https://doi.org/10.25143/socr.20.2021.2.084-098

PSD1 from Perspective of ECJ

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Abstract

Directive 2007/64/EC (known also as Payment Service Directive 1 – PSD1) and Directive (EU) 2015/2366 (known also as Payment Service Directive 2 – PSD2) both regulate payment services in the EU. PSD1 is no longer in force and it was replaced with PSD2 that provides the basis for a better integrated EU payments market, opens up a market for new types of payment services, allows to use new technologies to provide these services etc.

The European Court of Justice (ECJ) has made some significant rulings that helped to understand some concepts from the PSD1 and PSD2 more clearly.

In this article, the author gives reviews of the rulings of the ECJ that are related to payment services, PSD1 and gives her own opinion on the possible impact of the respective rulings.

The article was based on methods of general scientific research and interpretation of legal norms and analysis of the case-law of the ECJ. The aim of this article is to review some of the ECJ judgments related to payment services and PSD1.

Keywords: ECJ, Payment Services, Payment Service Directive, PSD1, PSD2.

Introduction

On 24 September 2020, the Commission adopted a retail payments strategy for the EU that aims to further develop the European payments market so Europe can fully reap the benefits of innovation and opportunities that come with digitalisation. The strategy focuses on creating conditions that make it possible to develop instant payments and EU-wide payment solutions that are cost effective and accessible to individuals and businesses across Europe. At the same time, consumer protection is at the heart of the Commission's strategy in order to create safe payment solutions where risks are monitored and mitigated effectively. By developing EU-wide payment

solutions, the Commission also wishes to lessen Europe's dependency on big global players (European Commission, n.d.).

The mentioned Retail Payment Strategy proves once again that the development of payment services is important EU-wide. Development of payment services brings and will bring many benefits such as instant payment, greater competition and most likely lower prices of payment services. The evolution of payment services will also bring more security for both payment service providers and customers. It means understanding of payment services including the ECJ rulings that explain the payment service-related concepts is also very important for future development from the legal point of view.

Payment services were regulated by PSD1 and currently are regulated by PSD2. There are multiple reasons to replace PSD1 with PSD2. Such as rapid growth of new technological solutions, development of new payment services that were not regulated by PSD1 and the need to guarantee fair competition in that market etc.

PSD1[1] and PSD2[2] are maximum or full harmonisation directives which means that the EU countries may not introduce rules that are stricter than those set in the directive (Summary, n.d.). However, the ECJ rulings show some difficulties in understanding of some concepts related to payment services. Even though there are some discussions whether judgments of the ECJ are binding to national courts (Slaņķe, 2013), the author follows the idea that the judgments are binding to national courts despite that not being *expresis verbis* written in the EU legislation.

Considering the above, it is important to review and analyse judgments of the ECJ that apply to payment services in the EU because it has an influence on the national legislation and also the way how national laws are applied and whether PSD1 and PSD2 are implemented correctly. This article aims to review judgments related payment services and discuss some of these judgments.

The author used case law database InfoCuria[3] to look for judgments with the search texts "2007/64/EC" (36 cases found). The found judgments have been divided in three groups: 1) cases where searched words are used as reference; 2) information not available; 3) useful judgments. As in some judgments the search texts were used as references without deeper consideration, only "useful judgments" will be reviewed in this article.

This article will cover those judgments that explain concepts related to PSD1 more clearly. Due to the limited length of the article judgments related to PSD2 have been excluded. The author also does not analyse other case-related documents such as opinions of the advocate general.

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[1] See Article 86 of PSD1.

[2] See Article 107 of PSD2.

[3] Database InfoCuria. https://curia.europa.eu/juris/recherche.jsf?oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=6482672

"2007/64/EC" in the ECJ judgments

Out of 36 judgments, the author finds 9 judgments as "useful judgments". As mentioned before, not all judgments could be considered a valuable case law. However, in this article the author will review only six important judgments related to PSD1. The article aims to give a short description of the case facts and valuable court findings; the author will also share personal comments.

