

Disputing unauthorized payment transactions. Communication to the system.¹

In recent years, the payment services sector has undergone significant changes, linked to the transposition of important European legislation (including the PSD2 Directive) and the deployment of new technologies – which have contributed to a profound change in customers' payment habits (namely, the gradual reduction in the use of cash) – the digitalization of services and the spread of e-commerce, also as a result of the pandemic.

In this context, the need to grant customers the right to dispute unauthorized transactions and to receive the refund to which they are entitled has become increasingly important.

Legislative Decree 11/2010 identifies the conditions under which the customer is entitled to a refund by the payment service provider (PSP) for the amount of the disputed transaction² and defines the timing and procedure for such refund; its aim is to eliminate the negative effects on customers of the debiting linked to the unauthorized transaction,³ thereby helping to strengthen customer protection and foster trust in payment services.

Compliance with these rules is essential for the protection of customers and also has a bearing on financial intermediaries' operational risk profiles and the smooth functioning, reliability and efficiency of the payments system.

Banca d'Italia has therefore carried out an in-depth analysis of the safeguards provided by PSPs in this area, through on-site and off-site supervision. As a result of this analysis, it was deemed appropriate to provide guidance in order to ensure uniform conduct on the part of market players and their alignment with the rules and regulations, as well as to facilitate convergence towards practices that are more focused on the quality of customer relations. The in-depth analysis also took into account the complaints lodged with the Banking and Financial Ombudsman (ABF) and those submitted to Banca d'Italia, as well as reports from consumer organizations.

Specifically, the following issues were identified:

- **unfounded refusal of a refund**, mainly due to the criteria used for assessing disputed payments that are not in line with the rules defining the liability of PSPs and customers in the use of payment instruments;
- **shortcomings in the execution of refunds**, both in terms of the time needed to process the disputed payments – often exacerbated by the obligations imposed on customers that are not actually required by the rules governing the sector – and of the restoration of the state of the payment account following the disputing of the unauthorized transaction;

¹ Courtesy translation. Only the Italian version is authentic.

² In accordance with Articles 10 and 12 of Legislative Decree 11/2010, PSPs must, as a rule, ensure the refund when the disputed payment transaction was not authorized with the highest standards of security laid out by the rules and regulations, namely through strong customer authentication (SCA). Conversely, if SCA was used, the PSP may choose not to refund customers if it ascertained that the disputed transaction was carried out owing to a failure on the part of customers to comply with their obligations (e.g. safekeeping of the payment instrument), with intent or gross negligence on their part. In any event, the PSP always has the right not to refund customers if they believe that their request to dispute the transactions stems from an attempt to defraud the PSP itself. On this last point, see [the communication to the system submitted by Banca d'Italia on 30 October 2023](#).

³ Pursuant to Article 11 of Legislative Decree 11/2010, the refund of disputed transactions must be carried out at the latest by the end of the working day following the day on which the request was made. Furthermore, if the transaction led to the debiting of a payment account, the refund must be made in such a way as to bring it back to the state in which it would have been had the payment not taken place, ensuring that the value date of the credit is no later than the date on which the amount was debited.



- **gaps in the provision of information to customers**, both regarding how customers are required to dispute the unauthorized payment with the PSP and the latter's grounds for refusing the refund, if any;
- **inadequacy of the tokenization mechanisms** in place for customers' payment cards in external wallet provider applications (used for physical and remote POS payments), with specific reference to the enrolment phase, often performed without strong customer authentication or through authentication elements that are not under the control of the PSP that issued the card.

PSPs are therefore invited to carry out a self-assessment of the alignment of their arrangements, procedures and practices with the regulatory provisions and with Banca d'Italia's expectations. Specifically, Banca d'Italia expects that:

- the process for managing disputed payments is governed by **a specific internal policy**, in accordance with the regulatory requirements laid down in Legislative Decree 11/2010. In this context, **all categories of unauthorized transactions** should be regulated (regardless of the payment instrument through which they were carried out or of the reason for which they lack authorization). This is meant **to avoid the possibility of some of these transactions being processed based on the rules laid out for ordinary complaints**, for which, among others things, the processing times set by the relevant legislation are different;⁴
- the **fact-finding phase** concerning the request to dispute a transaction is **carried out taking into account the criteria for allocating responsibilities** between PSPs and customers laid down in **the rules governing the sector**.

