

# Memorandum on withdrawal of consent to future payments

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**Memorandum on withdrawal of consent to future payments**

**The Danish Consumer Ombudsman**

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[[Guidelines/Memorandum/Guidance](#)] prepared by the Danish Consumer Ombudsman

"[Month and year]"

# 1 Introduction

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The Danish Consumer Ombudsman increasingly sees consumers encountering problems when trying to stop regular payments from their account.

It may be in situations where the consumer disputes having entered into an agreement, but where the trader continues to withdraw amounts from the consumer's account or situations where the consumer has willingly entered into an agreement, but where the trader continues to withdraw amounts after the consumer has terminated the agreement.

They are continuing agreements such as subscriptions and will usually involve card payments with the consumer having registered his card data with the trader, who subsequently uses the data to regularly charge amounts to the payment account with which the payment card is associated.

This memorandum will examine the options that consumers have to stop such payments. In relation to this, the relevant provisions of the Danish Payment Services Act and the Payment Services Directive (in the following referred to as the Directive) will be examined. The memorandum reflects the Consumer Ombudsman's interpretation and understanding of the rules.

In the examination, the consumer will normally be termed the “payer”, the card issuer/the bank will be termed the “provider” and the trader the “payee”, as this is the terminology used in the Payment Services Act and the Directive.

Section 2 below examines the Directive's regulation on the issue of withdrawal of consent and section 3 will examine the regulation on withdrawal of consent under the Payment Services Act.

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## Section 2

# REGULATION UNDER THE PAYMENT SERVICES DIRECTIVE

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Withdrawal of consent to payment transactions are regulated by the Directive, which will therefore be examined in this section with the Consumer Ombudsman's interpretation of the rules of the Directive.

### 2.1. Consent to a payment transaction

[Text] Pursuant to article 54(1) of the Directive, a payment transaction is authorised (approved) only if the payer has given consent to execute the payment transaction.

Article 54(1) of the Directive reads:

*“1. Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.*

Article 54(1) does not specify any requirements as to how such consent should be worded or notified. This is for the payer and the provider to agree. See article 54(2) of the Directive, which reads:

*“2. Consent to execute a payment transaction or a series of payment transactions shall be notified in the form agreed between the payer and his payment service provider.*

*In the absence of such consent, a payment transaction shall be considered to be unauthorised.”*

### 2.2. Withdrawal of consent

#### 2.2.1. Access to withdrawal of consent

[Text] In Denmark, according to the general principles of the law of obligations a payer may withdraw a consent given. This right is also expressly stated in article 54 of the Directive.

Article 54(3) of the Directive reads:

*“3. Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 66. Consent to execute a series of payment transactions may*

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*also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.”*

Thus, pursuant to article 54(3), a payer may withdraw his consent. A payer may also withdraw his consent to a series of payment transactions with the effect that any future payment transaction would be unauthorised. This includes payments under a continuing subscription agreement.

### **2.2.2. Time limits for withdrawal of consent**

Pursuant to article 54(3), first sentence, of the Directive, the payer may withdraw his consent, but no later than the point in time of irrevocability under article 66.

The time limits specified in article 66 depend on the type of payment transaction.

Article 66 of the Directive reads:

- “1. Member States shall ensure that the payment service user may not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise specified in this Article.*
- 2. Where the payment transaction is initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.*
- 3. However, in the case of a direct debit and without prejudice to refund rights the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.*
- 4. In the case referred to in Article 64(2) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.*
- 5. After the time limits specified in paragraphs 1 to 4, the payment order may be revoked only if agreed between the payment service user and his payment service provider. In the case referred to in paragraphs 2 and 3, the payee's agreement shall also be required. If agreed in the framework contract, the payment service provider may charge for revocation.”*

Article 66 concerns revocation of *a single* payment order and is understood to mean that the time limits relate to the payment transaction *in process*, and not to any future payments.

Also, pursuant to article 54(3), second sentence, of the Directive, no time limit applies to the withdrawal of consent to execute a series of payment transactions. Accordingly, the payer may at any time revoke any future payments not yet in process without having to observe any specified time limit.

### **2.2.3. From whom should the consent be withdrawn**

Article 54 does not expressly set out to whom the consent should be notified, or from whom the consent may be withdrawn.