Case C616/11, T-Mobile Austria GmbH *vs* Verein für Konsumenteninformation

The case is regarded to be the first judgment when PSD1 is considered in the ECJ, which has given an insight into the ECJ's approach concerning payment services; in some source the approach is described as "bullish" (Graham, 2014).

T-Mobile Austria is a telecommunication service provider. It charged an additional monthly fee of EUR 3 to consumers subscribed to the 'Call Europe' tariff who opted for payment other than by direct debit or credit card, which include, in particular, payment through online banking or by means of a paper transfer order.

The Oberster Gerichtshof (Supreme Court) referred the following question to the ECJ for preliminary ruling:

> "Is a transfer order form signed by the payer in person and/or the procedure for ordering transfers based on a signed transfer order form and the agreed procedure for ordering transfers through online banking (telebanking) to be regarded as "payment instruments" within the meaning of Article 4.23 and Article 52(3) of Directive [2007/64]?"

The ECJ paraphrased the question in the following way:

> "[..] the referring court asks, in essence, whether Article 4.23 of Directive 2007/64 must be interpreted as meaning that, first, a transfer order form signed by the payer in person and/or the procedure for ordering transfers based on a signed transfer order form and, second, the procedure for ordering transfers through online banking constitute payment instruments within the meaning of that provision" (Court of Justice of the European Union (Fifth Chamber), Case C-161/11, 09.04.2014).

The ECJ provided the following response:

> "the answer is that Article 4.23 of Directive 2007/64 must be interpreted as meaning that both the procedure for ordering transfers by means of a transfer order form signed by the payer in person and the procedure for ordering transfers through online banking constitute payment instruments within the meaning of that provision" (Court of Justice of the European Union (Fifth Chamber), Case C-161/11, 2014).

PSD1 defines payment instrument as "any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order" (Directive 2007/64/EC, 2007). According to the ECJ judgment signature and procedure for

ordering transfers through online banking, it must be considered as a "procedure" that is a payment instrument. It means that from the perspective of the ECJ, payment instrument as the procedure can include such components as signature of a person and ordering transfers online. The key point is whether consecutive actions allow payment service users to initiate a payment order and if a payment service user can initiate a payment order; it is highly likely that the whole process could be considered as a payment instrument.

Case C375/15, BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG *vs* Verein für Konsumenteninformation

BAWAG is a bank operating throughout Austria. In its relations with consumers, it uses standard terms and conditions governing the consumers' use of the online banking website *e-banking*. Standard terms and conditions relating to the online banking website *e-banking* contain a term stating that

> "notices and statements (in particular account information, account statements, credit card statements, notices of changes, etc.) which the bank has to transmit to the customer or make available to him shall, where a customer has agreed to e-banking, be received by them by post or electronically by making them retrievable or transmitting them by means of [BAWAG] e-banking" (Court of Justice of the European Union (Third Chamber), Case-375/15, 2017).

Directive 2007/64/EC requires that at any time during contractual relationship the payment service user shall have a right to receive, on request, contractual terms of the framework contract as well as the information and conditions specified in Article 42 on paper or on another durable medium (Directive 2007/64/EC, Case-375/15, 2007).

In the respective case, the question to the Court of Justice for preliminary ruling was whether Article 41(1) is in conjunction with Article 36(1) of Directive 2007/64 to be interpreted as meaning that information (in electronic format) transmitted by the bank to the electronic mailbox of the customer, as part of online banking website *e-banking* so that the customer can retrieve this information by clicking on it after logging into the online banking website *e-banking*, has been provided on a durable medium (Directive 2007/64/EC, Case-375/15, 2007).

