

Instruction no. 3

On claim procedures to the Financial Information Authority for the resolution of disputes related to the provision of payment services by entities carrying out financial activities on a professional basis

THE FINANCIAL INFORMATION AUTHORITY

Having regard to Law no. XVIII on Transparency, Supervision and Financial Intelligence, of 8 October 2013;

Having regard to Regulation no. 1 on Prudential supervision of the entities carrying out financial activities on a professional basis of 25 September 2014, and in particular Article 34;

Having regard to Regulation no. 3 on payment services provided by entities carrying out financial activities on a professional basis of 23 May 2018 and, in particular articles 65, 66, 67;

Considering that:

It is necessary to establish transparent and effective claim procedures to protect users;

In execution of the decision taken by the Board of Directors on 23 May 2018;

HAS ADOPTED THE FOLLOWING INSTRUCTION

Article 1. Scope of Application

This Instruction shall apply to disputes related to the conclusion, execution or interpretation of contracts relating to payment services.

Article 2. General Provisions

1. The claim procedure may be activated for disputes referred to in Article 1 concerning:

- a) The ascertainment of rights, obligations and faculties, without regard to the value of the service to which they refer;
- b) The payment of a sum of money within the limit of 100,000 euros, which in the case of a currency other than the euro is calculated using the average reference exchange rate published by the European Central Bank for the relevant period.

2. The following are excluded from the claim procedure:

- a) Claims for compensation for damages that are not immediate and direct effect of the payment service provider's conduct in the conclusion, execution or interpretation of the contract between the user and the payment service provider itself;
- b) Questions relating to goods or services other than the payment services covered by the contract between the user and the payment service provider.
- c) Disputes already submitted to the judicial authority;
- d) Disputes for which a forced execution or injunction procedure is pending.

3. The claim procedure to the Financial Information Authority may be activated after the complaint procedure to the payment services provider has been completed, pursuant to Article 6 (1).

Article 3. Fundamental Principles

The claim procedure shall be comply with the following principles:

- a) Effectiveness of user protection;
- b) Impartiality and independence of the deciding body;
- c) Cost-effectiveness and celerity.

Article 4. Definitions

For the purposes of this Instruction, the following definitions apply:

1. «*Dispute*»: Contestation relating to payment services.
2. «*Parties*»: Payment service provider and payment service user.
3. «*Payment service provider*»: Entity carrying out financial activities on a professional basis, and authorized by the Financial Information Authority to provide payment services.
4. «*Complaint procedure*»: Procedure through which a payment service user may question directly to payment service provider potential violations, irregularities, faults in accordance to Article 65 of Regulation no. 3.
5. «*Claim procedure*»: Procedure through which the Financial Information Authority is asked to resolve a dispute related to payment services.
6. «*Complaint*»: Instance of activation of a complaint procedure with the payment service provider.
7. «*Claim*»: Instance of activation of the procedure for the resolution of a dispute in front of the Financial Information Authority.
8. For the purpose of defining the general terms referred to in this Regulation and not defined in the preceding paragraphs, refer to Article 4 of Regulation no. 3.

Article 5. Complaint to the Payment Service Provider

1. The payment service provider shall adopt a complaint procedure in accordance with the provisions of Article 65 of Regulation no. 3.
2. The complaint procedure referred to in paragraph 1 shall ensure, moreover, that the office or the person in charge of handling complaints:
 - a) keep constantly updated on the guidelines followed by the Financial Information Authority in the treatment and decision of claims;
 - b) evaluate complaints also taking into account the aforementioned guidelines, verifying whether the matter submitted by the user falls into cases similar to those already decided by the Financial Information Authority and considering the solutions adopted in such cases.

