

Official Gazette 16/2020 (12 February 2020), Act on Amendments to the Act on the Implementation of EU Regulations Governing Payment Systems

THE CROATIAN PARLIAMENT

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE ACT ON THE IMPLEMENTATION OF EU REGULATIONS GOVERNING PAYMENT SYSTEMS

I hereby promulgate the Act on Amendments to the Act on the Implementation of EU Regulations Governing Payment Systems, passed by the Croatian Parliament at its session on 31 January 2020.

Class: 011-01/20-01/06

No.: 71-06-01/1-20-2

Zagreb, 6 February 2020

The President of the Republic of Croatia

Kolinda Grabar-Kitarović, m.p.

ACT

ON AMENDMENTS TO THE ACT ON THE IMPLEMENTATION OF EU REGULATIONS GOVERNING PAYMENT SYSTEMS

Article 1

In the Act on the Implementation of EU Regulations Governing Payment Systems (Official Gazette 50/2016), in Article 2, item (1) is amended to read:

“1. Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (Text with EEA relevance), as last amended by Regulation (EU) 2019/518 of the European Parliament and of the Council of 19 March 2019 amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges (Text with EEA relevance) (hereinafter referred to as ‘Regulation (EC) No 924/2009’).”.

Article 2

Article 3 is amended to read:

“(1) The terms used in this Act shall have the meaning as defined in the Regulation referred to in Article 2 of this Act to which the individual provision of this Act refers.

(2) The terms that are not defined by the individual Regulation referred to in Article 2 of this Act, which are used in this Act, shall have the meaning as defined in the law governing the payment system.”.

Article 3

In Article 4, paragraphs (1), (2) and (3) are amended to read:

“(1) The Croatian National Bank shall be the competent authority for the supervision of the application of Regulation (EC) No 924/2009, Regulation (EU) No 260/2012, Regulation (EU) 2015/751 and the provisions of Articles 5, 6 and 7 of this Act by credit institutions, electronic money institutions, small electronic money institutions, payment institutions and small payment institutions established in the Republic of Croatia, branches established by third-country credit institutions and electronic money institutions in the Republic of Croatia and payment system operators with a head office in the Republic of Croatia.

(2) Where credit institutions, electronic money institutions and payment institutions from another member state provide payment services in the territory of the Republic of Croatia through a branch or agent appointed in the Republic of Croatia under the right of establishment, the Croatian National Bank shall be the competent authority for the supervision of the application of Regulation (EC) No 924/2009, Regulation (EU) No 260/2012, Regulation (EU) 2015/751 and the provisions of Articles 5 and 6 of this Act by the branch or agent.

(3) The provisions of the laws governing the operation of credit institutions, electronic money institutions, payment institutions and payment system operators shall apply to the supervision referred to in paragraphs (1) and (2) of this Article.”.

In paragraph (5), the words ‘persons other than payment service providers’ are replaced by the words ‘any other person subject to its application’.

After paragraph (5), paragraph (6) is added which reads:

“(6) The Market Inspection of the State Inspectorate shall exercise supervision of the application of Regulation (EC) No 924/2009 by entities subject to its application other than the institutions referred to in paragraph (1) of this Article, which within their activity offer currency conversion services at an ATM or at the point of sale.”.

The former paragraph (6), which becomes paragraph (7), the words ‘The Croatian National Bank and the Financial Inspectorate of the Republic of Croatia’ are replaced by the words ‘The Croatian National Bank, the Financial Inspectorate of the Republic of Croatia and the State Inspectorate’.

In the former paragraph (7), which becomes paragraph (8), in the introductory sentence, the words ‘referred to in paragraph (6)’ are replaced by the words ‘referred to in paragraph (7)’.

In item (3), the word ‘laws’ is replaced by the word ‘regulations’.

In the former paragraphs (8) and (9), which become paragraphs (9) and (10), the words ‘referred to in paragraph (7)’ are replaced by the words ‘referred to in paragraph (8)’.

Article 4

Before the title of Article 5, the title of Title III is amended to read: “III OUT-OF-COURT COMPLAINT PROCEDURES AND ALTERNATIVE DISPUTE RESOLUTION.