The ECJ responded that Articles 41(1) and 44(1) of Directive 2007/64, read in conjunction with Article 4(25) of that directive, must be interpreted as meaning that changes to the information and conditions, provided for under Article 42 of that directive, and the changes to the framework contract as well, which are transmitted by the payment service provider to the user of those services through the electronic mailbox of an online internet banking website, may not be considered to have been provided on a durable medium within the meaning of those provisions unless these two conditions are met:

1) the website allows the user to store information addressed to them personally in such a way that they may access it and reproduce it unchanged for an adequate period, without any unilateral alteration of its content by that service provider or by another professional being possible;
2) if the payment service user is obliged to consult the website in order to become aware of the information, transmission of that information must be accompanied by active behaviour on the part of the provider aimed at drawing the user's attention to the existence and availability of that information on that website.

In the event of the payment service user being obliged to consult such a website in order to become aware of the relevant information, that information is merely made available to that user within the meaning of the first sentence of Article 36(1) of Directive 2007/64, when transmission of that information is not accompanied by active behaviour on the part of the payment service provider (Court of Justice of the European Union (Third Chamber), 2017).

From the relevant judgment, it can be concluded that it does not matter who the holder of the durable medium is and it can be held also by the payment service provider. However, the durable medium must be compliant with multiple requirements:

1) the website allows to store information that is personally addressed to the user;
2) the user can access the information and reproduce it unchanged for an adequate period;
3) the information cannot be unilaterally changed by the payment service provider or another professional;
4) if the website holder is the payment service provider and the payment service user is obliged to get acquainted with the information on the website, the payment service provider is obliged to actively draw the user's attention that the information is available on the website.

The judgment reveals that the court with its response exposes to many widely interpretable concepts such as "adequate period" and "another professional".

The concept of "adequate period" is not used in the directive 2007/64/EC. From the author's perspective, "adequate period" of storing information related to payment services must be at least the period when the customer receives the payment service. "Adequate period" should be the period when the payment service user can raise a claim against the payment service provider. And "adequate period" must be compliant with the national legislation of the period to collect the information that is related to payment services.

From the judgment, it is not clear who "another professional" is as the directive 2007/64/EC does not use such concept. The author considers that "another professional" might be the third party that has an agreement with a payment service provider related to the website where the information is stored, somebody having legal rights to access the information and change it. Therefore, in case the payment service provider uses the service of "another professional" to provide the website that is considered a durable medium, the payment service provider must be sure that "another professional" does not change the stored information.

The obligation made to the service provider to "provide information" is to be distinguished from the situation where the PSD simply requires having the information "made available" to the customer (e.g. regarding executed payment transactions). In the latter case, the customer shall take active steps to obtain the information (such as actively consulting its e-banking mailbox). In such situation, the service provider is not required to take additional steps (Di Lorenzo, 2017).

A durable medium could be considered paper, USB stick, CD-ROMs, DVDs, memory cards, hard disks of computers and e-mails (Schulze, 2020). In the future other technical solutions such as blockchain could also be considered a durable medium (IBM, n.d.).

Case C-568/16, Faiz Rasool other party Rasool Entertainment GmbH

The request has been made in criminal proceedings against Mr Faiz Rasool, in his capacity as the manager of Rasool Entertainment GmbH (RE), for installing multifunctional terminals enabling cash withdrawals in gaming arcades operated by the company, without being authorised to provide payment services under the German legislation transposing Directive 2007/64 (Court of Justice of the European Union (Fifth Chamber), Case C-568/16, 2018).

The ECJ was prompted with the following question whether Article 4(3) of Directive 2007/64, read in conjunction with point 2 of the annex to the directive, must be interpreted as meaning that a cash withdrawal service offered by a gaming arcade operator to his customers by means of multifunctional terminals in those arcades is a "payment service" within the meaning of that directive, where the operator provides the service free of charge, they do not carry out any operation on those customers' payment accounts, and the activities they perform on that occasion are confined to making the terminals available and loading them with cash (Court of Justice of the European Union (Fifth Chamber), Case C-568/16, 2018).

The ECJ's response reads: "Article 4(3) of Directive 2007/64/EC, read in conjunction with point 2 of the annex to the directive, must be interpreted as meaning that a cash withdrawal service offered by a gaming arcade operator to his customers by means of multifunctional terminals in those arcades is not a 'payment service' within the meaning of that directive, where the operator does not carry out any operation on those customers' payment accounts and the activities he performs on that occasion are confined to making the terminals available and loading them with cash" (Court of Justice of the European Union (Fifth Chamber), Case C-568/16, 2018).