Article 6. Claim to the Financial Information Authority

1. The user who is not satisfied, or whose complaint has not led to any conclusion within thirty (30) working days of its receipt by the payment service provider, may submit a claim to the Financial Information Authority, also without the assistance of a lawyer.
2. The claim to the Financial Information Authority cannot be proposed if more than twelve (12) months have elapsed since the complaint was lodged with the payment service provider.
3. The claim to the Financial Information Authority shall have as its subject the same matter of the complaint, without prejudice to the possibility for the user to request, in the claim, the damage compensation even when such request has not been formulated in the complaint, if the alleged damage is an immediate and direct effect of the payment service provider's behaviour reported in the complaint.
4. The claim shall be signed by the user and may be presented directly or by the legal representative, or by a person with power of attorney.

Article 7. Arrangements for the Submission of the Claim

1. The claim shall be submitted using the forms published on the website of the Financial Information Authority (Annex 1), or available at the seat of the same Authority (Annex 2), and alternatively:
 - a) sent by registered mail with proof of delivery to the seat of the Financial Information Authority;
 - b) presented at the seat of the Financial Information Authority.
2. The Financial Information Authority shall confirm receipt of the claim within five (5) working days.
3. The claim is free of charge for the user.

Article 8. Notification to the Payment Service Provider

1. The user who has lodged a claim pursuant to articles 6 and 7, shall at the same time send a copy of the claim to the payment service provider.
2. If the claim and the documentation attached do not show that such communication was made by the user, the Financial Information Authority shall send a copy to the payment service provider within five (5) working days of receipt of the claim.
3. The payment service provider within thirty (30) working days of receipt shall submit to the Financial Information Authority:
 - a) his own observations;
 - b) a copy of all the documentation useful for the evaluation of the claim, including the documentation related to the complaint phase.

4. The communication referred to in paragraph 3 shall be presented in the manner established in Article 7.

5. The Financial Information Authority shall send to the user a copy of the observations presented by the payment service provider.

6. If the delay or absence of the documentation due from the payment service provider, even following any requests for integration by the Financial Information Authority, limit or render impossible a decision on the dispute, the Financial Information Authority shall assess the conduct of the payment service provider in terms of failure to cooperate in the performance of the procedure, and more generally in terms of the obstruction of the supervisory activity.

Article 9. Arbitration Board

1. Within thirty (30) working days of receipt of the claim, the Financial Information Authority shall establish the Arbitration Board and shall notify the parties the regular occurred constitution of the Board.

2. The Board is constituted by the Director of the Financial Information Authority and at least by two members appointed by the same Authority among persons in possession of the requisites of experience, professionalism, integrity and independence, and who shall not be in situations of incompatibility or interests with respect to disputes. In the designation of the members of the Board it shall be ensured that the composition is adequate, considering the parties involved and the dispute object of the claim, and the impartiality and independence of the deciding body shall be ensured.

3. The member of the Board that after the designation come into situations of incompatibility or conflict of interest shall inform the President of the Board for the purpose of the designation of substitutes. If, in exceptional cases, the situation of conflict of interest emerges during a meeting, the handling of the claim is postponed.

4. The following categories of subjects cannot be appointed as members of the Board:

a) politically exposed persons;

b) those who, in the previous two years, have held corporate offices or carry out subordinate work or self-employed activities with a coordinated and continuous collaboration for payment service provider or in any case with one of the parties involved;

c) those who:

i) are forbidden, bankrupt or sentenced to a penalty involving the interdiction, even temporary, from public offices or the incapacity to exercise managerial offices in the State or in another foreign State;

ii) have been indicted or sentenced in the State or in a foreign State:

- for crimes in the financial, investment or insurance sectors, as well as for corporate, bankruptcy and fiscal crimes;

- for a crime against the public administration, against public faith, against property, against public order, or against the public economy;

- for any non-culpable offense, whereby the law of the State provides for a custodial sentence of not less than a minimum of one year;

iii) have been subjected to administrative sanctions for the violation or systematic non-compliance of the obligations in force in the economic and financial sector, imposed:

- by the competent authorities of the Holy See or of the State, including the Financial Information Authority, pursuant to articles 47 (3) and 66 (3), of Law No. XVIII of 8 October 2013;

- by the competent authorities of foreign States;

iv) Are subjected to canonical sanctions, or are in any case known to be promoters or members of associations under canon 1374 of the Code of Canon Law (CIC).