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The matter has been discussed with the European Commission. In the opinion of the Commission, consent under article 54 must be deemed to be given to the provider, as the consent relates to the payment transaction to be executed by the payer's payment service provider. In certain cases, the consent may be notified indirectly via the payee to the payment service provider. With regard to the payer's right to withdraw his consent to future payments, it is irrelevant whether the consent to the execution of such payments was given directly by the payer or indirectly via the payee to the provider.

The Consumer Ombudsman concurs with the Commission's interpretation.

Consequently, according to Danish property law rules, consent may also be withdrawn from the provider.

Moreover, pursuant to Danish property law rules, a consumer will always be able to instruct the payee not to make withdrawals from the consumer's account if the consumer believes that no agreement has been entered into. If an agreement has been entered into, the consumer can, having regard to the contents of the agreement, terminate the agreement and, accordingly, instruct the payee to cease making withdrawals from the account.

#### **2.2.4. Effect of withdrawal of consent**

Pursuant to article 54(3), second sentence, of the Directive (quoted under 2.2.1. above), if consent to execute a series of payment transactions is withdrawn, it has the effect that any future payment transaction must be deemed to be unauthorised.

When payment transactions are thus unauthorised, the payer's provider must immediately refund the relevant amount (see article 60(1) of the Directive).

Article 60 of the Directive reads:

*“1. Member States shall ensure that, without prejudice to Article 58, in the case of an unauthorised payment transaction, the payer's payment service provider refunds to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.*

*2. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his payment service provider.”*

## Section 3

# REGULATION UNDER THE DANISH PAYMENT SERVICES ACT

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Above, we examined the regulation on withdrawal of consent under the Directive. However, in Denmark, rights and obligations are created by way of Danish legislation. The Directive is implemented in the Payment Services Act, which is examined in the following.

### 3.1. Consent to a payment transaction

Pursuant to section 57(1) of the Payment Services Act, a payment transaction is authorised (approved) only if the payer has given consent to execute the payment transaction. Section 57 of Payment Services Act implements article 54 of the Directive.

Section 57 of the Payment Services Act reads:

*“57.-(1) A payment transaction shall only be authorised if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.*

*(2) Consent shall be notified in the manner and following the procedures agreed between the payer and his provider.*

*(3) Consent may not be withdrawn after the time consequential upon section 73.”*

As can be seen, section 57 does not specify any requirements as to how such consent should be worded or notified. This is for the payer and the provider to agree (see section 57(2) of the Payment Services Act).

The legislative material to section 57 of the Payment Services Act, (Bill no. L 119 of 28 January 2009) gives the following examples of notification of consent:

*”Examples of notification of the payer's consent include the payer using his PIN in a shop, signing a payment order at a branch or using his e-banking code.”*



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When online purchases are paid for using a payment card consent is notified by the payer submitting his card number, expiry date and card verification code, according to the cardholder rules<sup>1</sup> of the three leading banks.

### 3.2. Withdrawal of consent

#### 3.2.1. Access to withdrawal of consent

Section 57(3) of the Payment Services Act stipulates that consent may not be withdrawn after the time that follows from section 73. Section 57 is quoted in 3.1. above.

Accordingly, it follows by implication from section 57(3) of the Payment Services Act that consent may be withdrawn.

Also, it follows directly from section 54(3), first sentence, of the Directive that consent may be withdrawn.

Article 54(3) of the Directive reads:

*“3. Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 66. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.”*

The above provisions are thus based on payers being free to withdraw a consent given. This is also in accordance with the general principles of the law of obligations.

Section 57(3) of the Payment Services Act prescribes mandatory protection when the user is a consumer, cf. section 5(1) and (2) of the Payment Services Act, per contra. Accordingly the payer's right to withdraw consent may not be derogated from by agreement if the payer is a consumer.

Section 5(1) and (2) of the Payment Services Act reads:

*“5.-(1) This Act may not be derogated from to the detriment of the payment services user, cf. however, subsections (2)-(4).  
(2) Part 5, sections 55, 57(3), 62, 64-66, 68, 73, 74 and 85 as well as part 10 may be derogated from by agreement between the provider and payment services users who are not consumers. The parties may also agree some other time limit for objections than that mentioned in section 63.”*

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<sup>1</sup> Cardholder rules of Danske Bank, Nordea and Jyske Bank.

According to general contract law principles, consent may be withdrawn with respect to any payment transactions for which consent has been given. If the payer has given his consent to a series of regular payment transactions, e.g. a continuing subscription, the payer may equally withdraw his consent to all future regular payments.