The ECJ base their judgment on the fact that "the operator does not carry out any operation on those customers' payment accounts". Currently, PSD2 considers "account information service" also as a payment service where the payment service provider does not carry out an operation with the money of the payment service receiver but

only with the data related to the account. Therefore, following the current legislation, it should be clarified that "carrying out any operation on the customers' payment accounts" includes also acquiring information from the account. However, if a person only makes terminal available and loads it with cash, it still should not be considered as a payment service.

C191/17, Bundeskammer für Arbeiter und Angestellte (Austria) *vs* ING-DiBa Direktbank Austria Niederlassung der ING-DiBa AG

ING-DiBa Direktbank Austria offers online savings accounts from which its customers can make payments and withdrawals by way of telebanking. Those transfers must always be made through reference accounts opened on behalf of those clients. Those reference accounts are current accounts that those clients may also hold in a bank other than ING-DiBa Direktbank Austria. The referring court states that transfers made from or to online savings accounts do not involve the use of a payment service provider. The referring court states, inter alia, that the mere designation by the term "savings account" does not make it possible to exclude such an account from the scope of the Payment Services Directive. However, it wonders whether, given their purpose, namely savings deposits, online savings accounts may be considered as being used to carry out payment transactions (Court of Justice of the European Union (Fifth Chamber), Case-191/17, 2018).

By its question, the referring court asks, in essence, whether Article 4(14) of the Payment Services Directive must be interpreted as meaning that a savings account which allows for sums deposited without notice and from which payment and withdrawal transactions may be made solely by way of a current account, called a "reference account", comes within the concept of "payment account" (Court of Justice of the European Union (Fifth Chamber), Case-191/17, 2018).

The ECJ responds to the question:

> "Article 4(14) of Directive 2007/64/EC must be interpreted as meaning that a savings account which allows for sums deposited without notice and from which payment and withdrawal transactions may be made solely by means of a current account does not come within the concept of 'payment account'. In the judgment, the court also expresses that savings accounts do not, in principle, fall within the definition of the concept of 'payment account', such an exclusion is not absolute. It follows, in fact, from recital 12, first, that the mere name of an account as a 'savings account' is not sufficient in itself to exclude the categorisation of 'payment account' and, second, that the determining criterion for the purposes of that categorisation lies in the ability to perform daily payment transactions from such an account. In that respect, it is important to take account of Article 1(6) of the Payment Accounts Directive, which provides that it applies to payment accounts through which consumers are able at least to place funds in a payment account, withdraw cash from a payment account, and execute and receive payment transactions, including credit transfers, to and from the third party." (Court of Justice of the European Union (Fifth Chamber), 04.10.2018)

From the judgment it can be seen that the substance of payment account is taken from Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (hereinafter – The Payment Account Directive).

Although the Payment Account Directive is not directly applicable to disputes in the main proceedings, recital 12 thereof states that it is to apply to all payment service providers, as defined in the Payment Services Directive. It is also set out in recital 14 of the Payment Accounts Directive that definitions contained in that directive had to be aligned as far as possible with those contained in other Union legislative acts, and in particular with those contained in the Payment Services Directive. Regarding the concept of "payment account", it must be pointed out that the definition provided for in Article 2(3) of the Payment Accounts Directive is almost identical to that set out in Article 4(14) of the Payment Services Directive. As the Advocate General stated in point 54 of his Opinion, the only difference that the term "consumer" used in the first of those definitions is replaced by the expression "user of payment services" in the second of the definitions, does not reflect a substantial difference in the definition of that concept but rather a difference of purpose between the two directives concerned (Court of Justice of the European Union (Fifth Chamber), 04.10.2018).

Thus, to classify an account as a payment account, the account must have the following functionalities: consumers are able

1) to at least place funds in a payment account;
2) to withdraw cash from a payment account;
3) to execute and receive payment transactions, including credit transfers, to and from the third party.