5. The Director of the Financial Information Authority takes on the functions of President of the Board and in this capacity:

a) shall ensure that the composition of the Board is adequate considering the parties involved and the dispute object of the claim, as well as the impartiality and independence of the deciding body;

b) shall approve the meeting schedule;

c) shall coordinate the work of the Board, verify the results of the votes, sign the decision;

d) shall appoint a technical secretariat, including an actuary secretary responsible for drafting the minutes of the activities carried out.

6. In carrying out their activities, the members of the Board shall comply with the Regulations for the functioning of the Board and the Code of Conduct adopted by the Financial Information Authority.

Article 10. Unacceptability or inadmissibility

1. Within five (5) working days of the term referred to in Article 8 (3), if he finds the manifest inadmissibility or inadmissibility, the President of the Board shall declare the claim inadmissible.

2. The manifest unacceptability or inadmissibility occurs in the following cases:

a) the subject of the dispute does not fall within the scope of application referred to in Article 1;

b) the claim does not relate to one of the cases referred to in Article 2 (1);

c) the claim relates to one of the cases referred to in Article 2 (2);

- d) the claim has not been presented within the time limit referred to in Article 6 (1) (2);
- e) the user has not carried out the complaint procedure with the payment service provider;
- f) the claim does not concern the same matter of the complaint with the payment service provider;
- g) the user or the payment service provider cannot be determined in the claim;
- h) in the claim there is no contestation about a conduct of the payment service provider;
- i) the claim is submitted against a subject that cannot be qualified as a payment service provider;
- j) the claim is presented without using the specific form or is unsigned.

Article 11. Resolvable Irregularities

1. If the President of the Board may find resolvable irregularities or the incompleteness of the documentation presented, he shall be set a deadline for regularization or for the necessary additions, and the claim shall return to the technical secretariat.
2. Once the aforementioned deadline has expired, the claim is declared inadmissible.

Article 12. Duration of the Procedure

1. In the event of acceptance, in whole or in part, the President of the Board shall declare the claim admissible and the Board decides within sixty (60) working days of the deadline for the submission of the observations by the service provider referred to in Article 8 (3).
2. The term referred to in paragraph 1 may be suspended by the President of the Board one or several times, and in any case for a total period not exceeding sixty (60) working days, during the preparatory phase, for the purposes of regularization or integration of the claim referred to in article 11, or to request further information from the parties.

Article 13. Cases of Interruption, Cessation or Extinction of the Dispute

1. If the user promotes or accedes to an attempt at mediation with the payment service provider, the Board, *ex officio* or on request of one of the parties, shall declare the interruption of the procedure.

If the parties reach an agreement before the decision on the claim or the demand of the claimant is fully satisfied, the Board declares, also *ex officio*, the cessation of the matter of the dispute. If the mediation attempt fails, the user may submit the restart of the claim without the need for a new complaint with the payment service provider. In this case, the parties may refer to the documentation already lodged, without prejudice to the possibility for the Board to request further documentation.

2. If the dispute is submitted by the payment service provider to the judicial authority, the Board shall require the user to declare whether there is an interest in the prosecution of the procedure. If the claimant has not expressed his interest in this regard within ten (10) working days of the request, the Board declares the termination of the procedure.

Otherwise, the procedure shall continue despite the establishment of the judgment.

3. In case of renouncement to the claim, formally expressed by the user, by his legal representative, or by a person with power of attorney, the Board declares the extinction of the procedure.

4. The Financial Information Authority shall promptly notify the parties of the declaration of interruption, extinction or termination of the matter of the dispute.

Article 14. Decision on the Claim

1. The decision on the object of the claim shall be taken on the basis of the documentation gathered during the preliminary investigation, according to the rules of law, applying the provisions of law and regulations on the payment services provision.

It may contain further indications aimed at favouring relations between the user and the payment service provider.

