utilise its service, and within the UK there is no fee imposed on consumers who close their accounts less than 12 months after opening it.

Charges applicable: BEUC is in favour of an EU-wide ban on surcharges on any means of payment. Surcharges were introduced by the PSD to allow merchants to steer consumers towards using more efficient and cheap means of payments (from a merchant perspective), allow them to renegotiate lower fees and thus put downward pressure on MIF. Nevertheless, the tool failed to achieve its objectives and has been used to the detriment of consumers without any benefits for them. Limiting the surcharge ban to debit and credit cards (as proposed by the Commission) would be a step backwards, especially for Member States which have banned surcharges on any means of payment.

Access to and use of payment account information by third party payment instrument issuers: BEUC supports the Commission proposal.

Payment service provider's liability for unauthorised payment transactions: In case of unauthorised payment transactions, consumers often struggle to get their money back quickly. This is because the PSD provision regarding 'immediate' refund is being interpreted differently across countries. BEUC requests that the consumer's PSP refunds to the consumer the amount of the

² Study on the impact of Directive 2007/64/EC on payment services in the internal market and on the application of Regulation (EC) 924/2009 on cross-border payments in the Community, Feb 2013: http://ec.europa.eu/internal_market/payments/docs/framework/130724_study-impact-psd_en.pdf

unauthorised payment transaction on the same day it has been made aware of the transaction.

Payer's liability for unauthorised payment transactions: There is a need to provide clear definition of 'gross negligence' in the revised PSD. This term leaves room for different interpretations and is being abused by some PSPs. The Commission impact assessment states that *"What constitutes a gross negligence is in practice left to the discretion of PSPs, with a consequence that even clearly non-negligent cases, such as theft of a payment card from a coat pocket in a shop or restaurant is sometimes treated as gross negligence. Such interpretations are made possible by a too widely drafted PSD references to the contractual terms and conditions of the PSPs, which allows in turn the PSP to define on its own, what gross negligence and fraudulent behaviour is."*

Payment transactions where the transaction amount is not known in advance: For such transactions (e.g. payment at petrol station, hotel), there is a need to set the maximum amount of funds which may be blocked on the consumer's payment account and maximum time limits for which the funds may be blocked by the payee. The consumer should be informed before and after such transactions take place.

Refunds for payment transactions initiated by or through a payee: Consumers should be granted an unconditional refund right for direct debit transactions. Unconditional and immediate refund right is a balancing mechanism which levels the playing field between the advantages offered to the payee and possible inconvenience for the consumer and will give the consumer complete control over his direct debit payments. The aim is to ensure immediate and seamless redress in case of an incident, such as fraudulent payments, undelivered goods/services.

Security requirements and incident notification: BEUC supports the Commission proposal regarding a mandatory data breach notification obligation: consumers should be notified whenever there has been a breach putting their personal data and security features at risk. In addition, data on fraud related to different means of payment should be made public. PSPs should be required to regularly provide data on fraud related to different means of payment to national competent authorities and to the European Banking Authority (EBA).

Competent authorities: Host state authorities should be given supervisory powers over PSPs who originate from other countries as they are better situated to perform this task. The host state authorities should be able to act directly where a PSP does not comply with its duties and responsibilities.

Sanctions: The EBA should be in charge of issuing guidelines to ensure sanctions are effective, proportionate and dissuasive.

Out of court redress: PSPs should be required to adhere to one or more alternative dispute resolution (ADR) bodies. It is insufficient that an appropriate ADR scheme is merely available – if business do not subscribe to the procedure, consumers are still left empty-handed.

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