
PAYMENT SERVICES EVOLUTION: FROM THE EUROPEAN DIRECTIVE OF 2007 TO THE DIGITAL SINGLE MARKET AND THE EUROPEAN DIRECTIVE OF 2015

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ABSTRACT

It is obvious that nowadays new and varied payment habits have proliferated (via smartphones, tablets, wearables...) in our society. What is more, technology advances faster than the applicable regulation. Present research highlights the importance of a suitable regulation in the field of payment services and shows the evolution from the European Directive of 2007 to the Digital Single Market and the European Directive of 2015. And all this focusing on the complex relationship between technology, consumers/users, payment service providers, legislators and authorities.

Keywords: payments services, regulation, Directive, Digital Single Market, consumer/user.

1. PAYMENT SERVICES EVOLUTION: TRENDS IN 2016

According to the report of Tune Marketing Console¹, 800 million persons acquired a new smartphone in 2015, which means that almost 50% of the world population has one of these devices. In addition, the same year near, 53% of the online purchases came across these devices, being the forecast for 2016 of 65%.

For its part, the Spanish company Vector ITC² has carried out a study showing the five trends in mobile payment for this 2016. Namely:

¹ <http://in.tune.com/tmc-site-global-mobile-2016-thank-you>

The Tune Marketing Console study analyzes 400,000 gigabytes of data on mobile marketing from 249 countries, and provides conclusions such as during 2015 400,000 new applications arrived at Google store; a platform that also held 200,000 million downloads.

² http://www.vector-itcgroup.com/es/home/global_yhttp://www.vector-itcgroup.com/sites/default/files/noticias/pdf/ndp_pago_movil.pdf (December 2015)

A) "Big Pay":

These free of charge solutions (Apple Pay, Samsung Pay or AndroidPay) allow customers to pay through their smartphone, as a kind of payment by credit/debit card, but without being necessary any app or wallet in the mobile that is attached to the card issuing Bank.

B) "Host CardEmulation" (HCE):

Traditionally, mobile payment solutions were based on a secure element where the data from the customer's card was stored, either in mobile SIM or in a hardware component or in a software component. But with the service (HCE), and only through software, it is possible a virtual and accurate representation of a smart card, which enables safe transactions based on NFC (payments, loyalty programs, access cards, transportation cards).

In order that the HCE's solutions will be secure the cloud based payments is required, which allows the secure storage and management of data card, as well as the key of "tokenization", so that customer's card data are not transmitted by the network but instead a "token" is used. Banks have bet for this type of payment solutions, although it is true that the "Big Pay" allows to store and use cards of different Bank companies.

C) Bitcoin and "blockchain":

Recent studies on bitcoin have shown its usefulness as virtual currency, hoarding about the 90% of transactions with coins of this nature. Moreover, The Money Project has carried out a comparative study with information from The Economist over the year 2015 concluding that the bitcoin has been the most profitable currency throughout the year, rising 35% at this time against the dollar (but it was also the worst cryptocurrency of 2014)³.

Its safety is ensured through a shared accounting system based on cryptographic tests of trust; the so called "blockchain", which shows all the committed transactions and ensures that the user has the amount of bitcoins that tries to spend. Subsequently, through the "mining", the hanging transactions to be included in the block chain are transmitted and confirmed. This process enforces a chronological order in the mentioned chain, protects the network neutrality and allows an agreement between all devices on the system status. In other words, every transaction is signed and takes information both from the previous transaction and from the next one, creating a chain of transactions where each link is necessary for the whole system verification.

D) "Proximity Marketing":

³ <http://www.xatakaciencia.com/tecnologia/la-moneda-mas-rentable-del-2015-fue-el-bitcoin> (January 2016)

Through Proximity Marketing is possible to buy in physical shops without interacting with a salesman. It is based on the reception of a message on the customer's smartphone from a near shop offer, buying the item through the mobile. This requires a radio frequency system based on Bluetooth, called Beacon (BLE)⁴, with a range of about 40 meters and valid for Apple and Android.