This is supported by article 54(3), second sentence, of the Directive, according to which consent to execute a series of payment transactions may also be withdrawn.

### 3.2.2. Time limits for withdrawal of consent

As mentioned above, section 57(3) of the Payment Services Act stipulates that consent may not be withdrawn after the time consequential upon section 73.

The time limits specified in section 73 depend on the type of payment transaction.

Section 73 of the Payment Services Act reads:

- “73.-(1) A payment order may not be revoked after it has been received by the payer’s provider, cf. section 71(1), unless otherwise provided by subsections (2)-(5).*
- (2) A payment order initiated by or through the payee may not be revoked after the payer has issued his payment order or given his consent to execute the payment transaction to the payee.*
- (3) A payment order in connection with a direct debit may be revoked at the latest by the end of the business day preceding the day agreed for debiting the funds.*
- (4) Payment orders covered by section 71(2) may be revoked at the latest by the end of the business day preceding the date agreed.*
- (5) Subsections (1)-(4) may be derogated from by agreement between the user of the payment service and his provider. In the situations referred to in subsections (2) and (3), the payee’s consent shall also be required. A provider may demand payment for revocation, if so stated in the framework contract.*
- (6) In connection with micro payment instruments, notwithstanding subsections (1)-(5), it may be agreed that the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.*

Section 73 concerns revocation of a *single* payment order and is understood to mean that it relates to a payment transaction *in process*, and not to any future payment transactions in a series of payment transactions.

Accordingly, the time limit to be observed by the payer with respect to withdrawal of consent (see section 57(3) of the Payment Services Act) only relates to a single payment transaction *in process*, whereas no time limit must be observed with respect to withdrawal of consent to future payments in a series of payments. Also, pursuant to article 54(3), second sentence, of the Directive, no time limit applies to the withdrawal of consent to a series of payment transactions. Article 54(3) is quoted in 3.2.1. above. Section 57 of the Payment Services Act implements article 54 of the Directive and should be interpreted in conformity with this. Accordingly, the payer may at any time revoke any future payments not yet in process without having to observe any specified time limit.

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### 3.2.3. From whom should the consent be withdrawn?

Section 57 does not expressly set out to whom the consent should be notified, or to whom notification that the consent is withdrawn may be given. No information on this subject is found in the legislative material to the Payment Services Act or the Directive, either.

The Consumer Ombudsman therefore discussed the matter with the European Commission, which stated that, in the Commission's opinion, article 54, implemented by section 57 of the Payment Services Act, should be understood to mean that consent should be considered to be given to the payment service provider, as the consent relates to the payment transaction to be executed by the payer's provider. The Commission further stated that in certain cases, consent may be notified indirectly via the payee to the provider, and that with regard to the payer's right to withdraw his consent to future payments, it is irrelevant whether the consent to the execution of such payments was given directly by the payer or indirectly via the payee to the provider.

The Consumer Ombudsman concurs with the Commission's interpretation.

It follows from general contract law principles that notification that consent is withdrawn may be given to the party to whom the consent was given. Consent is given by the payer to the provider, possibly via a payee (see above).

Accordingly, the payer's notification that his consent to the future payments is withdrawn pursuant to section 57(3) may be given to the provider.

Notification of withdrawal of consent is an order and as such is effective from the time it is received.

Also, according to general property law rules, a consumer will always be entitled to contact the payee if the consumer does not believe that an agreement has been entered into and instruct the payee not to make withdrawals from the consumer's account. If an agreement has been entered into, the consumer can, having regard to the contents of the agreement, terminate the agreement and, accordingly, instruct the payee to cease making withdrawals from the account.

### 3.2.4. Effect of withdrawal of consent

When consent to execute a payment transaction has been withdrawn, any future payments are unauthorised (see section 57(1) of the Payment Services Act, per contra, and article 54(3), second sentence, of the Directive).

Section 57(1) of the Payment Services Act reads:

*“57.-(1) A payment transaction shall only be authorised if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.”*

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Article 54(3) of the Directive reads:

*“3. Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 66. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.”*

Pursuant to section 61 of the Payment Services Act, the payer's provider is liable for the payer's losses as a consequence of unauthorised payment transactions.

