



PRESS RELEASE No 31/26

Luxembourg, 5 March 2026

Advocate General's Opinion in Case C-70/25 | [Tukowiecka] ¹

Advocate General Rantos: the bank cannot refuse to refund immediately the amount of an unauthorised transaction on the ground of gross negligence on the part of the customer

However, once the immediate refund has been made, the bank may require the customer to bear the losses if the customer has deliberately or through gross negligence failed to fulfil his or her obligations as a payment service user

A customer of a Polish bank was the victim of phishing fraud: a third party posed as a buyer on a sales platform and sent her a fraudulent link imitating her bank's website. Having been taken in, she entered her login details, which allowed the fraudster to retrieve them and make an unauthorised payment from her bank account.

The next day, the customer reported the fraudulent transaction to her bank. However, the bank refused to refund the amount of the unauthorised transaction, taking the view that the customer had been grossly negligent in disclosing her bank details.

Following that refusal, the customer took legal action. The national court referred the matter to the Court of Justice to ask whether, under EU law, ² the bank, as a payment service provider, is obliged to refund immediately an unauthorised transaction, even if it considers that the customer has been grossly negligent, or whether it can refuse the refund on that ground.

In his Opinion, Advocate General Athanasios Rantos considers that **EU law ³ requires the bank, as a first step, to refund immediately the amount of the unauthorised transaction**, unless it has good reason to suspect fraud, which it must communicate in writing to the competent national authority. No other exception to that principle ⁴ of immediate reimbursement has been provided for, and the EU legislature has left no discretion to the Member States in that regard.

However, **that refund is not final**. Subsequently, if the bank establishes that the customer has failed, intentionally or through gross negligence, to fulfil one of the obligations relating, in particular, to personalised security data, ⁵ it may require the customer to bear the corresponding losses. If the customer refuses to reimburse the amount of the unauthorised transaction, **it is up to the bank to take legal action against that person to obtain payment**.

According to the Advocate General, such an approach is justified by the wording of the relevant European legislation, the context of the relevant provisions identified by the national court and the need to ensure a high level of protection for consumers using payment services, which is one of the objectives pursued by that legislation.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision. That decision is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² [Directive \(EU\) 2015/2366](#) of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.

³ Article 73(1) of the directive.

⁴ Although that aspect is not relevant in the present case, the Advocate General notes that, according to Directive 2015/2366, the payer must inform the bank of an unauthorised transaction without undue delay and, at the latest, within 13 months of the debit. Failing that, the bank does not have to make the immediate refund of the amount of that transaction.

⁵ Article 69 of the directive.