In Article 5, paragraph (2), item (2), after the word ‘complaint’, the semicolon and the word ‘and’ are deleted and the full stop is added.

Item (3) is deleted.

In paragraph (4), after the word ‘complaint’, a comma is inserted and the words ‘on paper, or if so agreed between the payment service provider and the user, on another durable medium.’ are added.

After paragraph (4), new paragraph (5) and paragraph (6) are added which read:

“(5) Exceptionally, where a payment service provider is unable to provide an answer within the time limit referred to in paragraph (4) of this Article for reasons beyond the control of the payment service provider, it shall be required to send a holding reply to the payment service user, within the time limit, indicating the reasons for a delay in answering to the complaint and specifying the time limit by which the payment service user will receive the final reply and which shall not exceed 35 days from the date of receipt of the complaint.

(6) In the final reply to the complaint, the payment service provider shall refer the payment service user to the possibility of submitting a complaint to the competent authority and where the payment service user is a consumer, also to the authorities competent for alternative consumer dispute resolution referred to in Article 7, paragraph (1) of this Act.”.

The former paragraph (5), which becomes paragraph (7), is amended to read:

“(7) Where a credit institution, an electronic money institution or a payment institution from another Member State provides payment services in the territory of the Republic of Croatia through a branch or an agent appointed in the Republic of Croatia under the right of establishment, the provisions of this Article shall apply to the branch or the agent.”.

Article 5

In Article 6, paragraph (1) is amended to read:

“(1) Payment service users may submit complaints to the Croatian National Bank against a credit institution, an electronic money institution, a small electronic money institution, a payment institution or a small payment institution if they deem they have acted contrary to Regulation (EC) No 924/2009, Regulation (EU) No 260/2012, Regulation (EU) 2015/751 or Article 5 of this Act.”.

Paragraph (3) is amended to read:

“(3) Where the Croatian National Bank receives a complaint against a credit institution, an electronic money institution or a payment institution from another Member State providing payment services in the Republic of Croatia directly or through an agent exercising the freedom to provide services, it shall forward such a complaint to the competent authority of the home Member State.”.

Paragraph (5) is amended to read:

“(5) In the case of a complaint against a credit institution, an electronic money institution or a payment institution from another Member State providing payment services in the Republic of Croatia through a branch or an agent appointed in the Republic of Croatia under the right to establishment, the Croatian National Bank shall send the invitation referred to in paragraph (4) of this Article to the branch or the agent.”.

In paragraph (6), the words ‘paragraphs (2) and (3) or paragraph (4)’, and the comma before these words, are deleted.

In paragraph (7), after the word ‘findings’, the words ‘and of the measures taken’ are added.

In paragraph (8), the words ‘mediation proceedings before the authority referred to in Article 7 of this Act’ are replaced by the words ‘an alternative dispute resolution for consumer disputes’.

Article 6

The title of Article 7 is amended to read: “*Alternative dispute resolution*”.

Article 7 is amended to read:

“(1) In all disputes with a payment service provider related to the application of Regulation (EC) No 924/2009, Regulation (EU) No 260/2012 and/or this Act, the payment service user that is a consumer shall have the right to initiate a procedure before any authority for alternative dispute resolution for consumer disputes, which the payment service provider has provided on its website or in its branches.

(2) A payment service provider shall participate in the alternative dispute resolution procedure initiated by the consumer before the authority referred to in paragraph (1) of this Article.

(3) In disputes with a payment service provider related to the application of Regulation (EU) 2015/751 and/or this Act, the payment service user shall have the right to initiate mediation proceedings before the Mediation Centre at the Croatian Chamber of Economy or another independent mediation authority.

(4) The provisions of this Article shall not affect the rights of payment service users to initiate court proceedings.”.

