

## Informative Note

# Main developments introduced by Order 1263/2019 of 26 December on transparency of conditions and information requirements applicable to payment services

28th January 2020

Regarding Order ECE/1263/2019 of 26th December

In order to complete the transposition of PSD2 in Spain, on 30 December last the Order ECE/1263/2019, of 26 December, on transparency of conditions and information requirements applicable to payment services (hereinafter, "**the Order**") was approved and will enter into force on **1 July 2020**.

The main novelties included in said Order are detailed below:

### Purpose and Scope

- The Order regulates the information requirements applicable to payment transactions (singular or subject to a master agreement) that payment service providers, including account information service providers and payment initiation service providers, must comply with.
- This regulation is mandatory for both parties (provider and user) if the user is **a consumer or a micro-enterprise**. Otherwise, the parties may agree not to apply the Order in whole or in part.
- On the other hand, compliance will not be required when the supplier only provides the account information service (except for information and conditions relating to one-off payment transactions and the framework contract in that which is applicable).
- Finally, a **transitional regime** is established whereby the framework contracts existing on the date of entry into force of the Order will continue to be valid. However, those provisions that are more favourable to the user in terms of transparency and information will be applicable.

### Information on foreign exchange rates and additional charges or reductions for the use of a given payment instrument

Regarding information on the currency of transactions and additional charges or reductions for the use of a given payment instrument, the Order states the following:

(a) Currency exchange



- Payments will be made in the currency agreed upon by the parties. When a currency exchange is offered to the payer and expressly accepted by him, all expenses, commissions and exchange rates for the conversion must be reported in advance.

- Payment service providers offering currency exchange services shall establish and publish the exchange rates, commissions and expenses, even minimum ones, applicable to such transactions, in the manner established by the Bank of Spain.

#### b) Use of a given payment instrument

- An obligation is established to inform the payment service user of both price reductions and additional charges for the use of a given payment instrument before the transaction is initiated.

- To make the following information available to users in a prominent place in all establishments from which the transaction can be initiated and on their website:

- Payment instruments whose use generates an additional expense or a reduction in price.

- Exact amount of the additional expense or reduction or, when it cannot be calculated in advance, the estimated amount.

- Any other circumstance that may condition the linking of an additional expense or reduction to the use of a payment instrument

#### **Information for small value payment instruments**

- Specialities are established with regard to the information requirements for **low value payment instruments**, which are those that only concern individual payment transactions not exceeding EUR 30, or that have an expenditure limit of EUR 150, or that allow the storage of funds not exceeding EUR 150 at any time.

For payment transactions at national level, the above limits shall be doubled, except for prepaid payment instruments, where the limits shall be EUR 500.

- In general, the information requirements for this type of instrument will have the following special features:

(i) the payment service provider shall provide the payer only with information on the main characteristics of the payment service;

(ii) it may be agreed that the provider is not obliged to propose changes to the conditions of the framework contract; and,

(iii) that after the execution of a transaction the provider only provides the user with a reference allowing the identification of the payment transaction, the amount and the charges.

## **One-off payment transactions**

### ***a) Prior information***

The user shall be provided with an **information brochure** or a draft copy of the single payment service contract or draft payment order including the following information:

- The specification of the information or unique identifier that the payment service user must provide for the correct initiation or execution of a payment order.
- The maximum execution time for the payment service to be provided.
- All charges to be paid by the user to the payment service provider and, where applicable, the breakdown of the amounts of such charges.
- The effective exchange rate or the reference rate to be applied in the case of foreign exchange transactions
- In addition, if a payment order is placed through a payment initiation service provider, the latter shall make available to the user the name of the payment initiation service provider and the contact details of the competent authority, as well as the details of the authorities responsible for supervising it and the details of the public register in which it is entered.

### ***b) Subsequent information***

Immediately after the payment order, the payment service provider shall provide both the payer and the payee:

- Identification of the payment transaction and, where available, information relating to the payee and the payer
- Amount of the payment transaction.
- Breakdown of the charges for the transaction.
- The exchange rate applied, if any
- Date of receipt of the order (for the payer) or date of the credit (for the payee)

Where the order is initiated through a payment initiation service provider, the latter shall provide the payer and, where applicable, the payee, with the following data

- A confirmation that the payment order has been successfully initiated with the payment service provider managing the payer's account
- A reference enabling the payer and the payee to identify the payment transaction and, where appropriate, the payee to identify the payer and any information communicated with the payment transaction
- the amount of the payment transaction

- where applicable, the amount of any charges to be paid for the transaction to the payment initiation service provider, with an appropriate breakdown.

