

Payment service providers' rectification of unauthorised or incorrectly executed payment transactions: user obligations

The Court of Justice of the European Union concludes that a payer is deprived of the right to reimbursement of the amount of an unauthorised transaction where he or she delayed in notifying his or her payment service provider of said transaction, even though he or she did so within 13 months from the debit date. This interpretation of the Payment Services Directive is applicable in Spain (Art. 43 RDL 19/2018).



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The Court of Justice of the European Union (Fourth Chamber), in its judgment of 1 August 2025 (case C-665/23, *IL v. Veracash SAS*), responds to three preliminary questions referred by the French Cour de Cassation in relation to the 2007 Payment Services Directive (PSD1). The current European regime on the notification and rectification of unauthorised or incorrectly

executed payment transactions, with no changes to this effect with respect to PSD1, is mainly found in Article 71 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD2), incorporated into Spanish law by Article 43 of Royal Decree-law 19/2018, of 23 November, on payment services and other urgent financial measures.

1. The dispute in the main proceedings and the questions referred for a preliminary ruling

In summary, the main proceedings arise from the following facts:

- IL (a natural person) has a gold deposit account with Veracash. On 24 March 2017, the financial institution sent a new payment and cash withdrawal card to IL's home address. Between 30 March and 17 May 2017, daily cash withdrawals were made from this account. Claiming that he had neither received that payment card nor authorised those withdrawals, IL brought an action before the First Instance Court of Évry seeking an order requiring Veracash to refund the sums corresponding to those withdrawals and to pay damages. These amounts are not specified in the Court of Justice of the European Union's judgment. The claim was dismissed in part at first instance; the appeal before the Paris Court of Appeal was dismissed by judgment of 3 January 2022. Both courts held that IL had not notified Veracash of the withdrawals at issue in the main proceedings "without undue delay" and "immediately", but rather on 23 May 2017, that is, almost two months after the first contested withdrawal, and was therefore not entitled to reimbursement of the amounts of those unauthorised transactions under the liability regime for unauthorised payment transactions provided for in the French Monetary and Financial Code. IL brought an appeal on a point of law before the Court of Cassation, arguing, among other things, that the

Court of Appeal had infringed Article L. 133-24 of the aforementioned Monetary and Financial Code by holding that IL had notified Veracash of the cash withdrawals too late, whereas, in IL's view, under Article L. 133-24, the user of a bank card has a time limit of 13 months after the date of the contested debit to issue such a notification. Veracash contends, on the other hand, that Article L. 133-24 establishes a double time limit and that the 13-month time limit is a final deadline. Moreover, the scheme of that provision requires the user, as soon as he or she becomes aware of an anomaly, to notify it immediately to his or her payment service provider.

Given that the outcome of the dispute in the French Court of Cassation depends on whether the payment service provider can refuse to refund the amount of an unauthorised transaction where the payer, despite having notified that transaction within 13 months after the debit date, delayed in doing so, without that delay however having been intentional or the result of gross negligence on his or her part, the Court of Cassation stays the proceedings and refers three questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling:

- First, must Articles 56, 58, 60 and 61 PSD1 be interpreted as meaning that the payer is deprived of the right to reimbursement of the amount of an unauthorised transaction if he [or she] delayed in notifying his [or her] payment service provider of the unauthorised payment transaction, even

though he [or she] did so within 13 months from the debit date?

- Second, if the answer to the first question is in the affirmative, is the deprivation of the payer's right to reimbursement conditional on the fact that the lateness of the notification is intentional or the result of gross negligence on the part of the payer?
- And third, if the answer to the first question is also in the affirmative, is the payer deprived of the right to reimbursement of all the unauthorised transactions or only those which could have been prevented if the notification had not been late?