Case C245/18, Tecnoservice Int. Srl, in liquidation *vs* Poste Italiane SpA

On 3 August 2015, a debtor of Tecnoservice made an order for payment by means of a bank transfer to the company of a sum to be credited to a current account with Poste Italiane, identified by means of a unique identifier within the meaning of Article 4(21) of Directive 2007/64, that is, by an international bank account number (IBAN). The name of the intended recipient of the transfer, that is Tecnoservice, was also stated in the transfer order. The transfer was made to the account corresponding to that IBAN. However, the holder of that account was an entity other than Tecnoservice, which therefore never received the sum due to it. Tecnoservice brought an action against Poste Italiane before the Tribunale ordinario di Udine (District Court, Udine, Italy), the referring court, claiming that Poste Italiane was liable on account of its failure to check whether the IBAN indicated by the payer corresponded to the name of the payee. Thus, it was alleged, Poste Italiane allowed the sum in question to be transferred to the wrong recipient, despite there being sufficient information to establish that the unique identifier was incorrect. According to

Poste Italiane, they cannot be deemed liable as it credited the account corresponding to the IBAN indicated on the order and are not required to carry out any additional checks. The referring court observes that the Directive 2007/64 provides that a payment order executed in accordance with a unique identifier is deemed to have been executed correctly. However, according to the court, Articles 74 and 75 of Directive 2007/64 and, therefore, relevant provisions of the national legislation can be interpreted in two ways. According to the first interpretation, those articles apply only to the relationship between the payer and his bank, and not to the relationship between the payee's bank and other interested parties, such as the payer, the actual payee or the incorrect payee. In such a case, the second relationship should be subject only to national provisions, which are often based on liability rules that are different and wider in scope than those introduced by the directive. According to the second interpretation, the articles apply to the payment transaction viewed as a whole, including the conduct of the payee's bank. In such a case, liability of the payee's payment service provider would also be strictly linked to simple observance of the IBAN indicated by the payer (Court of Justice of the European Union (Tenth Chamber), 21.03.2019).

By its question, the referring court asks, in essence, whether Articles 74 and 75 of Directive 2007/64 must be interpreted as meaning that when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, payment service provider liability is limited to the payer's payment service provider alone or that such liability extends to the payee's payment service provider (Court of Justice of the European Union (Tenth Chamber), 21.03.2019).

The ECJ rules that Article 74(2) of Directive 2007/64/EC must be interpreted as meaning that when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, the limitation of payment service provider liability, provided for by that article, applies to both the payer's and the payee's payment service provider.

It means that the payment service provider is not liable for the payer's incorrectly provided IBAN even if IBAN does not correspond to the payee's name indicated by that user. In accordance with Article 74(1) of Directive 2007/64/EC 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. It means that the payment service provider is liable only if the mistake with an incorrect unique identifier has been made by the payment service provider, If the mistake is made by the payment service user, the payment service user is liable. The same is set in the Article 74(2) of Directive 2007/64/EC – if the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction. With the judgment court the concept of "payment service provider" includes both payment service providers, i.e., payer's and payee's and, therefore, both payment service providers are not liable if the IBAN is wrong and the mistake has been made by the payment service user.

Case C-295/18, Mediterranean Shipping Company (Portugal) – Agentes de Navegação SA vs Banco Comercial Português SA