In particular, where there is no evidence of fraudulent behaviour on their part, **customers are entitled to refund** if the **PSP did not require strong customer authentication (SCA)**⁵ or **cannot prove** that the transaction **was authorized through SCA**.⁶ For **transactions authorized through SCA**, the fact-finding activity carried out by the PSP must ensure, in any event, that the customer's conduct is properly taken into account;

- **any procedural automatic mechanism** at the assessment stage is based on **granular grids**, in order to make it possible to properly assess whether there was any wilful misconduct or gross negligence on the part of the customer. However, PSPs must guarantee that such assessments are carried out even if the cases at hand are not explicitly covered in their grids;
- in order to ensure that requests to dispute a transaction are properly assessed, appropriate **initiatives are taken to raise awareness among staff**, particularly for those who are most in direct contact with customers in the handling of their requests and of any complaints, in order to enhance the corporate culture in this respect;
- internal regulations define **time frames for the management of disputed transactions that enable compliance with the time limit for a refund laid down in Article 11, paragraph 1 of Legislative Decree 11/2010**.

With regard to this time limit, PSPs must avoid instructing customers that their request to dispute a transaction **will only be considered** if they submit additional documentation,

⁴ This is without prejudice to the fact that the, rejection of a revocation or failure to respond to a request for revocation within 15 days (as the rules on payment services apply) is a sufficient condition for lodging a complaint with the ABF.

⁵ Article 12, paragraph 2-bis, of Legislative Decree 11/2010.

⁶ Article 10, paragraph 1, of Legislative Decree 11/2010.



besides notifying the PSPs of the unauthorized transaction. Examples of such additional documentation include police reports and similar documents, which the PSPs can in any case request at a later date for assessment purposes. Asking customers to go through a burdensome process in order to have their request to dispute a transaction assessed must also be avoided. PSPs are invited to set up effective channels for contact and assistance through which customers can dispute the unauthorized transaction and obtain all necessary information concerning their request;

- **where a payment account has been debited**, arrangements are in place to take account of the need to restore the latter to the state in which it would have been had the transaction not taken place and, in particular, that the **credit value date is no later than the debit one** (Article 11, paragraph 1, of Legislative Decree 11/2010); the refund must take into account the need not to charge the customer any costs associated with carrying out the disputed transaction;
- **the transparency documentation contains adequate information** to ensure that **customers are fully aware of their rights and obligations**.

The recommendation is to **avoid general references to the provisions of the legislation on disputed transactions and to state explicitly how the customer should submit the communications in accordance with the law** (e.g. those regarding theft, loss, misappropriation or unauthorized use of the instruments, or the notification of the revocation of unauthorized payment transactions);

- **transparency towards the customer regarding the legal right** that PSPs have to **recover the sums initially refunded** if it subsequently emerges that the transaction had been authorized by the customer.

In this respect, the new **contracts should highlight this right** and also indicate the procedure through which the PSP might recover the sums initially refunded, specifying the period within which the process will be deemed to have been completed, which must in any case be reasonable in order to avoid protracted situations of uncertainty. Furthermore, again in order to increase customers' awareness of the PSPs' right to recover sums that were initially refunded, PSPs are expected to inform the customer of such right both when the initial refund is provided and, if applicable, when the refunded amounts are recovered;

- **post-revocation communications to customers** are drafted in clear and intelligible language and contain **comprehensive information** regarding the **reasons for rejection** of requests for a **refund** and the possibility of asserting their legal rights;
- The **tokenization procedures** in place for customers' payment cards are designed to be in line with the authentication procedures laid down in Commission Delegated Regulation (EU) 2018/389, which are also mentioned in the Q&A published on the subject⁷, both when the enrolment is carried out using the mobile banking application of the issuing PSP and when it is performed directly in the environment made available by the external wallet providers.

⁷ Available at the following link: <https://www.eba.europa.eu/publications-and-media/press-releases/eba-clarifies-application-strong-customer-authentication>



In addition, with regard to disputes before the ABF, the provisions in force⁸ require financial intermediaries to assess complaints submitted to them by customers also in the light of previous decisions by the ABF, verifying whether a given complaint submitted by the customer relates to an issue similar to those already decided by the ABF, and looking at the solutions adopted in such cases. This should make it possible to resolve disputes relating to matters on which the ABF has developed a consistent and uniform approach, especially if this was achieved when considering appeals in which the PSP was a party, by simply filing a complaint with the PSP or, at the latest, once the ABF has been involved. PSPs are therefore invited to give due consideration to these aspects, including in relation to the management of customer complaints (either made directly to them or lodged with the ABF) regarding unauthorized transactions.

Where the self-assessment carried out by a PSP points to the need for corrective action, Banca d'Italia expects the PSP, with the help of its control functions, to draw up an action plan to be implemented as soon as possible and, in any case, no later than 12 months after the publication of this guidance.

The assessments and analyses carried out by the PSP must be properly formalized and will be subject to the ordinary supervision of Banca d'Italia.

⁸ See the Bank of Italy's provision of 18 June 2009 (last updated in August 2020) on out-of-court dispute resolution systems in banking and financial transactions and services, section VI, paragraph 1.