Article 7

Article 8 is amended to read:

“(1) The following payment service providers shall be liable for the misdemeanours referred to in paragraph (2) of this Article:

- 1) credit institutions, electronic money institutions, small electronic money institutions, payment institutions and small payment institutions established in the Republic of Croatia;
- 2) branches of credit institutions in the Republic of Croatia established in another Member State or third country;
- 3) branches of electronic money institutions in the Republic of Croatia established in another Member State or third country;
- 4) branches of payment institutions in the Republic of Croatia established in another Member State;
- 5) legal persons appointed as agents in the Republic of Croatia under the right of establishment of payment institutions or electronic money institutions established in other Member States;
- 6) units of local or regional self-government, when not acting in the capacity as public authority;
- 7) The Croatian National Bank, when not acting in its capacity as monetary authority or other public authority.

(2) The payment service provider referred to in paragraph (1) of this Article shall be fined between HRK 20,000.00 and HRK 500,000.00:

- 1) if it fails to levy the same charges on a payment service user in respect of cross-border payments in euro as the charges levied for corresponding national payments in kuna (Article 3, paragraph (1) of Regulation (EC) No 924/2009);
- 2) if, prior to the initiation of the payment transaction of a cash withdrawal at an ATM or a card-based payment at the point of sale, it fails to disclose the information to the payer on the total currency conversion charges expressed as a percentage mark-up over the latest available euro foreign exchange reference rates issued by the European Central Bank or if it fails to provide the information on the mark-up in a neutral and comprehensible manner or it fails to provide it free of charge (Article 3a, paragraphs (1) and (7) of Regulation (EC) No 924/2009);
- 3) if it fails to make the mark-up expressing the total currency conversion charges public in a neutral, comprehensible and easily accessible manner on a broadly available and easily accessible electronic platform, free of charge for the payer (Article 3a, paragraphs (2) and (7) of Regulation (EC) No 924/2009);
- 4) if, without undue delay after receiving a payment order for a cash withdrawal at an ATM or a card-based payment at the point of sale that is denominated in any Union currency that is different from the currency of the payer's account, it fails to send to the payer an electronic message through the agreed broadly available and easily accessible channel with the information on the percentage mark-up expressing the total currency conversion charges (Article 3a, paragraph (5), sub-paragraph (1) and paragraph (6), sub-paragraph (1) of Regulation (EC) No 924/2009);
- 5) if, once a month in which it receives from the payer a payment order for a cash withdrawal at an ATM or a payment at the point of sale that is denominated in any Union currency that is different from the currency of the payer's account, for each payment card that was issued to the

payer by the payer's payment service provider and that is linked to the same account, it fails to send to the payer an electronic message on the percentage mark-up expressing the total currency conversion charges through the agreed broadly available and easily accessible channel (Article 3a, paragraph (5), sub-paragraph (2) and paragraph (6), sub-paragraph (1) of Regulation (EC) No 924/2009);

6) if it fails to provide the information on the percentage mark-up expressing the total currency conversion charges for a cash withdrawal at an ATM and a card-based payment at the point of sale that is denominated in any Union currency that is different from the currency of the payer's account, which it is obliged to provide without delay after receiving a payment order, or which it is obliged to provide once a month, free of charge or if it fails to provide it in a neutral and comprehensible manner (Article 3a, paragraphs (5) and (7) of Regulation (EC) No 924/2009);

7) if it has failed to offer payment service users, in a neutral and comprehensible manner and free of charge, the possibility of opting out of receiving the electronic messages with the information on the percentage mark-up expressing the total currency conversion charges for a cash withdrawal at an ATM and a card-based payment at the point of sale that is denominated in any Union currency that is different from the currency of the payer's account, which it is obliged to send without delay after receiving the payment order and once a month (Article 3a, paragraph (6), sub-paragraph (2) and paragraph (7) of Regulation (EC) No 924/2009);

8) if, before the payer initiates a credit transfer online directly, using the website or the mobile banking application of the payment service provider, it fails to inform the payer in a clear, neutral and comprehensible manner, of the estimated charges for currency conversion services applicable to the credit transfer (Article 3b, paragraph (1) of Regulation (EC) No 924/2009);

