

REPUBLIC



OF CYPRUS

77(I) of 2018

**THE INTERCHANGE FEES FOR CARD-BASED
PAYMENT TRANSACTIONS LAW, 2018**

(English translation)

**Office of the Law Commissioner
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NOTE FOR THE READER

The publication of the Office of the Law Commissioner is an English translation of Law No.77(I) of 2018 enacted in Greek.

However useful the English translation of the Law is in practice, it does not replace the original text of the Law since only the Greek text of the Law published in the Official Gazette of the Republic of Cyprus is authentic.

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A LAW TO REGULATE THE INTERCHANGE FEES FOR CARD-BASED PAYMENT TRANSACTIONS AND FOR RELATED MATTERS

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No. 77(I) of 2018

**A LAW TO REGULATE THE INTERCHANGE FEES FOR CARD-BASED
PAYMENT TRANSACTIONS AND FOR RELATED MATTERS**

Preamble.
Official
Journal of
the European Union:
L123,19.5.2015,p1.

For purposes of better implementation of Articles 13 and 14 of the act of the European Union with title "Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015, on interchange fees for card-based payment transactions",

The House of Representatives enacts as follows:

PART I
INTRODUCTORY PROVISIONS

Short title.

1.This Law may be cited as the Interchange Fees for Card-Based Payment Transactions, Law, 2018.

Interpretation.

2.-(1)In this Law, unless the context otherwise requires-

"Central Bank" means the Central Bank of Cyprus;

"circular" means the explanatory content circular of the competent authority published on the website of the competent authority issuing it;

"Commission" means the Commission for the Protection of Competition established under section 8 of the Protection of Competition Law;

13(I) of 2008
41(I) of 2014.

"competent authority" means the competent authority of the Republic designated by section 4;

"Consumer' Protection Service" means the Consumer' Protection Service of the Ministry of Energy, Commerce, Industry and Tourism;

"directive" means the regulatory content directive of the Commission or of the Central Bank, published in the Official Gazette of the Republic;

"Regulation (EU) 2015/751" means the act of the European Union with title "Regulation (EU) 2015/751 of the European Parliament and of the Council, of 29 April 2015, on interchange fees for card- based payment transactions;

"Service" means the Service of the Commission provided for in section 19(1) of the Protection of Competition Law;

" regulated person" means a person which is subject to an obligation, prohibition or restriction by virtue of the provisions of Regulation (EU) 2015/751.

(2) Terms, used in this Law and not otherwise defined, shall have the meaning assigned to these terms by Regulation (EU) 2015/751.

(3) In this Law-

(a)Any reference to Regulation (EU) 2015/751 means the delegated acts issued thereunder, draft regulatory

technical standards, draft technical implementation standards and guidelines;

(b) any reference to a legislative act of the European Union, such as Directive, Regulation, Decision or delegated acts, draft regulatory technical standards, draft technical implementation standards and guidelines means the said acts, as from time to time corrected, amended or substituted, and

(c) any reference to a law or regulatory public instrument of the Republic means the said law or regulatory public instrument as from time to time corrected, amended or substituted, unless the context otherwise provides.

(4) Any reference to this Law also means the directives and circulars issued thereunder.

Scope
of application.

3. This Law has the same scope as that of the Regulation (EU) 2015/751.

PART II

COMPETENT AUTHORITIES AND EXERCISE OF POWERS

Competent
authorities and
exercise
of powers.

4.-(1) The Commission, the Central Bank and the Consumer' Protection Service shall be designated as the competent authorities that are empowered to ensure application of the provisions of this Law and the Regulation, except where a different explicit allocation of responsibilities is made, under the provisions of this Law:

Provided that, for the purposes of this Law, the Service collects data and conducts investigations and

inspections in order to comply with Regulation (EU) 2015/751, or to ascertain possible infringements of the provisions of the said Regulation, always following an order and relevant authorization of the Commission.

(2) The competent authorities may, in the exercise of their powers, competences and duties pursuant to this Law or the Regulation (EU) 2015/751, cooperate with other authorities, or organs or bodies or any other persons.

(3) The Commission and the Central Bank shall conclude a memorandum of understanding among themselves within three months from the date of the entry into force of this Law and shall take all the necessary measures for regulating the cooperation among themselves, for the better carrying out of their duties and for ensuring the application of the provisions of this Law and of Regulation (EU) 2015/751.