E) MP2P:

These mechanisms are most used and provided by Banks through the traditional bank transfer using IBAN and technological companies like Paypal, although nowadays other solutions are being developed to be able to pay with the mobile directly to another person, associating the telephone contact to his/her IBAN. Likewise, the Retail Payments Board (ERP) has been created in order to regulate such payments.

Because of these perspectives, if Banks do not want to stop being intermediaries in transactions, they have to compete in the new stage of payments, increasing their spending on security and new technologies. According to the technological consultant Ovum, in 2015 this trend began to be recorded with a 52% of Bank institutions increasing their spending in payment technology. We are talking about investing in fintechstartups (being "fintech" acronym for "financial" & "technology", that is, financial technology⁵), specializing in different fields of action (payments and transfers, onlinebanking, crowdfunding, security and privacy, digital wallets).

2. REGULATORY CHANGES: DIRECTIVE ON PAYMENT SERVICES 2007, DIGITAL SINGLE MARKET AND DIRECTIVE ON PAYMENT SERVICES 2015

In May of 2015, the European Commission presented the strategy to achieve the Digital Single Market (DSM), which will materialize before the end of 2016. Its main objective is to promote a European standardized system of payments, eliminating national barriers and harmonizing the heterogeneous current regulations.

As background to the Digital Single Market is the Single Market Act II and the Green Book called "Towards an integrated european market of card, online or mobile payments":

A) The Single Market Act II, published in October 2012, reported four new vectors for growth, employment and trust: a) integrated networks; b) cross-border mobility of citizens and companies; c) digital economy; d) actions to reinforce cohesion and consumer trust.

⁴ BLE, a wireless personal area network technology, could be an alternative to NFC technology, whose range is about 20 cm, because it uses a Bluetooth low energy to transmit a single universal ID picked up by a compliant application and can be converted into a physical location.

⁵ The inform called "The Future of Fintech and Banking" (Accenture 2015) shows that global investment in fintech companies increased from 4,050 million dollars in 2013 to 12,200 million in 2014, being Europe at the forefront of this growth.

Specifically, the digital economy is set as the essential step to achieve Digital Single Market by promoting e-commerce in Europe without restrictions and making payment services easier to use, more reliable and competitive.

B) The Green Book “Towards an integrated European market of card, online or mobile payments”⁶, published in 2012, taking as a premise how the purchase of goods and services in Europe is undergoing a profound change, notes that the market integration would bring four major advantages: increased competition, greater transparency and consumer’s choice, more innovation and increased payment security and customer’s trust. On that basis the review of the Directive 2007/64/EC on payment services in the internal market takes place.

But the optimal implementation of Digital Single Market involves the review of the Directive on Payment Services in force 2007/64/EC (hereinafter DPS1). Given the constant technological and social developments, as well as the payments services user’s lawsuits, who needs to be protected against eventual abuses, in July 2013 was approved by the European Parliament and the Council a Directive proposal⁷ on payment services in the internal market, and Directives 2002/65/EC, 2013/36/EU and 2009/110/EC would be amended, and Directive 2007/64/EC would be repealed. However, it was not until the beginning of May 2015 when the Council Presidency and the European Parliament reached a tentative agreement on a project of Directive conveniently developing this matter, updating legislation on payment services and including rules about security and supervision for online payments.

Recently, at the beginning of October, the European Parliament adopted the proposed new Directive, which would promote safer and more innovative payments and would ensure adequate protection to consumers. So that, 23rd December 2015, the Official Journal of European Union⁸ has published the Directive 2015/2366 of the European Parliament and of the Council of 25th November 2015 (hereinafter DPS2), on payment services in the internal market, that revises the Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and the Regulation (EU) n. 1093/2010 and repeals the Directive 2007/64/EC. The above-mentioned standard shall be applied two years later (13th January 2018), although Member States must perform the Directive rules of 2007 according to the new one.