2. The decision, taken at the majority of the votes of the members of the Board, shall include:

- a) the generalities of the parties;
- b) the description of the facts involved in the dispute;
- c) the decision;
- d) the reasons;
- e) the indication of the day, month, year and place in which it is signed;
- f) the signing of the arbitrators.

3. The decision signed by the majority of the arbitrators is valid, as long as it contains the express indication of the reasons for which the others have not signed it.

4. The decision is communicated to the parties within ten (10) working days of the decision. The President of the Board may dispose to communicate to parties the decision immediately and, subsequently, the reasons, in any case no later than ten (10) working days from the decision.

Article 15. Correction of the Decision

1. The interested party, within five (5) working days of the communication of the decision complete of the motivation referred to in Article 14 (4), may ask the Board to rectify it in cases it is affected by manifest material errors or errors of calculation.

2. The request of rectification shall be presented in the manner established in Article 7.

3. The party who has submitted the request for rectification referred to in paragraph 1 shall simultaneously send a copy to the other party.

4. If from the request for rectification and from the documentation attached, it does not appear that the party who submitted the request for rectification has made the communication referred to in paragraph 3, the Board will send a copy to the other party within five (5) working days from receipt of the request of rectification.

5. The counterparty to the request for correction within fifteen (15) working days of receipt, shall submit to the Financial Information Authority:

a) his own observation;

b) a copy of all the documentation useful for the evaluation of the request of adjustment.

6. The communication referred to in paragraph 5 shall be carried out pursuant to article 7.

7. The Board shall transmit to the party who submitted the request for correction the observations communicated by the other party.

8. If the delay or absence of the documentation due from the payment service provider, even following any requests for integration by the Financial Information Authority, limit or render impossible a ruling on the claim, the Financial Information Authority shall assess the conduct of the payment service provider in terms of failure to cooperate in carrying out the procedure, and more generally in terms of obstruction of the supervisory activity.

9. The request is examined before-hand by the President of the Board who, in case of manifest non-existence of the prerequisites for the correction, shall declare the request inadmissible. The declaration of inadmissibility shall be communicated to the parties within five (5) working days of receipt of the request.

10. In the event of acceptance, in whole or in part, of the request, the declaration of admissibility shall be communicated to the parties within five (5) working days of receipt of the request.

11. The Board shall decide on the request within ten (10) working days of the declaration of admissibility.

12. If the decision is accepted, in whole or in part, the request for correction shall integrate the decision that becomes final.

13. The final decision shall be communicated to the parties within ten (10) working days of the ruling. The President of the Board may dispose to communicate immediately the decision and, subsequently, the reasons, in any case no later than ten (10) working days from the decision.

14. Within the same deadline referred to in paragraph 1, the interested party may forward any further requests or communications to the President of the Board. The President of the Board provides indications on the answer to be addressed to the parties or submits the matter to the Board for appropriate deliberations.

15. The request or communication referred to in paragraph 8 shall be presented in the manner established in Article 7.

Article 16. Appeal

1. The interested party, within fifteen (15) working days from the communication of the decision and the motivation referred to in Article 14 (4) or Article 15 (13), may forward an appeal of the decision to the President of the Board.

2. The decision may be appealed in the following cases:

a) if the decision has been pronounced in the absence of a contract between the parties or by virtue of a void contract or expired or outside the terms of the contract;

b) if the decision has not been pronounced on all the questions referred to the Board, or contains provisions that are necessarily incompatible between them;

c) if the decision has been pronounced with the vote of one who could not be appointed as arbitrator;

d) if the decision has been made by arbitrators who have not been designated pursuant to the contract stipulated by the parties;

e) if the decision has not been made according to the rules of law.

3. The appeal shall be submitted pursuant to Article 7.

4. The party who has presented an appeal in accordance with paragraph 1 shall simultaneously send a copy to the other party.

5. If from the notice of appeal and from the documentation attached to it, it may not appear that the party who presented the notice of appeal has made the communication referred to in paragraph 4, the Board will send a copy to the other part within five (5) working days from receipt of the appeal.