(4) Each of the Commission and the Central Bank may, within the context of exercising its powers, competences and duties pursuant to this Law and/or the Regulation (EU) 2015/751, apply to the competent judicial authorities, if such an application is provided in the Cyprus law.

Application
of Articles
3 to 5 and 7
of Regulation (EU)
2015/751.

5.-(1) The Central Bank designs and manages the regular procedure for collecting information and data from each payment service provider, and, if applicable, from each card payment scheme, for purposes of ensuring the application of the provisions of Articles 3 to 5 and 7 of Regulation (EU) 2015/751.

(2) Where the Central Bank ascertains an infringement of any of Articles 3 to 5 and 7 of Regulation (EU) 2015/751, in accordance with the information and data collected pursuant to subsection (1) or otherwise, is dealing with such infringements and imposes any measures or/and sanctions, pursuant to the provisions of Part IV of this Law.

(3) The Central Bank shall, in cases where it reasonably deems that there may be competition issues, forward the information to the Commission, and informs it of any measures it has taken or may take or/and any sanctions that it has imposed or may impose pursuant to subsection (2).

(4) After receiving all information pursuant to subsection (3), the Commission may request information and data from any person for the purposes of ensuring the application of any of Articles 3 to 5 and 7 of Regulation (EU) 2015/751.

(5) In cases where the Commission according to the information and data collected pursuant to subsection (4), ascertains infringements of any of Articles 3 and 4 of Regulation (EU) 2015/751, by any person, is dealing with such infringements under the provisions of Part IV of this Law.

(6) Without prejudice to the remaining provisions of this section, the Commission may request information and data from any person in any case it has a reasonable suspicion of violation of any of the Articles 3 to 5 and 7

of Regulation (EU) 2015/751, inclusive, and upon receipt of a duly substantiated complaint, and may deal with such infringements under the provisions of Part IV of this Law.

Application
of Articles 6
and 8 to 12
of Regulation
(EU) 2015/751.

6.-(1) The Commission shall be the competent authority for ensuring the application of the provisions of Articles 6,8,9, 10(1) to (3), 11 and 12 of Regulation (EU) 2015/751 based on the investigations that is conducting or the information and/or data collected through its Service, from or in relation to a regulated person and is dealing with such infringements under the provisions of Parts III and IV of this Law.

(2) The Central Bank shall be the competent authority for ensuring the application of the provisions of Article 10(5) of Regulation (EU) 2015/751.

(3) The Consumer' Protection Service shall be the competent authority for ensuring the application of the provisions of Article 10(4) of Regulation (EU) 2015/751.

Powers
to collect
information
and data.

7.-(1) Subject to the provisions of section 4 and without prejudice to any other provisions of this Law and Regulation (EU) 2015/751, each competent authority may collect from any regulated person data,documents and information, necessary for the carrying out of its competences, powers and duties under this Law, in printed, electronic, and/or digital editable format or any other format the competent authority may prescribe:

Provided that, for the purposes of application of this subsection, the competent authority may require access

to and/or delivery to it of the media on which any such information or data are stored as well as access to relevant virtual information repositories.

(2) For the purposes of implementing Regulation (EU) 2015/751, each competent authority, within the context of its competences, powers and duties, pursuant to this Law, may-

(a) require and obtain from any regulated person further clarifications, documents and information and data, as itself deems necessary or relevant, and

(b) conduct ex-officio investigations and investigations upon duly substantiated complaints, and

(c) co-operate and exchange documents and information and data with the other competent authority as well as with each competent authority in the European Union for investigating cross-border infringements of Regulation (EU) 2015/751.

(3) The competent authority's request shall specify the information, data, documents or/and clarifications required in accordance with the provisions of this Law, or/and Regulation (EU) 2015/751, the reasoning of the request, a reasonable time-limit allowed for the information to be provided which may not be less than twenty days and the possible sanctions in the event of non-compliance with the above obligation for the provision of information, data and documents.

(4) The regulated person to whom the competent authority's request is addressed to shall be obliged to

provide, in a timely, complete and accurate manner, the requested information, data, documents or/and clarifications in printed, electronic and/or digital editable format and/or any other format, within the fixed time-limit.

