

Exempting Merchant-Initiated Transactions from Strong Customer Authentication

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The Association of Credit Card Issuers Europe (ACCIE) welcomes the fact the European Commission is examining the question of Strong Customer Authentication (SCA) for Merchant-Initiated Transactions within the context of the revised Payment Services Directive (PSD2). ACCIE understands this critical question relating to the primary text of PSD2 has been referred to the European Commission after having been posted on the European Banking Authority's Q&A tool.

As per Art. 97 (Authentication) (1) (b) of PSD2, Payment Service Providers (PSPs) must apply SCA where a payer initiates an electronic payment transaction. The central issue concerns when the initiation of a payment transaction by a payer occurs. Whilst PSD2 includes no explanation as to what is meant by "initiation", recital 29 of PSD2 states that release refers to an act which, amongst other things, causes a creditor to release goods or deliver a service without undue delay. Following a teleological interpretation method, it seems reasonable to infer that a transaction can only be made if, from the point of view of a payer, everything has been done to receive goods or a service.

As presented in this paper, there are many instances where a payee rather than a payer initiates a payment transaction. ACCIE firmly believes these payee-initiated transactions should not fall within the scope of SCA and, therefore, should be exempted from the corresponding requirements. When checking into a hotel, a payer usually deposits a means of payment as security during the reservation process. At this point, the exact service to be rendered (*e.g.*, with/without breakfast, minibar use) and its cost is unknown, meaning a payment cannot be triggered. Therefore, it stands to reason that a payer cannot be deemed the initiator of a payment transaction which the person has not authorised and hence over which has no control.

The situation is similar when booking a business trip through a travel agency. Typically, a company deposits a means of payment with a travel agent, without knowing the amount or object of future bookings to be made. Bookings are often triggered in advance of travel via a Global Distribution System (GDS), enabling payment transactions to be initiated between a travel agency and a travel industry service provider acting as a merchant, whether that be an airline, hotel or car rental company. The nature of the GDS means authorisation of a ticket occurs at a point in future, well after a booking has been made. At the time of the booking, it is thus completely unclear for a payer when a merchant will authorise and thereby tacitly accept the offer of a transaction. As such, initiation of the payment transaction is beyond the control of the payer, who has effectively surrendered command of this to a merchant. Simply put, it is the payee and not the payer who initiates an electronic payment transaction.

To conclude, both examples described above illustrate that there are various instances in which a payee and not a payer initiates an electronic payment transaction, as per Art. 97 (1) (b) of PSD2. ACCIE believes that PSPs should not be obliged to apply SCA in such cases, as they fall outside the scope of the associated Regulatory Technical Standards (RTS).

Of course, we welcome further discussions on this topic and are willing to elaborate on our views.