9) if, prior to the initiation of a credit transfer, it fails to communicate to the payer, in a clear, neutral and comprehensible manner, the estimated total amount of the credit transfer in the currency of the payer's account, including any transaction fee and any currency conversion charges or if it fails to communicate to the payer the estimated amount to be transferred to the payee in the currency used by the payee (Article 3b, paragraph (2) of Regulation (EC) No 924/2009);

10) if it fails to communicate to the payment service user the payment service user's IBAN and the payment service provider's BIC in accordance with Article 4, paragraph (1) of Regulation (EC) No 924/2009 or if it charges for such a communication;

11) if it levies additional charges on a payment service user contrary to Article 4, paragraph (3) of Regulation (EC) No 924/2009 as amended by Regulation (EU) No 260/2012;

12) if its reachability for credit transfers initiated by a payer from any Member State or for direct debits initiated by a payee from any Member State is not in accordance with Article 3 of Regulation (EU) No 260/2012;

13) if it uses payment schemes which do not comply with the conditions referred to in Article 4, paragraph (1) of Regulation (EU) No 260/2012;

14) if it fails to carry out credit transfers in accordance with Article 5, paragraphs (1) and (2) of Regulation (EU) No 260/2012;

15) if it fails to carry out direct debits in accordance with Article 5, paragraphs (1), (3) and (6) of Regulation (EU) No 260/2012;

16) if it requires a payment service user to indicate the BIC of the payment service provider for cross-border payment transactions in euro in accordance with Article 5, paragraph (7) of Regulation (EU) No 260/2012;

17) if it requires a payment service user to indicate the BIC of the payment service provider for national payment transactions in euro in accordance with Article 5, paragraph (7) of Regulation (EU) No 260/2012;

18) if it applies a multilateral interchange fee, or other agreed remuneration with an equivalent object or effect, including a fee agreed bilaterally between two payment service providers and a fee set unilaterally by a payment service provider in accordance with Article 8, paragraphs (1) and (3) of Regulation (EU) No 260/2012 to cross-border direct debit payment transactions in euro;

19) if it applies a multilateral interchange fee, or other agreed remuneration with an equivalent object or effect, including a fee agreed bilaterally between two payment service providers and a fee set unilaterally by a payment service provider in accordance with Article 8, paragraphs (1) and (3) of Regulation (EU) No 260/2012 to national direct debit payment transactions in euro;

20) if it applies a multilateral interchange fee, or other agreed remuneration with an equivalent object or effect, including a fee agreed bilaterally between two payment service providers and a fee set unilaterally by a payment service provider to R-transactions, without complying with the conditions referred to in Article 8, paragraph (2) of Regulation (EU) No 260/2012;

21) if, prior to the execution of the payment transaction to which Regulation (EC) No 924/2009, Regulation (EU) No 260/2012 and/or Regulation (EU) 2015/751 applies, it fails to provide or make available to the payment service user the information on the payment service user's right to submit a complaint and on the manner of submitting the complaint in accordance with Article 5, paragraph (2) of this Act, without complying with the conditions referred to in Article 5, paragraph (3) of this Act;

22) if it fails to provide the payment service user with the final reply to the complaint within the time limit and in the manner laid down in Article 5, paragraph (4) of this Act, without complying with the conditions referred to in Article 5, paragraph (5) of this Act;

23) if, for reasons beyond the control of the payment service provider, it fails to send a holding reply to the payment service user with the content and within the time limit laid down in Article 5, paragraph (5) of this Act or if it fails to send the final reply to the payment service user within the time limit referred to in Article 5, paragraph (5) of this Act;

24) if, contrary to Article 5, paragraph (6) of this Act, in the final reply to the complaint, it fails to refer the payment service user to the possibility of submitting a complaint to the competent authority or if it fails to refer the payment service user that is a consumer to the authority competent for alternative dispute resolution referred to in Article 7, paragraph (1) of this Act;

25) if, at the invitation of the Croatian National Bank, it fails to submit its statement and the relevant evidence within the time limit referred to in the invitation in accordance with Article 6, paragraph (4) of this Act;

26) if, contrary to Article 7, paragraph (2) of this Act, it refuses to participate in the alternative dispute resolution procedure initiated before the authority on which it gave information pursuant to Article 7, paragraph (1) of this Act;