2. The CJEU's interpretation of liability for unauthorised payment transactions

In its ruling, the CJEU answers the first question in the affirmative and interprets Article 58 PSD1 (now Article 71 PSD2) as meaning that the payment service user is, in principle, deprived of the right to obtain rectification of a transaction if he or she did not notify his or her payment service provider without undue delay on becoming aware of an unauthorised payment transaction, even though he or she notified it to that payment service provider within 13 months after the debit date.

With regard to the second question, Articles 58, 60(1) and 61(2) PSD1, read in conjunction with Article 56(1)(b) thereof, must be interpreted as meaning that, in the event of an unauthorised payment

transaction resulting from the use of a lost, stolen or misappropriated payment instrument, or from any unauthorised use of such an instrument, and where that transaction has been notified by the payer to his or her payment service provider within 13 months after the debit date, that payer is — in principle and except where the payer has acted fraudulently — to be deprived of his or her right to obtain actual rectification of that transaction only if he or she delayed in notifying it to his or her payment service provider with intent or gross negligence consisting in a serious breach of a duty of care.

Finally, following the reformulation of the third question, the CJEU concludes that the aforementioned articles must be interpreted as meaning that, in the event of successive unauthorised payment transactions, resulting from the use of a lost, stolen or misappropriated payment instrument or any unauthorised use of such an

The CJEU clarifies the payer's liability for delay in notifying an unauthorised payment transaction

instrument, and where the payer, while observing the 13-month time limit after the debit dates of those transactions, partially delayed in notifying them to his or her payment service provider with intent or gross negligence, that payer is, in principle, deprived of the right to obtain a refund only of the losses resulting from the transactions which he or she delayed in notifying to his or her payment service provider with intent or gross negligence.

Applying this ruling to Spanish law, we must bear in mind that Article 43(1) of Royal Decree-law 19/2018, transposing Article 71 PSD2, states:

The payment service user shall obtain rectification of an unauthorised or incorrectly executed payment transaction from the payment service provider only if the payment service user notifies the payment service provider without undue delay on becoming aware of any such transaction giving rise to a claim, including that under Article 60, and no later than 13 months after the debit date.

In this judgment of 1 August 2025, the CJEU recalls the obligation of the payment service user to notify their payment service provider “without undue delay” on becoming aware of, in particular, an unauthorised payment transaction “no later than” 13 months after the debit date. Consequently, the right of the payment service user to obtain rectification of an unauthorised payment transaction “is subject to the prior fulfilment of a twofold temporal requirement”, with a different starting date for the calculation of the period: in the case of the 13 months provided for notification by the user, which is objective in nature, the *dies a quo* is the debit date. Whereas the obligation to notify “without undue delay” is subjective in nature, in that it requires the payment service user to act as soon as possible, having regard to the circumstances in which he or she finds him or herself, from the moment he or she becomes aware of the unauthorised payment transaction.

The CJEU therefore concludes that, in order to obtain rectification of a transaction, the user “is required both to notify his or her payment service provider without undue delay on becoming aware of an unauthorised payment transaction and to make that notification no later than 13 months after the debit date”.

In its reasoning, the CJEU also refers to Article 56(1)(b) PSD1 (Art. 41(b) of the Royal Decree-law on payment services), under which, in the event of becoming aware of the loss, theft or misappropriation of the payment instrument, or its unauthorised use, the user is under an obligation to notify it to the payment service provider or the entity specified by that provider without undue delay. In such cases, the time limit runs from the date on which the payment service user becomes aware not only of any unauthorised use of the payment instrument (in this case a card), but, as the case may be, of the loss, theft or misappropriation of that instrument.

However, awareness of those events may occur even before that instrument is used for the purposes of carrying out an unauthorised payment transaction. But in the main proceedings, both obligations arose simultaneously. The Court states that in “such circumstances, it would be inconsistent to consider that mere compliance with the time limit of 13 months after the debit date is sufficient for the payment transaction in question to be regarded as having been notified in accordance with the requirements of Article 58 of Directive 2007/64, whereas Article 56(1)(b) of that directive requires, in principle, a more expeditious notification”. In support of its view, the CJEU has regard to other

considerations in relation to the objectives pursued by PSD1, citing the judgment of 2 September 2021 (CRCAM, C337/20, EU:C:2021:671), which states that the obligation on the payment service user to notify any unauthorised transaction is the condition for that regime to be able to apply for the benefit of that user.