⁶ Single Euro Payments Area (SEPA), payment cards, payment via Internet, mobile payments, payment service providers and cybersecurity are analyzed here, among others.

⁷ Brussels, 24.7.2013, COM (2013) 547 final, 2013/0264 (COD).

The Presidency of the Council of the European Union published more than a year later, as a result of the negotiations held at the meeting on 25th July, the compromise text of the Draft Directive on Payment Services, with some updates, focusing on the evolution of payments in our society, e-commerce and the need to implement security.

⁸ Official Journal of the European Union, n. 337, on 23rd December 2015, pages 35-127.

http://www.boe.es/diario_boe/txt.php?id=DOUE-L-2015-82575

3. THE NEW DIRECTIVE ON PAYMENT SERVICES 2015: BASIS AND KEY ASPECTS

The own DPS2 understands that “payment services are essential for the functioning of vital economic and social activities” (Recital 7). Given such relevancy and the practical reality, indicates the lacks of the DPS1: “Directive 2007/64/EC was adopted in December 2007 on the basis of a Commission proposal of December 2005. Since then, the retail payments market has experienced significant technical innovation, with rapid growth in the number of electronic and mobile payments and the emergence of new types of payment services in the market place, which challenges the current framework” (Recital 3). “Many innovative payment products or services do not fall, entirely or in large part, within the scope of Directive 2007/64/EC. Furthermore, the scope of Directive 2007/64/EC and, in particular, the elements excluded from its scope, such as certain payment-related activities, has proved in some cases to be too ambiguous, too general or simply outdated, taking into account market developments. This has resulted in legal uncertainty, potential security risks in the payment chain and a lack of consumer protection in certain areas. It has been proven the difficult for payment service providers to launch innovative, safe and easy-to-use digital payment services and to provide consumers and retailers with effective, convenient and secure payment methods in the Union” (Whereas 4).

Likewise, and in relation to the Digital Single Market, the Directive observes that “the continued development of an integrated internal market for safe electronic payments is crucial in order to support the growth of the Union economy and to ensure that consumers, merchants and companies enjoy choice and transparency of payment services to benefit fully from the internal market”. (Recital 5)

And not less important is the area of the cybersecurity and e-trust. In this point, the Directive shows: “In recent years, the security risks relating to electronic payments have increased. This is due to the growing technical complexity of electronic payments, the continuously growing volumes of electronic payments worldwide and emerging types of payment services. Safe and secure payment services constitute a vital condition for a well- functioning payment services market. Users of payment services should therefore be adequately protected against such risks”. (Recital 7)

The new norm includes several important aspects, based on two essential premises: a) enable that new payment methods reach to a greater number of consumers; b) ensure high consumer protection using these payment services throughout the Union. So that:

1) Neutral definition of payment transactions so as to capture not only the traditional acquiring model structure around the use of payment cards, but also different business models, including those where more than one acquirer is involved.

- 2) Authorization of the figure of the supplier of services, which will be very active in applications for mobile and other electronic channels (low-cost alternative to card payments), which carries a challenge for banks.
- 3) Stricter safety requirements (enhanced authentication) for processing electronic payments and for the customers' financial data protection.
- 4) Consumers' protection against deceitful and unfair commercial practices, especially reinforcing the precontractual information requirements.
- 5) Consumer's right to receive relevant information free of charge before becoming bound to a payment service contract. This information will be made with high level of clarity, taking into account consumer needs as well as technical aspects and cost-effectiveness.
- 6) Prohibition of non-transparent methods of pricing since it makes difficult for users to establish the real prices of the payment service.
- 7) Prohibition of additional charges for using certain payment instrument.
- 8) Rationalization and harmonization of rules on liability for unauthorized operations, providing enhanced protection to the legitimate interests of payment services users. The maximum amount that, at any circumstance, a payment service user may be forced to disburse when a unauthorized payment transaction is made descends from EUR 150 EUR to 50 EUR, except in fraud or serious negligence cases.
- 9) National creation of a competent figure to handle complaints from individual payment services and consumers' associations.
- 10) Continuous activity of the European Banking Authority (EBA) for the development of guidelines.