(5) Subject to the European Union law the competent authorities shall exchange among themselves data for purposes of exercising their powers, competences and duties under this Law or/and Regulation (EU) 2015/751.

Powers
of inspections
and investigations.

8.-(1) In order to exercise its competences, powers and duties under the provisions of this Law, each competent authority may conduct on site inspections and investigations at the premises as well as obtain access to virtual information storage repositories of information of each regulated person and for this purpose shall have the power to –

(a) enter any premises and inspect any documents and data, irrespective of the medium on which they are stored, provided that there is a reasonable suspicion that the documents or data related to the inspection or investigation may be essential to establish a case of infringement of the provisions of this Law or/and Regulation (EU) 2015/751; and

(b) receive or acquire, irrespective of their form, copies of documents and data, irrespective of the medium on which they are stored and wherever they are stored; and

(c) seal any business premises and any records, documents and data for the period of the inspection and to the extent required by the inspection; and

(d) submit to each representative or member of the staff of the regulated person, questions or explanations and request an explanation on the facts or data relating to the subject-matter and purpose of the inspection and record the answers.

(2) The inspections and investigations under subsection (1) shall be conducted and the relevant powers shall be exercised by the Commission, through its Service, and if deemed necessary by the Commission, the officers of the Service shall be accompanied by other officers, namely public officers and/or officers of the wider public sector provided the authority in charge of the said employees and/or officers consents to it and/or persons with special expertise who may be employed by the Commission or provide services to it:

Provided that the involvement of a public officer or an officer of the wider public sector who is not employed by the competent authority concerned shall be subject to the consent of the entity in charge of them.

(3) Inspections and investigations may be conducted without prior notification of the regulated person.

(4) The regulated person subject to inspection or investigation may consult a lawyer during the inspection or investigation, but the presence of the lawyer is not a legal requirement for the validity of the inspection or

investigation nor a defence in the event of non-compliance and/or defective compliance with the competent authority's order.

(5) The competent authority shall request, if deemed necessary, the assistance of the Police in order to exercise its powers according to the provisions of this section.

(6) Subject to the European Union law, a person making information available to the competent authority in accordance with the provisions of this Law and/or Regulation (EU) 2015/751, shall not be considered to be infringing any restriction on disclosure of information imposed by contract or under any legislative, regulatory, or administrative provision and such a person shall not be thereby incur legal liability of any kind related to such disclosure.

Co-operation
with competent
authorities of
other member states.

9. The competent authorities may co-operate with the authorities designated as competent in relation to the implementation of the provisions of Regulation (EU) 2015/751 in other member states of the European Union and the European Commission, for purposes of applying the provisions of Regulation (EU) 2015/751.

PART III

PROCEEDINGS BEFORE THE COMMISSION

Rules
governing
the proceedings
before the
Commission.

10. In cases where the Commission ascertains an infringement of any of Articles 6, 8 to 9, 10(1) to (3), 11 and 12 of Regulation (EU) 2015/751, following a proper preliminary investigation carried out by the Service, the

Commission shall initiate an examination procedure in accordance with section 17 of the Protection of Competition Law which shall apply mutatis mutandis.

Commission's
powers
to take statements.

11. The Commission may, through its Service, in the exercise of its competences, powers and duties under this Law, conduct an interview with any natural person, or person legally representing a legal person that consents to it for the purpose of taking statements in respect to the subject-matter of the inspection or investigation carried out in accordance with section 30A of the Protection of Competition Law, which shall apply mutatis mutandis.

PART IV

ADMINISTRATIVE MEASURES, SANCTIONS, APPLICATION AND IMPOSITION AND ENFORCEMENT OF COMPLIANCE

Administrative
measures and
administrative
sanctions.

12.-(1) The competent authorities may take decisions and impose appropriate administrative sanctions and take measures for each infringement of the provisions of this Law or/and Regulation (EU) 2015/751 for which they are responsible and take all necessary measures to ensure their implementation, without prejudice to any criminal proceedings that exist or have been concluded:

Provided that the powers of the Commission and the Central Bank, by virtue of this Law, shall not affect their supervisory powers under the provisions of any other law.

