



<u>Decision Ref:</u>	2021-0058
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Banking Online Facility
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint concerns the security measures required by the Provider for effecting SEPA transfers to recipients in other EU Member States.

The Complainant's Case

The Complainant encountered difficulty making a transaction to an account domiciled in an EU Member State. He was firstly unable to save another EU Member State IBAN as payee on his online account and secondly the transaction also required the use of an electronic card reader device to complete the process. He asserts that *"none of these steps whatsoever are required for an Irish IBAN account transfer with any other Irish banking entity"*.

The Complainant claims that in requiring the additional steps of having to insert an EU Member State payee account details each time, and the requirement to use the card reader device to make payments to a eurozone account may be *"anti-competitive"* and in breach of the SEPA Regulations 260/2012. The Complainant cites this Regulation as being designed to permit European citizens to make payments as easily as domestic payments.

The complaint is that the Provider wrongfully contravened EU Regulation 260/2012 requiring more steps to be completed to transfer to an EU Member State account than to an Irish account.

The Complainant wants the Provider's transactions to be in line with the SEPA Regulation and to treat cross border transactions in the same manner as domestic credit transfers.

The Provider's Case

The Provider states that its credit transfers are governed by the SEPA Credit Transfer Scheme and outlines in a letter to the Complainant on 23 August 2018 that with this regulatory scheme there cannot be a differentiation between national payments and cross border payments once an account is in the SEPA zone. The Provider states that the *“payment scheme used by the [Provider] is in compliance with Article 4.1 of the EU Regulation 260/2012”*. The Provider also states that in relation to the inability by the Complainant to save a German IBAN as a payee, it does *“not have this functionality available currently”*. The Provider further says that it will look into the *“feasibility”* of providing this facility.

In relation to the use of the card reader device to read the card of the Complainant to complete euro zone transactions, the Provider states that this is in place for security reasons. The Provider states that this device is *“not governed by the SEPA scheme”* but part of a process the Provider is entitled to put in place for security and *“other regulatory obligations”*. The Provider allows transfers to the value of €300 to be completed with a ‘mobile app’ but above this amount, a card reader device for the Complainant’s card was required.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 10 February 2021 outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Mobile banking apps have become commonplace across providers. They can be a convenient means for customers to carry out their banking business rather than attending in branch or speaking over the telephone. These platforms, however, can present challenges to a provider in striking a balance between the convenience of a customer and ensuring that security is not compromised on that customer's account.

"SEPA" stands for Single Euro Payments Area. What has been described in this complaint as the "SEPA Scheme" comprises a suite of legislation and other measures enacted at EU level with the basic aim of creating a single market for euro payments, permitting service users to make cashless, euro-denominated payments to payees located anywhere in the area that it covers (essentially, the EU) under the same basic terms and conditions, using one payment account and a single set of instructions.

The Scheme simplifies the means by which a customer with an account within the relevant countries (currently 36 – the 27 EU Member States plus 9 countries outside of the EU) can send and receive euro payments to and from any other account within a relevant country.

The SEPA Scheme made international transfers less cumbersome than the previous system when banks in different countries deployed differing methods of naming/numbering accounts, a customer would often have to fill out a form in branch, a transfer could take a number of days, and would usually attract fees.

The Provider's online banking platform permits SEPA transfers to be effected to both domestic accounts and accounts domiciled in other EU Member States. The process is nearly identical, other than the differences with which the Complainant takes issue. The Provider's mobile app does not allow the payee details for a foreign account details to be saved. This means that a user must manually input the details (BIC, IBAN etc.) each time that user wishes to effect a transfer to an account domiciled in another EU Member State. Where an account is domiciled in Ireland, the mobile app permits a user to save the account details, so that that account can simply be selected from a list in the app when payment is to be made, rather than having to key in the details again each time.

The Provider's online banking platform also requires that a card reader device must be used in order to effect payments over €1,000 (previously €300) for domestic transfers, but a card reader device is required to make all transfers to foreign payees (this is also a by-product of the fact their details cannot be saved).

This has the net effect of foreign transfers requiring extra steps to implement compared to domestic transfers.

Regulation 88.3 of the Payment Services regulations 2018 requires that consent to the execution of a payment is required to be provided in a manner agreed between payer and the payment service bank. The account terms and conditions (section 6.16) provide for the framework of consent to execution of a payment. The account terms and conditions between bank and customer provide the manner in which transactions can be effected/authenticated. The transactions complained of in this complaint are provided for in the terms and conditions of the Complainant's account.

The question is whether or not the Provider is entitled to maintain a system that treats foreign transfers in a different manner to domestic ones.

Article 4.1 of Regulation (EU) No. 260/2012 (the SEPA Regulation) states that:

“Payment schemes to be used by PSPs for the purposes of carrying out credit transfers and direct debits shall comply with the following conditions:

(a) their rules are the same for national and cross-border credit transfer transactions within the Union and similarly for national and cross-border debit transfer transactions within the Union”.

The Complainant's submission is that this provision precludes the Provider from operating a system which requires a customer to take different steps when making a domestic SEPA transfer as opposed to a cross border one.

The Provider contends that this provision does not apply to the customer interface used for effecting payments, but to the operation of payments schemes (as between banks / payment service providers). It submits that the “equality” in Article 4.1 applies to the system that operates between bank and bank (or PSP and PSP), and not to the system that operates between bank and customer.

It notes the content of Recital 10 of the SEPA Regulations in this regard, which states:

“Technical interoperability is a prerequisite for competition. In order to create an integrated market for electronic payments systems in euro, it is essential that the processing of credit transfers and direct debits is not hindered by business rules or technical obstacles such as compulsory adherence to more than one system for settling cross-border payments. Credit transfers and direct debits should be carried out under a scheme, the basic rules of which are adhered to by PSPs representing a majority of PSPs within a majority of the Member States and constituting a majority of PSPs within the Union, and which are the same both for cross-border and for purely national credit transfer and direct debit transactions.

Where there is more than one payment system for the processing of such payments, those payment systems should be interoperable through the use of Union-wide and international standards so that all PSUs and all PSPs can enjoy the benefits of seamless retail euro payments across the Union.”

The Provider's interpretation of the application of Article 4.1 is correct. An example of failing to comply with that article would be, for example, maintaining current accounts that were not identifiable by an IBAN and BIC.

Accordingly, I cannot accept that not allowing the details of a non-Irish bank account to be saved for future use, or requiring the use a card reader for certain transactions, constitutes a breach of the SEPA Regulations, or is otherwise wrongful conduct on the part of the Provider.

The conduct complained of in this complaint is not contrary to law. Furthermore, I do not believe it is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant. It is important to note that the Complainant is not being discriminated against. This is because the system applies to all customers of the Provider and not just the Complainant. I have no evidence of any improper motive or irrelevant consideration upon which it is based, and the Provider explained its conduct to the Complainant prior to the complaint being made to this Office.

I note that the Provider states that it is in the process of assessing the feasibility of adding cross border accounts as payees on its internet banking platform.

For the reasons set out in this Decision, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

8 March 2021

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

