

# We need an electronic payments law to protect consumers

Our method of payment has moved from paper to electronic. It's safe and less time-consuming

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Most people use an electronic means of payment every day, whether it is using your credit-card to pay for lunch, paying utility bills via direct debit, booking flights online, or simply the payment of your wages directly into your account.

For most of us, gone are the days of writing cheques or carrying around more than €50 cash. Our method of payment has moved from paper to electronic. It's safe and less time-consuming.

Banking business has been transformed. Providing loan facilities and deposit services is the traditional model. Modern banking business provides a kaleidoscope of financial products and services, and different methods of transferring funds, with electronic fund transfer (EFT) becoming increasingly popular and important.

For example, securities operations, credit cards, ATMs, mobile banking, teleshopping and home banking.

Many payments traditionally made with paper instruments – cheques and cash – are now being made electronically via the EFT clearing systems operated by the Central Bank. This system provides for the clearing of electronic payments for participating banks and other depository institutions.

An EFT is a computerised system that enables payments between parties to occur online or electronically rather than using traditional payments method such as cash and cheques. A process that describes how value, generally money, is exchanged electronically for goods services or information, is a universally accepted description of an EFT.

## Limited liability

The accessibility of consumer-activated EFT creates and facilitates difficulties in relation to security and customer's rights.

ATM, mobile banking, internet banking and some aggregation services all require the use of security systems to ensure that only the customer may carry out transactions, and require that the customer should keep his or her password or PIN number secret.

Generally a customer bears the responsibility for unauthorised paper-based transactions such as a forged cheque. However, it is common for the standard terms applicable to EFTs to provide that the bank is authorised by the customer to accept and act upon any instruction, which is authenticated by the customer's password or PIN number. This general position may be limited by the proviso that if the customer has taken reasonable care to keep his security details secret and secure, they will not be liable for unauthorised transactions; or the customer's liability will be limited to a specified amount provided the bank receives prompt notification that the customer suspects someone knows their security details.

In Ireland consumer-activated EFT has no legislative footing. The relationship between the card issuer and cardholder is governed by the contract (generally a standard form contract) between the parties and supplemented where appropriate by the law of tort. All ATM and laser card contracts are written contracts, drawn up by the card-issuer and signed by the cardholder. This creates an inequality of power in the relationship, namely that the cardholder has little choice but to agree to the card-issuer's terms and conditions if he or she wants the card.

## Credit card fraud

Credit card fraud continues to be a major problem. This is particularly so where payment cards are used to make payment where the cardholder is not present, such as telephone or internet payments. The effect of the terms and conditions between the parties to card transactions is, in general, to place the risk of losses from fraud on the merchant who accepted the card as payment.

The number of electronic payments has increased by 15.9 per cent, with the number of mobile payments, also known as m-payments, increased by 60.8 per cent since 2011. The Nilson Report observed that by 2017, the number of payment cards in circulation worldwide will exceed 20.56 billion. With VISA representing 28 per cent and Mastercard with 36 per cent, their combined share of the global market of payment cards is 64 per cent. Global growth continues to be driven by debit and credit cards; globally debit card transactions totalled 140.7 billion and credit cards 62.7 billion, respectively.

With the increased use of credit and debit cards it is crucial that the Oireachtas implement legislation addressing consumer-activated EFTs, and not leave the relationship between the cardholder and credit card-issuer to be governed by the card-issuer's contract, which is undoubtedly drafted in favour of the card-issuer.

In the event of fraud or a mistaken payment it is the consumer that is left abandoned at sea, possibly without any right to be re-compensated for the money lost.

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