MSC holds an overnight deposit account with BCP Bank. Following an audit conducted in 2014, MSC discovered that the account was being regularly debited by way of direct debits in favour of a third party ("the principal") with whom it had no relationship and without it having given any authorisation to BCP Bank to that effect. By letter of 17 November 2014, MSC asked BCP Bank to cancel those direct debits, to reimburse it for the amounts withdrawn and to send it a copy of documents authorising those direct debits. Following some exchanges between the two entities, BCP Bank cancelled the direct debits and repaid the sum of EUR 683.48, corresponding to the direct debit payments made in October and November 2014. In the course of those exchanges, a copy of payment authorisation for the direct debits at issue was obtained from Caixa Geral de Depósitos SA where the account which received those direct debits was held ("the principal's bank"). BCP Bank was then able to see that such authorisation had not been given by the holder of the debited account, MSC, but by the principal, a third company, for the purpose of making payments to that principal by direct debit from an account, with the result that the authorisation highlighted the existence of a discrepancy between the account number shown and the bank identification number which was MSC's bank identification number with BCP Bank. On 10 December 2014, MSC contacted BCP Bank again reiterating that its account had been wrongly debited. By letter of 16 December 2014, BCP Bank confirmed that MSC had not given any such authorisation, or that it was at least improper, and that MSC was accordingly entitled to be reimbursed for direct debits executed up to the legal limit of 13 months laid down in Article 69 of the RJSP, that is to say, a sum equivalent to the direct debits made from October 2013 to December 2014. Therefore, the bank ordered that that sum be reimbursed. Subsequently, MSC found that between May 2010 and September 2013 direct debits had been paid from its account on the basis of that authorisation for a total sum of EUR 8,226.03 ("the direct debits at issue"). By letter of 3 August 2016, it made a request to BCP Bank that it also be reimbursed for that sum, which was refused by the bank (Court of Justice of the European Union (Tenth Chamber), 11.04.2019).

The Tribunal da Relação do Porto (Court of Appeal, Oporto) refer the following questions to the ECJ for preliminary ruling:

1) whether Article 2 of Directive [2007/64] must be interpreted to the effect that the scope of that directive, as defined in that article, includes execution of a direct-debit payment order issued by a third-party on an account which it does not hold, where the holder of that account has not entered into a payment service contract for a single transaction or a framework contract for the provision of payment services with that credit institution?
2) if the answer to question 1 is affirmative, whether that account holder can be considered to be a payment service user for the purposes of Article 58 of that directive' (Court of Justice of the European Union (Tenth Chamber), 11.04.2019).

The ECJ rules the following answers:

1) Article 2(1) of Directive 2007/64/EC must be interpreted to the effect that the notion of "payment services", for the purposes of that provision, includes execution of direct debits, initiated by the payee, on a payment account of which it is not the holder, where the holder of the account thus debited does not consent to those direct debits.
2) Article 58 of Directive 2007/64 must be interpreted to the effect that the notion of "payment service user", for the purposes of that article, includes the holder of a payment account on which direct debits were executed without its consent.

The ECJ explains these answers – for the purposes of Directive 2007/64, the notion of "payment services" is defined in Article 4(3) as relating to "any business activity listed in the Annex". Point 3 of that annex states that such notion covers execution of "payment transactions", which in accordance with Article 4(5) of that directive, are acts initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee. In accordance with the first indent of point 3 of that annex, those transactions include execution of direct debits, including one-off direct debits. A "direct debit" is defined in Article 4(28) of that directive, in essence, as "a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent" and the notion of "payer" is defined in Article 4(7), *inter alia*, as "a natural or legal person who holds a payment account and allows a payment order from that payment account". It follows from those provisions that the execution of direct debits initiated by the payee on an account of which it is not the holder comes within the notion of "payment services" in Article 2(1) of Directive 2007/64, even in the absence of any underlying obligations between the payer and the payee, where the payer, as holder of the payment account thus debited, consented to those direct debits. However, those provisions do not in themselves, in the absence of any reference to that effect, make it possible to establish clearly whether the execution of direct debits by the payee on an account of which it is not the holder also comes within that notion where the holder of the debited account did not consent to those direct debits. If the fact that the holder of the debited payment account did not consent to execution of a direct debit on that account meant that such a transaction could be excluded from the notion of "payment services" in Article 2(1) of Directive 2007/64 and, consequently, from the scope of that directive, those provisions, in so far as they concern unauthorised payment transactions, would be devoid of any meaning or practical effect. It is apparent from the context surrounding that notion that it must be interpreted to the effect that it includes execution of direct debits initiated by the payee on an account of which it is not the holder, even where the holder of the debited account did not consent to those direct debits (Court of Justice of the European Union (Tenth Chamber), Case C-295/18, 2019).

