

EuroISPA's opinion on the EU Payments Services Regulation (PSR)

General considerations:

EuroISPA is of the opinion to delete article 59 and instead shift the focus on digital literacy, empowering the consumers to make knowledgeable and safe decisions as well as strengthening cooperation between all players involved to effectively combat bank fraud.

Focus on Article 59 §5a and §5b:

1. EuroISPA is of the opinion that article 59 unjustifiably makes Electronic Communications Operators accountable for offenders' impersonation scams.

Electronic Communications Operators cannot be held responsible for actions relating to criminal offenses committed by malicious people via their services, and are required to comply with several safeguards, such as the prohibition of generalised surveillance. The focus should instead be on detecting criminals through public-private collaboration. Indeed, in situations of compliance with several safeguards, electronic communications operators actively and closely cooperate with the judicial authorities, within the framework of injunction procedures or highly regulated administrative requests.

2. EuroISPA is of the opinion that electronic communications operators should not bear legal and financial responsibility for bank fraud.

Electronic Communications Operators only operate an electronic communications network open to the public or provide the public with an electronic communications service. Therefore, they cannot be held responsible for reprehensible acts, particularly criminal acts, committed by others against bank customers.

3. EuroISPA insists that electronic communication operators are neither technically able nor legally empowered to remove content. Therefore, the measures they can deploy would only have limited effect.

The secrecy of correspondence and respect for net neutrality are required of electronic communications operators who cannot under any circumstances identify, and/or remove content. Asking them to do so would require operators to identify this content and qualify it as fraudulent themselves, or in conjunction with the banks. However, net neutrality and the secrecy of correspondence principles prohibit operators from identifying or removing such content. Additionally, the removal of content does not correspond to any technical reality for an electronic communications operator. Under no circumstances can an operator remove fraudulent content – this is the responsibility of the operators of digital platforms such as search engines, hosts or social networks.

4. EuroISPA insists that the general obligation to educate and prevent bank fraud cannot weigh on electronic communications operators, who have no contractual relationship with these customers and do not intervene in any way in the payment procedure.

The aforementioned statement poses an additional risk of confusion as to the responsibilities of each person and a “loss of opportunity” for the customer who first contacts his operator before contacting his bank. An electronic communications operator could not respond to a request from a banking customer who wrongly identifies the electronic communications operator as a possible party to the payment process.

5. Finally, EuroISPA believes digital literacy empowers customers to make safer decisions against fraudsters and therefore, that the final text should focus on detection and prevention rather than on shifting responsibility onto Electronic Communications Operators.

It is crucial to raise consumer awareness on fraudulent modus operandi. This could be done via third parties such as putting in place systems and campaigns to better recognise, avoid and report scams. These campaigns should be designed and disseminated within all layers of society, taking into account its most vulnerable citizens. Additionally, rather than putting the unjustifiable burden of responsibility on Electronic Communications Operators, focus should be shifted on the actual prevention of fraudulent activities. Impersonation scams levels will not decrease if we do not target those carrying them out.

Established in 1997, EuroISPA is the world's largest association of Internet Services Providers Associations, representing over 3,300 Internet Service Providers (ISPs) across the EU and EFTA countries. EuroISPA is recognised as the voice of the EU ISP industry, reflecting the views of ISPs of all sizes from across its member base.