4. ONLINE PLATFORM FOR SOLVING PURCHASES DISPUTES

It is not possible to deny that the use of mobile devices as payment ways will be critical in the future at the moment of interaction with the commerce, but it will not be free from potential conflicts about shopping between consumers and online companies (which will be required to provide a link to this tool on their websites). To solve these conflicts the European Commission has launched a new platform on the Internet, available from 15th February in <http://ec.europa.eu/consumers/odr/>, with the aim of solving disputes in that area, both for national and international transactions.

Such platform is the result of the Directive 2013/11/EU of the European Parliament and of Council, on 21st May 2013, on alternative resolution of consumer disputes, and the Regulation (EU) 524/2013 of the European Parliament and of the Council, which establishes

the creation of an online platform for solving litigations, and offers a single window to consumers and merchants for the online extrajudicial resolution of litigations through ADR entities linked to that platform and with quality procedures.

Its performance will be simple: 1) The consumer completes the online complaint form and sends it from the platform itself. 2) The claim is sent to the seller, who proposes to the consumer an ADR entity. 3) As soon as the consumer and the seller put in agreement on which mediation entity is going to solve their conflict, the platform sends it to the above mentioned entity. 4) The mediation entity deals with the case electronically and proposes a solution in 90 days.

According to the European Commission the main advantage of this platform is to avoid having to go through lengthy and costly procedures to solve online shopping consumption disputes, strengthening the trust in them and setting itself as an important contribution to the Digital Single Market Strategy.

5. CONCLUSION

Reading present research, it can be deduced that technology advances faster than the applicable regulation. For this reason it is necessary to adapt the norms in force to the proliferation of new and varied payment habits: via smartphones or tablets; services such as PayPal, Google Wallet, Apple Pay, Trustly (being these ones only a small sample of the unstoppable evolution of payment methods); or through innovations such as the so-called wearable banking. Thus, the experts' foresights in payment services and applications through several devices are quite favorable for 2016; in fact, this year could be the moment in which the phone relegates the Bank card as payment instrument par excellence⁹. And we must not forget that the Digital Single Market aims to materialize before the end of 2016.

All this highlights the complex relationship between technology, consumers/users, payment service providers, legislators and authorities. Thus, the advancement of technology helps consumer numerous tasks (with the consequent risks of mismanagement, fraud or cyber attacks), including online payments, which supposes the need of payment service providers to adapt to the new circumstances present on the web environment. And it is precisely here where an optimal intervention by legislator and by competent authorities become necessary in order to promote a secure payment system that generates consumer/user's full trust (named e-trust).

⁹ The data published by the Deloitte Agency shows that 35% of banking users use online and physical channels simultaneously; and only between 15% and 20%, or almost only, employ digital media. http://economia.elpais.com/economia/2015/05/09/actualidad/1431195384_102007.html

For this reason it is essential the vision and the responsiveness of Banks to improve their digital processes.

The expected new regulation of payment services has been slow to materialize. Clearly, this has led numerous efforts to fill the gaps that the Directive of 2007 had, and to allow the entry of new services without forgetting the protective function for consumer. The Decalogue mentioned above is an example of this.

In Article 108, the DPS2 provides that “the Commission shall, by 13 January 2021, submit to the European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the application and impact of this Directive”. This term shows a high confidence in the Directive; term, from my point of view, quite excessive because it is obvious that technology goes forward much faster than regulation, resulting situations not provided or, if provided, more complex than expected.

Finally, in this complex stage there are several agents involved who, independently of their particular interests, look in the same direction: the consolidation of payments methods with safety guarantees and efficiency.

Time and technology will give us the solution...