(2) Without prejudice to the provisions of subsection (1), the competent authorities may take or/and impose any

of the following administrative measures and administrative sanctions, in case of an infringement of the provisions of the Law and Regulation (EU) 2015/751, for which they are competent –

(a) An order requiring the person responsible for the infringement to bring the infringement to an end and take appropriate measures to ensure that it will not be repeated, and to notify the competent authority which imposed the said order and which may monitor the implementation of these measures;

(b) an administrative fine up to 10% of the total turnover of the undertaking as recorded in the latest available audited financial statements, and, in case the infringement continues, an administrative fine up to one thousand euros for every day during which the infringement continues;

(c) without prejudice to paragraph (b), if these provisions apply in the case of a member of the board of directors, manager or officer or any other person, in the event that the infringement is found to be due to his own fault, intentional omission or negligence, an administrative fine up to eighty-five thousand euros;

(d) necessary measures to ensure that the public is properly informed, including the correction of false or misleading information disclosed, requiring, inter alia, a regulated person or any other person who published or disseminated, false or misleading information, to publish a corrective statement;

(e) in the case of omission to provide the required information within the required time-limit or/and intentionally or negligently supply false, incomplete, inaccurate or misleading information, an administrative fine to the regulated person up to eighty-five thousand euros;

(f) without prejudice to paragraph (e), in case of omission to provide the required information within the required time-limit, an administrative fine to the regulated person up to one thousand euros for every day during which the infringement continues;

(g) in case the regulated person intentionally or negligently provides incomplete or altered records, books, statements or other documents of business activity required or in case of refusal of the regulated person to comply with an order of the competent authority for inspection or investigation, an administrative fine to the regulated person up to one thousand euros for every day during which the infringement continues;

(h) in case of omission of the regulated person to comply with an order of the competent authority for carrying out an inspection or investigation, an administrative fine to it up to one thousand euros for every day during which the infringement continues.

Information to be taken into account for determining the administrative measures and sanctions.

13.-(1) The competent authorities, in determining the type and level of administrative measures and/or administrative sanctions shall take into account all the relevant circumstances, including the following particulars, as deemed necessary –

- (a) the gravity of the infringement;
- (b) the level of co-operation of the person responsible for the infringement with each competent authority;
- (c) any previous infringements by the person responsible for the infringement; and
- (d) any measures taken for the prevention of continuation or recurrence of the infringement immediately after the initial intervention of the authority.

(2) The taking of decisions and/or other measures and/or imposition of an administrative fine, under the provisions of this Law and/or Regulation (EU) 2015/751, shall be made provided that the competent authority gives the person concerned or his representative the opportunity to be heard or to make representations orally or, in writing, and provided that the competent authority duly justifies such decisions, measures and administrative fines.

Criminal
offences
and civil
liability.

14.-(1) Any person who-

- (a) omits to comply with or acts in contravention of a decision, administrative measure or administrative sanction of the competent authority, or/and
- (b) contravenes the obligation of confidentiality imposed pursuant to the provisions of this Law, or/and
- (c) provides false or misleading or inaccurate data, information or documents or printed material to the

competent authority or in any other procedure provided for in this Law,

shall commit a criminal offence punishable with a sentence of imprisonment not exceeding five years or with a fine not exceeding seven hundred thousand euros or with both such penalties.

(2) Criminal liability for the offences provided for in this section committed by a legal person is incurred except for the legal person itself but also by any of the members of its board of directors or management, regulatory or controlling bodies who are proven to have agreed to or assisted in the commission of the offence.

(3) Any person who is criminally liable, for the offences, committed by a legal person as provided for in subsection (2), shall be liable jointly and/or severally with the legal person for any damage caused to third parties due to the act or omission constituting the offence.

(4) A prosecution in respect of any offence under this Law, shall not be instituted except by, or with the consent of, the Attorney-General of the Republic.

Reporting
of
infringements.

15. Each competent authority may, by means of a directive thereof, define, specify or clarify, inter alia, any relevant matter concerning the manner of reporting of infringements, the monitoring of reports and the mechanisms for the protection of persons making such reports.

Reasoning,
communication
and publication
of decisions.

16.-(1) The decisions of each competent authority must be duly reasoned and shall be communicated to each person concerned.

(2) The decisions of each competent authority shall, unless they concern the imposition of measures of an investigative nature, be published in the Official Gazette of the Republic, provided that incorrect publication does not affect the validity of the decision.