27) if it offers or requests a per transaction interchange fee of more than 0.2% of the value of the transaction for any debit card transaction, and thereby acts contrary to Article 3, paragraph (1) of Regulation (EU) 2015/751;

28) if it offers or requests a per transaction interchange fee of more than 0.3% of the value of the transaction for any credit card transaction, and thereby acts contrary to Article 4 of Regulation (EU) 2015/751;

29) if it circumvents the application of the interchange fee cap referred to in Article 3, paragraph (1) or Article 4 of Regulation (EU) 2015/751, and thereby acts contrary to Article 5 of Regulation (EU) 2015/751;

30) if it fails to provide the consumer, on his/her request, two or more different brands on a card-based payment instrument, provided that such a service is offered by the payment service provider, or if it fails to provide the consumer, in good time before the contract is signed, with information on all the payment brands available and their characteristics, including their functionality, cost and security, and thereby acts contrary to Article 8, paragraph (2) of Regulation (EU) 2015/751;

31) if any routing principles or equivalent measures described in Article 8, paragraph (5) of Regulation (EU) 2015/751 which the payment service provider applies are discriminatory or are applied in a discriminatory manner, and thereby acts contrary to Article 8, paragraph (5) of Regulation (EU) 2015/751;

32) if it inserts automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application by the payer or the payee when using a co-badged payment instrument, and thereby acts contrary to Article 8, paragraph (6) of Regulation (EU) 2015/751;

33) if, as an acquirer, it fails to offer or charge its payee merchant service charges individually specified, and thereby acts contrary to Article 9, paragraph (1) of Regulation (EU) 2015/751;

34) if, as an acquirer, it fails to include in its agreement with a payee individually specified information on the amount of charges, and thereby acts contrary to Article 9, paragraph (2) of Regulation (EU) 2015/751;

35) if it applies any rule that obliges payees accepting a card-based payment instrument issued by one issuer also to accept other card-based payment instruments issued within the framework of the same payment card scheme, and thereby acts contrary to Article 10, paragraph (1) of Regulation (EU) 2015/751 in relation to Article 10, paragraphs (2) and (3) of Regulation (EU) 2015/751;

36) if, as an issuer, it fails to ensure that its payment instruments are electronically identifiable or, in the case of newly-issued card-based payment instruments, also visibly identifiable, and thereby acts contrary to Article 10, paragraph (5) of Regulation (EU) 2015/751;

37) if it prevents payees from steering consumers to the use of any payment instrument preferred by the payee or if it prohibits payees from treating card-based payment instruments of a given payment card scheme more or less favourably than others, and thereby acts contrary to Article 11, paragraph (1) of Regulation (EU) 2015/751;

38) if it prevents payees from informing payers about interchange fees and merchant service charges, and thereby acts contrary to Article (11), paragraph (2) of Regulation (EU) 2015/751;

39) if, after the execution of an individual card-based payment transaction, it fails to provide the payee with the information on that transaction in accordance with Article (12) of Regulation (EU) 2015/751.

(3) A fine between HRK 5,000.00 and HRK 50,000.00 shall also be imposed for any of the misdemeanours referred to in paragraph (2) of this Article on:

1) the responsible person of the management board of the payment service provider referred to in paragraph (1), item (1) of this Article or the responsible executive director if the payment service provider has a board of directors, or if the payment service provider referred to in paragraph (1), item (1) of this Article, with the exception of credit institutions, engages in another business activity in addition to payment services, the director responsible for payment services;

2) the responsible person of the payment service provider (branch) referred to in paragraph (1), items (2) to (4) of this Article and the responsible person of the payment service provider (agent) referred to in paragraph (1), item (5) of this Article that is a legal person;

3) the responsible person of the payment service provider referred to in paragraph (1), items (6) and (7) of this Article.

(4) A fine between HRK 10,000.00 and HRK 250,000.00 shall also be imposed for any of the misdemeanours referred to in paragraph (2) of this Article on a craftsman or another self-employed person set up in the Republic of Croatia under the right of establishment and appointed as an agent of the payment institution or the electronic money institution established in another Member State.