6. The counterpart of the appeal within fifteen (15) working days of receipt shall submit to the Financial Information Authority:

a) his own observation;

b) a copy of all documentation useful for the assessment of the appeal.

7. The communication referred to in paragraph 6 shall be carried out pursuant to Article 7.

8. The Board transmits to the parties who presented the appeal the observations communicated by the other party.

9. If the delay or absence of the documentation due from the payment service provider, even following any requests for integration by the Financial Information Authority, limits or renders impossible a ruling on the appeal, the Financial Information Authority shall assess the conduct of the payment service provider in terms of failure to cooperate in carrying out the procedure, and more generally in terms of obstruction of the supervisory activity.

10. The appeal is examined before-hand by the President of the Board who, if he detects the manifest non-existence of the conditions, declares the appeal inadmissible. The declaration of inadmissibility shall be communicated to the parties within five (5) working days of receipt of the request.

11. In the event of acceptance of the appeal, the declaration of admissibility is communicated to the parties within five (5) working days of the term referred to in paragraph 6.

12. The Board shall decide on the appeal within thirty (30) working days of the declaration of admissibility.

13. The decision is communicated to the parties within ten (10) working days of the decision. The President of the Board may dispose to communicate to parties the decision immediately and, subsequently, the reasons, in any case no later than ten (10) working days from the decision.

Article 17. Forwarding of the Decision to the Judicial Authority

The final decision, in original within fifteen (15) working days of its ruling shall be filed by the Financial Information Authority at the Registry of the Single Judge at the Tribunal of the Vatican City State, pursuant to Article 712 of the Code of Civil Procedure.

Article 18. Declaration of Enforceability

1. The decision of the Board shall be declared enforceable by the single Judge at the Tribunal of the Vatican City State, pursuant to Article 713 of the Code of Civil Procedure.

2. A copy of the single judge's orders is sent to the Financial Information Authority.

Article 19. Appeal

1. Against the decree of the Single Judge referred to in Article 18, or against the refusal of the Single Judge to pronounce it, the interested party may appeal to the Court of first instance of the Vatican City State, pursuant to Article 713 of the Code of Civil Procedure.
2. A copy of the Court orders is sent to the Financial Information Authority.

Article 20. Transparency of the Contracts Stipulated between the User and the Payment Service Provider

1. Payment service providers shall provide users with accurate information regarding the claim procedures, expressly including in the contract stipulated for the provision of payment services the user's right to lodge claims in front of the Financial Information Authority, also reporting the information necessary to contact the same Authority.
2. In the contract referred to in paragraph 1, at least, the following clauses shall be included:
 - a) any future disputes related to the execution of the contract and the provision of payment services will be referred to the Financial Information Authority, as arbitrator;
 - b) the user has the right to lodge claims in front of the Financial Information Authority, which has the power to determine the methods of claim, the rules of the procedure, and the means to appeal the decisions.
3. The right to claim to the Financial Information Authority cannot be the subject of renunciation by the user, even if the contract contains clauses relating to the complaints or mediation procedures.

Article 21. Final and Referral Provisions

1. The claim procedure is without prejudice to the faculty of the parties, as well as third parties, to appeal to the judicial authority or any other means provided for by the law, for the protection of their rights or interests.
2. The claim procedure shall not affect the powers of the Financial Information Authority of:
 - a) Adopting sanctions pursuant to articles 47 and 66 of Law no. XVIII;
 - b) Transmitting reports, documents, data and information to the Office of the Promoter of Justice if there is a justified reason to suspect money laundering or financing of terrorism, pursuant to Article 48 (e) of Law no. XVIII;
 - c) Transmitting reports to the Office of the Promoter of Justice pursuant to Article 150 of the Code of Criminal Procedure.
3. For matters not governed by this Instruction, reference should be made to the provisions of the law and regulations into force.

This Instruction, including the Annexes thereof, will enter into force on the day of its publication in the official website of the Financial Information Authority.

Vatican, 29 May 2019

RENÉ BRÜLHART
President

Visto

TOMMASO DI RUZZA
Director