Publication
of decisions
for imposition
of administrative
measures and
sanctions.

17.-(1)(a) Without prejudice to the rest of the paragraphs of this subsection, each competent authority shall publish on its website, any decision which imposes administrative sanction or any other measure of violation of the provisions of this Law or/and of Regulation (EU) 2015/751, immediately after the said decision is communicated to the person subjected to the sanction or measure; such publication shall include at least information on the type and nature of the infringement and the identity of the person subjected to the sanction or measure.

(b) The provisions of paragraph (a) shall not apply for decisions for the imposition of measures of an investigative nature.

(c) In case the competent authority considers that publication of the identity of the legal person to which the decision concerns or the personal data of a natural person is disproportional, following assessment conducted in relation to the proportionality of publication of these data, the competent authority shall-

(i) Postpone the publication of the decision, until the reasons of the said postponement cease to exist; or

(ii) publish the decision in an anonymous basis in accordance with the Cyprus law, provided that the publication ensures effective protection of the relevant personal data; or

(iii) not publish the decision, if it considers that the publication in accordance with the provisions of subparagraph (i) and (ii) is not sufficient to insure the proportionality of the publication of the said decisions in relation to de minimis measures.

(d) In case a competent authority decides to publish the decision in an anonymous way, as referred to in subparagraph (ii) of paragraph (c), it may postpone the publication of relevant data for reasonable period of time, when prescribed that the reasons of the anonymous publication will cease during the period thereof.

(2) In case a competent authority proceeds to publication in accordance with this section, it is obliged to publish any subsequent change to the facts initially published, such as revocation of any relevant sanction or measure by the competent authority, any sanction or measure affected by recourse or appeal before a competent Court and the decision upon such recourse or appeal of the competent Court.

(3) The competent authority ensures that every decision published as prescribed in this section, shall remain on

its website for a period up to one year after its publication; any personal data within the said publication shall remain on the website of the competent authority for the period required, in accordance with the rules for the protection of personal data, in force.

(4) This section shall be applied, in compliance with European Union law in relation to the protection of personal data.

Monitoring
of compliance.

18. Each competent authority may conduct an ex-officio investigation for the purpose of the investigation of infringement or omission to comply with the provisions of this Law or/and Regulation (EU) 2015/751.

PART V

FINAL AND TRANSITIONAL PROVISIONS

Summons.

19. The summons before the Commission for the purposes of carrying into effect of this Law or/and Regulation (EU) 2015/751, shall be made in accordance with section 45 of the Protection of Competition Law applying, mutatis mutandis.

Fees.

20. (1) Each of the Commission and the Central Bank may, in a reasonable and cost oriented manner, prescribe all fees related to the exercise of its duties under this Law or/and Regulation (EU) 2015/751 and require payment by each regulated person.

(2) The Central Bank may issue directives for prescribing and payment of the fees referred to in subsection (1) by a regulated person.

(3) Fees imposed by the Commission on a regulated person under this section, may be prescribed by an Order issued by the Minister of Energy, Commerce, Industry and Tourism* and published in the Official Gazette of the Republic.

Limitation
of liability.

21. The Chairperson, the other four members and the substitute members of the Commission, the members of the staff of the Service and the persons working under the supervision of the Commission, as well as the Governor of the Central Bank, the members of the Board of Directors of the Central Bank and any person being an advisor or an officer of the Central Bank or of the Service as well as the members of the Consumer' Protection Service shall have no liability in case of an action, suit or other proceedings for the claim of damages for anything done or omitted to be done, in the exercise of their duties, competences or powers, pursuant to this Law or/and Regulation (EU) 2015/751, unless it is proven that the act or omission was not in good faith or is the result of gross negligence.

Issue of
directives
and circulars.

22. Each competent authority has the power to issue directives and circulars for prescribing any other matter of its competence provided for in this Law or/and in Regulation (EU) 2015/751, which requires or may be prescribed.

* Note: In accordance with the Law 151(I) of 2018 the Ministry of Energy, Commerce, Industry and Tourism was renamed Ministry of Energy, Commerce and Industry. The Law entered into force on 2nd January 2019. [Official Gaz. Suppl.I(I) no.4679, dated 19.12.2018].