Section 61 of the Payment Services Act reads:

*“61.-(1) The payer's provider shall be liable for losses consequential upon unauthorised payment transactions, cf. section 57, unless otherwise provided by section 62. In the event of an unauthorised transaction, the payer's provider shall immediately repay the amount to the payer.*

*(2) It may be agreed that subsection (1) shall not apply to micro payment instruments applied anonymously or if, because of the nature of the payment instrument, the payer's provider is unable to prove that the payment transaction was authorised.”*

Accordingly, the provider is liable for losses suffered by the payer as a consequence of any future payment transactions executed after the payer's withdrawal of consent (see section 61 of the Payment Services Act).

In the event of an unauthorised payment transaction, the provider must immediately refund the amount to the payer (see section 61(1), second sentence, of the Payment Services Act).

Accordingly, if the payer reports an unauthorised transaction to the provider, the provider should, as a general rule, repay the amount to the payer's account as soon as possible, cf. the legislative material for section 61(1) of the Payment Services Act (Bill no. L 119 of 28 January 2009).

The special explanatory notes to section 61(1) of the Payment Services Act provide as follows:

*“According to the provision, in the event of an unauthorised transaction, the payer's provider shall immediately repay the amount to the payer. As a general rule, a provider should therefore repay the amount in dispute as soon as possible after an unauthorised transaction has been reported. If the provider suspects that the transaction is not unauthorised and therefore refuses immediate repayment, pursuant to the provisions of the Danish Interest Rate Act the payer may be entitled to interest if it is later established that the transaction was unauthorised.”*

This provision concerns liability, and the party actually liable to the payer is the payee who has wrongfully withdrawn the amount. In accordance with the general rules of the law of damages, the bank will thus be entitled to make a recourse claim against the payee.

Section 61 does not stipulate that the payer is required to demand that the provider repay the amount to his account. Once the payer has reported to the bank

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that withdrawals made by a specific payee are unauthorised, the provider must hereafter repay any subsequent withdrawals to the payer's account at its own initiative. The withdrawals originate from the same agreement/consent, and the payer is therefore not required to inform his bank every time a new amount is withdrawn by the payee on the basis of the consent. In the opinion of the Consumer Ombudsman, if the bank does not repay the amounts at its own initiative, this could be contrary to good practice, cf. section 84 of the Payment Services Act.

#### **3.2.4.1. Time limit for objections**

Pursuant to section 63 of the Payment Services Act, objection against an unauthorised payment transaction must be received by the provider as soon as possible and no later than 13 months after debiting the payment transaction in question.

Section 63 of the Payment Services Act reads:

*“63.-(1) Objections against unauthorised or incorrect payment transactions shall be received by the provider as soon as possible and no later than 13 months after debiting the payment transaction in question. For objections from the payee, the time limit shall be 13 months after the date of crediting. If the provider has not notified information or made information available pursuant to part 5, the time limit shall be calculated from the date on which the provider notified the information or made it available.”*

It follows from the legislative material to section 63 (Bill no. L 119 of 28 January 2009) that the payer must submit his objection to the provider as soon as possible after the payer *has become aware of* the unauthorised payment transaction.

The special explanatory notes to section 63 of the Payment Services Act provide as follows:

*“Under section 63 of the bill, any objections should be submitted to the provider as soon as possible after the payer becoming aware of an unauthorised or incorrect transaction having been made.”*

This is also in conformity with article 58 of the Directive, implemented by section 63 of the Payment Services Act.

Article 58 of the Directive reads:

*“The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, including that under Article 75, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Title III.”* (Our italics).

In addition to the absolute time limit for objections of 13 months, the general rules on inactivity apply, cf. the legislative material to section 63 of the Payment Services Act (Bill no. L 119 of 28 January 2009).

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The special explanatory notes to section 63 of the Payment Services Act provide as follows:

*“Whereas the provision specifies a time limit for objections of no more than 13 months, payment service users may forfeit this right before such time as a result of inactivity.”*

### **3.2.5. How to stop unauthorised withdrawals from the account?**

The Consumer Ombudsman's experience is that the banks' way of solving the problem of unauthorised withdrawals from the payer's payment account is to block the payment card used to make the purchase from the payee.

As an explanation of this, the financial sector cited that, with the current international payment card systems, providers are only to a limited extent able to identify and stop payments from a specific payee.