With regard to the second question, namely whether the aforementioned provisions of PSD1 must be interpreted as meaning that, in the event of an unauthorised payment transaction resulting from the use of a lost, stolen or misappropriated payment instrument, or from the unauthorised use of any such instrument, and where that transaction has been notified by the payer to his or her payment service provider within 13 months after the debit date, that payer is to be deprived of his or her right to obtain actual rectification of that transaction only if he or she delayed in notifying it to his or her payment service provider with intent or *gross negligence*, the CJEU recalls the reversal of the burden of proof set out in Article 59 PSD1 (Article 44 of the Spanish regulation): it is the payment service provider who must prove that the payment transaction has been authenticated, accurately recorded and entered in the accounts. In practice, this means that if the user has notified the transaction within thirteen months, there is an immediate repayment obligation on the part of the payment service provider (judgment of 2 September 2021, CRCAM, C337/20). However, the CJEU points out that this obligation to refund immediately the amount of the transaction concerned is subject to certain qualifications, set out in Article 61 PSD1 (Article 46 of the Spanish regulation). In particular, the payer is to bear

all the losses relating to any unauthorised payment transactions if he or she incurred them by acting fraudulently or by failing to fulfil one or more of his or her obligations under Article 56 with intent or gross negligence. The payer's obligations include the obligation, for that payer, to notify without undue delay his or her payment service provider or the entity specified by that provider when he or she becomes aware of the loss, theft, misappropriation or unauthorised use of his or her payment instrument. Therefore, the CJEU concludes that the payer is required to bear the losses relating to unauthorised payment transactions resulting from the use of his payment instrument only where he or she has acted fraudulently or where the payer has, with intent or gross negligence, delayed in notifying his or her payment service provider or the entity specified by that provider of the loss, theft, misappropriation or unauthorised use of that instrument. It is for the referring court, which alone has jurisdiction to assess the facts, to determine whether that is the case for each of the withdrawals at issue in the main proceedings, since Article 58 PSD1 expressly refers to the notification of individual payment transactions (in Spanish law, see Article 44 of Royal Decree-law 19/2018).

With regard to the concept of gross negligence, this would constitute a “serious breach of a duty of care”, which must be assessed in the light of the specific circumstances of the payer. Therefore, in the event of an unauthorised payment transaction resulting from the use of a lost, stolen or misappropriated payment instrument, or from any unauthorised use of such an instrument, and where that transaction has been notified by the payer

to his or her payment service provider within 13 months after the debit date, that payer is — in principle and except where that payer has acted fraudulently — to be deprived of his or her right to obtain actual rectification of that transaction only if he or she delayed in notifying it to his or her payment service provider with intent or gross negligence consisting in a serious breach of a duty of care.

As for the third question referred for a preliminary ruling, it is reformulated by the CJEU and answered as follows: the PSD1 regime must be interpreted as meaning that, in the event of successive unauthorised payment transactions, resulting from the use of a lost, stolen or misappropriated payment instrument or any unauthorised use of such an instrument, and where the payer, while observing the 13-month time

limit after the debit dates of those transactions, partially delayed in notifying them to his or her payment service provider with intent or gross negligence, that payer is, in principle, deprived of the right to obtain a refund only of the losses resulting from the transactions which he or she delayed in notifying to his or her payment service provider with intent or gross negligence. In view of the applicable regulations, the CJEU infers that, even in the case of unauthorised payment transactions carried out repeatedly over time, all of which result from the same loss, theft or misappropriation of the payment instrument in question, the payer may be deprived of the right to obtain rectification only in respect of transactions which he or she delayed in notifying to his or her payment service provider with intent or gross negligence.