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Tecnologia e innovazione: nuovi modi per fare cose note?
Benevento, 15-16 Dicembre 2020

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Theme

Payment Initiation Services

Title

New frontiers in payment services: the Payment Initiation Service in the Directive 2015/2366/EU

Abstract

The paper will explore issues related to the Payment Initiation Service, which are currently subject to Directive 2015/2366/EU (Payment Services Directive II, PSD2) and, in Italy, to the Law Decree n. 11 of January 27th, 2010.

The PSD2 replaced the first Payment Services Directive (Directive 2007/74/EC, PSD), with the intention to provide full harmonisation of the legal framework for non-cash payments in the internal market. Due to significant technical innovations, the rapid growth in the number of electronic and mobile payments, relevant areas of the payments market - in particular Internet and mobile payments - remained not fully covered by the Directive 2007/74/CE. Consequently, the second Directive has tried to take into account all the remarkable innovations in payment services and to better reflect the current European payment services market, where competitors should play on equal ground.

As a result, new services emerging in the area of Internet payments can now follow the same rules as traditional payment service providers regarding registration, licensing, and supervision by the competent authorities. At the same time, the PSD2 has set new rules to improve the efficiency of payment services as a whole, increase transparency, and strengthen consumer protection.

For what concerns the Payment Initiation Service, it plays a relevant part in e-commerce payments: it establishes a software bridge between the website of the merchant and the online banking platform of the payer's account servicing payment service provider in order to initiate internet payments on the basis of a credit transfer. In other words, through this electronic intermediation, individuals can now issue payments online, via non-traditional means (credit or debit card, bank transfer etc.), e.g., through mobile applications.

A specific definition of the Payment Initiation Service is set out in the Article 4, n. 15, of PSD2: 'payment initiation service' means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider. As can be noted, the transaction involves many actors, including some new entrants into the payment service market, such as Third Party Providers (TTPs).

The paper will deal with the nature of relations between payment service users and payment initiation service providers; as well as those between the latter and account servicing payment service providers.

The Payment Initiation Service Provider (PISP), which is a TPP, is enabled – by the user's explicit consent - to transfer directly from the payer's payment account to the payee's account, through direct or indirect access to the payer's account. It does not - at any stage of the payment chain - hold the user's funds. It also has a duty to provide both the payer and the payee with all relevant information and condition related to the service, before and after the payment order initiation. Articles 45 and 46 set out the information that the PISP has a duty to disclose: the name of the service provider, the geographical address of its head office, any other contact details (including electronic mail address), relevant for communication with the PISP. Additionally, a confirmation of the successful initiation of the payment order is needed as well as a reference enabling the payer and the payee to identify the payment transaction etc.

The second actor involved in the payment transaction is the Account Servicing Payment Service Provider (ASPSP). It is a payment service provider which provides and maintains a payment account for a payer and it has a duty to cooperate in the payment operation initiated through a PISP.

First of all, Paragraph 33 of the PSD2 Preamble states that *"Any payment service provider, including the account servicing payment service provider of the payment service user, should be able to offer payment initiation services"*. Similarly, Article 66(1) of the PSD2 states that Member States shall ensure that a payer has the right to make use of a payment initiation service provider to obtain payment services. As a consequence, the ASPSP is required to provide services, where based on the payment service user's explicit consent.

Moreover, among other obligations that will be discussed, the ASPSP shall allow direct access to the account for payment initiation service providers, although no contractual relation between ASPSPs and PISPs is required, regardless of the business model used by the latter. It also has to immediately confirm whether the amount necessary for the execution of a payment transaction is available on the payment account of the payer.

The paper will also address criteria to allocate liability when a transaction initiated through a PISP was unauthorized, non-executed, wrongfully or lately executed.

Paragraph 74 of the PSD2 Preamble states that the allocation of liability between the payment service provider servicing the account and the payment initiation service provider involved in the transaction should compel them to take responsibility for the respective parts of the transaction that are under their control. Moreover, in case of any transaction error, in Article 73 (1) it is stated that the payer's payment service provider shall refund the payer with the amount of the unauthorised payment transaction immediately, and in any event no later than by the end of the following business day, after noting or being notified of the transaction, except where the payer's payment service provider has reasonable grounds for suspecting fraud and communicates those grounds in writing to the relevant national authority.

The first payment service provider which has the obligation to refund is the ASPSP, but if the payment initiation service provider is liable for the unauthorised payment

transaction, it shall immediately compensate the account servicing payment service provider. However, the payer bears all losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or failing to fulfil one or more of the obligations set out in Article 69 with intent or gross negligence. Lastly, the paper will discuss ambiguities and gaps in the European legal framework on payment services that have not been addressed in PSD2, also through a deeper analysis of the solutions under Italian Law.