In the opinion of the Consumer Ombudsman, the bank should, as a minimum, at its own initiative arrange for any regular withdrawals to be repaid to the payer's account following the payer's first notification that his consent has been withdrawn, see section 61 of the Payment Services Act. The Consumer Ombudsman will take this matter up with the Danish Bankers Association. However, in the opinion of the Consumer Ombudsman, it is most consistent with good practice if the bank is able to block the payee in question from making unauthorised withdrawals from the payer's account when the payer has withdrawn his consent.

Many consumers nowadays have linked their payment card to a number of payment services, such as phone subscriptions, fitness club subscriptions, streaming services, brobizz (easy access bridge toll) and mobile phone payment plans. The consumer may also have ordered trips, hotels, car rental or other services, submitting his card information to the payee for future payment using the payment card. Therefore, if the consumer's payment card is blocked, the consumer will have to contact all these different traders and inform them that he has a new payment card. This is of great inconvenience to consumers.

The Consumer Ombudsman recognises that the only technical option available for now is to block the payer's payment card. The Consumer Ombudsman was pleased to learn that the Danish Bankers' Association has recommended to the banks that they not charge a fee for blocking cards in such situations.

However, the Consumer Ombudsman finds that making it possible to block individual withdrawals from specific payees would be most consistent with good practice (see section 84 of the Payment Services Act). The Consumer Ombudsman recommends that the banks work on developing a solution in the near future, and the Consumer Ombudsman would be happy to participate in discussions with the banks in this respect.

[Text]

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**"[Heading 3]"**  
[Text]

## Section 4

# SUMMARY OF REGULATION UNDER THE PAYMENT SERVICES ACT

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It follows from section 57(1) of the Payment Services Act, that the payer must give his consent to a payment transaction for it to be authorised (approved).

It follows by implication from section 57(3) of the Payment Services Act and directly from article 54(3), first sentence, of the Directive that consent may be withdrawn. This is in accordance with the general rules of the law of obligations.

Withdrawal of consent under section 57(3) of the Payment Services Act refers to consent given pursuant to subsection 1. If such consent has been given to a continuing series of payments (e.g. a subscription), the withdrawal of consent under section 57(3) may also be made with respect to future continuing payments. This also follows directly from article 54(3), second sentence, of the Directive.

As regards payment transactions in process, consent must be withdrawn within certain time limits as set out in section 73 of the Payment Services Act. As regards future payments not yet in process, no time limit must be observed, cf. section 57(3) by implication, in conjunction with article 54(3), second sentence, of the Directive.

Section 57 of the Payment Services Act does not expressly set out to whom the consent should be notified, or from whom the consent may be withdrawn.

The matter has been discussed with the European Commission, which has explained that article 54 of the Directive – as implemented in section 57 of the Payment Services Act – should be interpreted to the effect that the consent is to be notified to the provider. The Consumer Ombudsman concurs with this interpretation.

According to general contract law principles, consent may be withdrawn from the party to whom the consent was given and, accordingly, withdrawal of the consent may thus be withdrawn from the provider.

It also follows from general property law rules that a consumer will always be entitled to contact the payee if the consumer does not believe that an agreement has been entered into and instruct the payee not to make withdrawals from the consumer's account. If an agreement has been entered into, the consumer can, with due consideration for the contents of the agreement, terminate the agree-



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ment and, accordingly, instruct the payee to cease making withdrawals from the account.

When the payer has withdrawn consent to the payments, any future payments are unauthorised, see section 57(1) of the Payment Services Act, per contra, and article 54(3), second sentence, of the Directive, and the provider/bank is liable for the payer's losses as a consequence of such payments, see section 61 of the Payment Services Act. The provider must then repay any subsequent withdrawals to the payer's account at its own initiative when the payer has notified the provider that the payment transactions are unauthorised.

For now, the only available technical solution to the problem of stopping withdrawals from the payer's account is for the bank is to block the payer's payment card and issue a new one. However, this may cause considerable inconvenience to the consumer, and the Consumer Ombudsman is therefore of the opinion that making it possible to block individual withdrawals from specific payees would be most consistent with good practice (see section 84 of the Payment Services Act). The Consumer Ombudsman therefore recommends that the banks work on developing a solution in the near future. However, in any event the bank should at its own initiative arrange for any regular withdrawals to be repaid to the payer's account following the payer's first notification that his consent has been withdrawn, see section 61 of the Payment Services Act. The Consumer Ombudsman will take this matter up with the Danish Bankers Association.