(5) The fine referred to in paragraph (3) of this Article shall be imposed on the responsible person for any of the misdemeanours referred to in paragraph (2) of this Article committed during the provision of payment services by the Republic of Croatia, when not acting in the capacity as public authority.

(6) Exceptionally, any of the misdemeanours referred to in paragraph (2) of this Article shall not be committed if the payment service provider referred to in paragraph (1) of this Article, where provided for in Regulation (EC) No 924/2009, as last amended by Regulation (EU) 2019/518, Regulation (EU) No 260/2012 and Regulation (EU) 2015/751, has agreed otherwise with the payment service user than prescribed therein.”

Article 8

The title of Article 9 and Article 9 are deleted.

Article 9

The title of Article 10 and Article 10 are deleted.

Article 10

In Article 14, paragraph (1), in the introductory sentence, the words ‘or natural’ are deleted.

New items (1) to (5) are added which read:

“1) if, when providing a currency conversion service at an ATM or at the point of sale, it fails to disclose to the payer the information on the total currency conversion charges expressed as a percentage mark-up over the latest available euro foreign exchange reference rates issued by the European Central Bank, prior to the initiation of the payment transaction of a cash withdrawal at an ATM or a card-based payment at the point of sale, or if it fails to clearly display the information on the percentage mark-up at the ATM or at the point of sale (Article 3a, paragraphs (1) and (4) of Regulation (EC) No 924/2009);

2) if, when providing a currency conversion service at an ATM or at the point of sale, prior to the initiation of the payment transaction of a cash withdrawal at an ATM or a card-based payment at the point of sale, it fails to provide the payer with the information on the amount to be paid to the payee in the currency used by the payee and on the amount to be paid by the payer in the currency of the payer’s account (Article 3a, paragraph (3) of Regulation (EC) No 924/2009);

3) if, when providing a currency conversion service at an ATM or at the point of sale, following the initiation of the payment transaction of a cash withdrawal at an ATM or a card-based payment at the point of sale, it fails to make available to the payer the information on a durable medium on the percentage mark-up expressing the total currency conversion charges, on the amount to be paid to the payee in the currency used by the payee and on the amount to be paid by the payer in the currency of the payer’s account (Article 3a, paragraphs (1), (3) and (4) of Regulation (EC) No 924/2009);

4) if, when providing a currency conversion service at an ATM or at the point of sale, prior to the initiation of the payment transaction of a cash withdrawal at an ATM or a card-based payment at the point of sale, it fails to inform the payer of the possibility of paying in the currency used by the payee and having the currency conversion subsequently performed by the payer’s payment service provider (Article 3a, paragraph (4) of Regulation (EC) No 924/2009);

5) if, when providing a currency conversion service at an ATM or at the point of sale, it fails to provide the payer with the information referred to in Article 3a, paragraphs (1), (3) and (4) of Regulation (EC) No 924/2009 free of charge or in a neutral and comprehensible manner (Article 3a, paragraph (7) of Regulation (EC) No 924/2009).”.

The former items (1) to (5) become items (6) to (10).

Paragraph (2) is amended to read:

“(2) The responsible person of the legal person shall also be fined between HRK 5,000.00 and HRK 50,000.00 for any of the misdemeanours referred to in paragraph (1) of this Article.”.

After paragraph (2), paragraph (3) is added which reads:

“(3) A craftsman or another self-employed person shall also be fined between HRK 10,000.00 and HRK 250,000.00 for any of the misdemeanours referred to in paragraph (1) of this Article.”.

FINAL PROVISION

Entry into force

Article 11

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette, with the exception of Article 8, paragraph (2), items (2), (3), (8) and (9) as amended by Article 7 of this Act and Article 14, paragraph (1), items (1) to (5) as amended by Article 10 of this Act, which shall enter into force on 19 April 2020 and Article 8, paragraph (2), items (4) to (7) as amended by Article 7 of this Act, which shall enter into force on 19 April 2021.

Class: 022-03/19-01/242

Zagreb, 31 January 2020

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament

Gordan Jandroković, m.p.