Thus, it is true that, in view of the wording of that provision alone, read in conjunction with Article 4(7) and (8) of that directive concerning the terms "payer" and "payee",

the holder of a payment account which was debited without its consent does not appear to come within that notion of "payment service user". However, execution of direct debits on a payment account, to which the holder of the debited account did not consent, comes within the notion of "payment services" in Article 2(1) of that directive. Also, it is clear from the actual wording of Article 58 and its title that it is specifically intended to apply in particular to unauthorised payment transactions (Court of Justice of the European Union (Tenth Chamber), 11.04.2019).

This judgment is important because it is applying protection from the PSD1 also to the payment service user that has not agreed to use the payment service or even did not have any information that he was using the payment service. The ECJ empowers objectives of the PSD1 allowing to apply PSD1 also in cases where the payment service user has not given consent to receive payment service. The ECJ uses teleological concept interpretation to come to conclusion that the protection of the PSD1 must be applicable to payment service users. Such a concept allows to give a larger level of safety to payment service users and allows easier reach for the aims of the PSD1.

Conclusions

The following conclusions have been put forward:

1) Development of payment services in the EU is one of the major aims currently. To reach this aim EU has issued PSD1 and PSD2. However, an important role in this development is also the ECJ that interprets both directives.
2) Payment instrument under the PSD1 must be considered any personalised devices and/or set of procedures agreed between payment service providers and payment service users. The set of procedures can also include such elements as personal signature and online banking. The key point is whether consecutive actions allow the payment service users to initiate a payment order and if the payment service user can initiate a payment order. The entire process could likely be considered as a payment instrument if the goal of such consecutive actions is to initiate payment order.
3) Durable medium must be compliant with multiple requirements:
   a) the website allows to store information that is personally addressed to the user;
   b) the user can access the information and reproduce it unchanged for an adequate period;
   c) information cannot be unilaterally changed by the payment service provider or another professional;
   d) if the website holder is the payment service provider and if the payment service user is obliged to get acquainted with the information on the website, the payment service provider is obliged actively to draw the user's attention that the information is available on the website;

4) The "adequate period" of storing information related to payment services must be at least the period when the customer receives the payment service. It should also be the period when the payment service user can raise a claim against the payment service provider, and it must be compliant with the national legislation of the period to collect the information that is related to payment services.
5) The "another professional" that is not allowed to change information to payment service user might be a third party that has an agreement with the payment service provider related to the website where the information is stored, somebody that has legal rights to access the information and change it. It is unlikely that with the "another professional" the court also thought about illegal actions to access the stored information.
6) The ECJ base the judgment on the fact that "the operator does not carry out any operation on those customers' payment accounts". Currently, PSD2 considers "account information service" also as a payment service where the payment service provider also does not carry out the operation with the money of the payment service receiver but only with the data related to the account. Therefore, in accordance with the current legislation, it should be clarified that "carrying out any operation on the customers' payment accounts" includes also acquiring information from the account. However, if a person only makes terminal available and loads it with cash, it still should not be considered as payment service.
7) To classify an account as a payment account, the account must have the following functionalities:
   a) consumers are able at least to place funds in a payment account;
   b) they withdraw cash from a payment account; and
   c) execute and receive payment transactions, including credit transfers, to and from a third party.
8) The payment service provider is not liable for the payer's incorrectly provided IBAN even if IBAN does not correspond to the payee's name indicated by that user. The ECJ's concept of "payment service provider" includes both payment service providers, i.e., payer's and payee's and, thus, both payment service providers are not liable if the IBAN is wrong and the mistake has been made by the payment service user.
9) PSD also covers and protects payment service user that has not agreed to use the payment service or even did not have any information that he was using the payment service. In such a way, the ECJ empowers objectives of the PSD1 allowing to apply PSD1 also in cases where the payment service user has not given consent to receive payment service.

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