### **Master Agreements**

The payment service provider shall provide the user with an **information brochure** or the **framework contract itself to be concluded**, where appropriate, containing the following information:

**(a) Payment service provider:** (i) identification details; (ii) details of the authorities responsible for supervising them; and (iii) details of the public register in which the authorised payment institutions are registered

**(b) Use of the payment service:** (i) description of the payment service; (ii) unique identifier to be provided by the user for the proper execution of the payment order; (iii) manner of communication of consent to initiate and execute the order; (iv) reference to the time of receipt of the payment order; (v) maximum execution time of the services; (vi) limits to payment transactions through a payment instrument and (vii) the service user's rights in the case of shared card based instruments.

**(c) Charges and interest and exchange rates:** (i) charges payable by the user to the provider; (ii) interest and exchange rates; and (iii) the method of calculation.

**(d) Communication:** (i) means of communication; (ii) the form and language in which the information is to be provided and (iii) the user's right to receive the framework agreement and the prospectus at any time

**(e) Responsibilities and requirements for return:** (i) security measures to be taken by the user to protect the payment instrument; (ii) notification procedure in case of fraud or suspicion; (iii) conditions under which the provider may block a payment instrument; (iv) liability of the payer in case of unauthorised payment transactions; (v) form and timing of notification in case of unauthorised payment transactions; (vi) liability of the provider in case of non-execution or delay; and (vii) requirements for full refund in case of unauthorised transactions.

**(f) Amendments and termination of the contract:** (i) duration and (ii) the user's right of termination.

**(g) Applicable law, jurisdiction and complaint procedures:** (i) applicable law; (ii) competent court and (iii) complaint procedures with the customer service.

- Once the payment transaction subject to a framework contract has been executed, the payment service provider of either the payer or the payee shall provide the same information as that provided for one-off payment transactions.

- The payment service provider shall provide the information at least once a month free of charge and in the form agreed by the parties.

### **Information brochure on the rights and obligations of users**

Payment service providers shall make available to users, in an accessible manner on their websites, where such sites exist, and on paper at their headquarters, agencies and at the entities where their

activities have been outsourced, the **brochure** setting out the main rights and obligations of users. This brochure is attached to this information note as **Annex 1**.

The provisions of the Order are supplemented by **three additional provisions, a single transitional provision, a repealing provision and six final provisions**.

- **First additional provision:** a specific regime applicable to certain transactions and contracts is established.
- - **Second additional provision:** as from 19 January 2020, the Banco de España is empowered to establish and amend the accounting rules and models to which the financial statements of payment institutions and electronic money institutions, including those of a hybrid nature, must conform, with the specifications determined by the Banco de España itself. The Accounting and Audit Institute must be consulted in order to amend the rules.
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- - **Third additional provision:** The obligation of payment service providers to make available to users the information brochure on the rights and obligations of users under the terms provided for in the previous section is established.
- - **Single transitory provision:** The framework contracts that payment service providers operating in Spain have signed with users on the date of entry into force of the order shall continue to be valid on its entry into force. However, the mandatory provisions relating to the transparency of contract conditions and the most favourable information requirements for consumers and micro-enterprises shall apply.
- - **Repeal:** Order EHA/1608/2010 of 14 June on the transparency of conditions and information requirements applicable to payment services is repealed.
- - **First final provision:** Establishes the title of competence that attributes to the State the exclusive competences on commercial legislation, bases of credit management, banking and insurance, and bases and coordination of the general planning of economic activity, respectively.
- - **Second final provision:** Order ECO/734/2004, of 11 March, on customer care departments and services and the customer ombudsman of financial institutions, is amended.
- - **Third final provision:** Order EHA/2899/2011, of 28 October, on transparency and protection of banking services customers, is amended.
- - **Fourth final provision:** Establishes the incorporation into Spanish law of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.
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- - **Fifth final provision:** The Bank of Spain is empowered to issue provisions and acts for the development and execution of this Order.
- - **Sixth final provision:** This Order shall enter into force on 1 July 2020, except for paragraphs 1 to 3 of the second additional provision, which shall enter into force 20 days after its publication in the BOE, i.e. on 19 January 2020.

For more information please contact:

Miguel Prado

[miguel.prado@AndersenTaxLegal.es](mailto:miguel.prado@AndersenTaxLegal.es)

Patricia Serna

[patricia.serna@AndersenTaxLegal.es](mailto:patricia.serna@AndersenTaxLegal.es)

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