



PayTechTalk 17 - the CJEU and what was three is now four PayTechTalk

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Following CJEU rulings: IF-Regulation, prohibition of surcharging and regulations regarding the access to



Arnex and others?

Right. At PayTechLaw we have been dealing with surcharging for a while now. Already in PayTechTalk 16 I chatted about [surcharging](#) with my colleague [Susanne](#). Susanne has also discussed this payment in her latest blog entry for [payments under § 270a BGB](#). And this will probably not put an end to it, especially since the European Court of Justice (**CJEU**) added fuel to the surcharging fire with their sentences to three-party-schemes.

Three-party? Four-Party?

Requests for a preliminary ruling filed by the High Court of Justice in England and Wales marked the starting point in this issue. They dealt with whether three-party-schemes or closed-loop schemes (e.g. Amex) under certain circumstances could become a four-party-scheme and therefore fall under the IF-Regulation or the PSD2 access regulations.

And these CJEU decisions are not to be underestimated.

Decision C-304/16

“ *When a three party payment card scheme enters a co-branding agreement or an agreement with an agent it is considered to be a four party payment card scheme. Consequently, it falls under the limitations for internet bank remunerations provided by the regulation.*

Decision C-643/16

“ *The court rules that a three party payment card scheme that has entered into a co-branding agreement with a co-branding partner does not lose the benefit of the exception provided for by that provision and, therefore, is not subject to the obligation laid down in Article 35(1) of that directive in a situation where that co-branding partner is not a payment service provider and does not provide payment services within that scheme with respect to the co-branded products. However, a three party payment card scheme that makes use of an agent for the purposes of supplying payment services loses the benefit of that exception and, therefore, is subject to the obligation laid down in Article 35(1).*



My guests in PayTechTalk 17

In Episode 17 of our Podcast PayTechTalk I discuss the exact impact and consequences of these rulings with my guests Dr. Hugo Godschalk, managing partner at the business consultancy PaySys Consultancy GmbH - and in the meantime member of the PayTechLaw-Team; Hanno Bender, lawyer and journalist for Lebensmittelzeitung amongst others - and blogger at hannobender and bargeldlosblog and with my esteemed colleague Susanne.

Enjoy PayTechTalk 17!

About Hanno Bender:

Hanno Bender is a lawyer and journalist. Since May 2014 he has worked for Lebensmittel Zeitung (LZ) as the head of their Law and Politics Department. Before that, he had worked for the Business Magazine "Der Handel" for thirteen years; first as business editor, then as head of the department "Finance and Law" and from 2008 on as member of the editor-in-chief's office ("Der Blattmacher"). Both publications are published by the dfv Mediengruppe (www.dfv.de). In his free time, Hanno runs www.bargeldlosblog.de, a voluntary project which deals with issues regarding the whole payment world - everything between Apple Pay to XS2A.

Related Links:

Scott McInnes (Bird&Bird) on:

[Interchange Fee Regulation \(IFR\) and PSD2 - Two important judgments from the Court of Justice of the European Union \(CJEU\)](#)

CJEU rulings:

[Press release CJEU](#)

[List of documents regarding C-304/16](#)

[List of documents regarding C-643/16](#)

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