



De Matteis Law

The Agentic Commerce Opportunity and its Regulatory Compliance

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Put the user first — because regulators will, too!

The use cases

Phase 1

- **Cardholder Initiated transactions (CIT)**
 - The Agent helps with research, comparison, and checkout
 - The cardholder is **in-session** and **initiates** the payment

Phase 2

- **Agent Initiated Transactions (AIT)**
 - The cardholder gives the Agent a **mandate** to pay on their behalf
 - The cardholder is **off-session** at the time of payment

AUTHENTICATION

Phase 1 – Cardholder Initiated Transactions

Cardholder Initiated Transactions (CIT)

- The cardholder is in-session and always **authenticates** each transaction with Strong Customer Authentication (**SCA**)
- **What's new:** cardholder initiates transaction through the Agent's chat interface (rather than directly on the merchant's website)

Compliance with PSD2/PSR is by design and straightforward:

- ✓ Fully compliant with **SCA requirements** (Article 97 PSD2 and future PSR)
- ✓ Fully compliant with **dynamic linking** requirement (Article 5 RTS on SCA) if the Agent uses **merchant name** and **transaction amount** in authentication

Phase 2 – Agent Initiated Transactions

Agent Initiated Transactions (AIT)

- Cardholder **always authenticates** the **mandate** to the Agent with **SCA**
- Work is in progress to define use-case and additional safeguards may be put in place, for example:
 - Transactions initially occur only with **trusted** merchants, within established **maximum amounts** and only for **repeated purchases**
 - If any parameter changes at the time of the transaction, **SCA applies** again
 - Cardholder can **revoke the mandate** with instant effect to prevent any future purchases

Phase 2 – Agent Initiated Transactions

First-best: compliance through analogy with MITs

- Similar regulatory uncertainty existed for **Merchant Initiated Transactions (MITs)**, which were **not expressly addressed in PSD2**
- **EC clarified with [Q&A 2018_4031](#)** (question submitted by Mastercard) that MITs are excluded from SCA – provided the initial mandate is always authenticated with SCA
- **AITs may be exempted similarly to MITs**, i.e., potentially outside SCA
- Condition: AITs are **very secure** from a fraud perspective
- Industry alignment and **regulatory confirmation** from EBA/EC needed

Phase 2 – Agent Initiated Transactions

Alternative: compliance through SCA exemptions

- ✓ **Transaction Risk Analysis (TRA) exemption.** The transaction is low-risk, and below certain amount thresholds (e.g., max 500 EUR) and the acquirer's/issuer's fraud rates are very low (e.g., max 13 bps)
- ✓ **Whitelisting exemption.** The transaction is initiated at merchants that have been previously whitelisted with SCA
- ✓ **Low-value remote exemption and recurring payment exemption.** The transaction is below € 30 or of a fixed recurring amount
- ✓ **New specific exemption** may be introduced in Level 2 regulation under PSR (Regulatory Technical Standards on SCA)

LIABILITY FOR FRAUD

Liability for fraud

Unauthorized (fraudulent) transactions

- The cardholder is generally refunded for fraud by the issuer

Compliance with PSD2/PSR is straightforward

- Existing **PSD2** and future **PSR** rules apply:
 - ✓ Cardholder **refunded** for fraud (except for gross negligence and friendly fraud)
 - ✓ If SCA is not applied, cardholder is refunded **even if grossly negligent**
- **Agent** may be made contractually **liable** to the issuer for behavior that facilitated fraud (e.g., Agent did not send an authentication request)

LIABILITY FOR MISTAKES AND HALLUCINATIONS

Liability for mistakes and hallucinations

Authorized transactions (but 'unwanted' because of Agent's or Merchant's mistake)

- If the Agent hallucinates, this is still an **authorized** transaction under PSD2/PSR
 - Thus, **PSD2/PSR refund** protection for unauthorised transactions **does not apply**
- ✓ However, other existing **consumer protection principles** apply:
 - **Agent** is liable to the consumer if it misinterprets, exceeds or otherwise breaches its mandate (out-of-budget orders, 'hallucinated' purchases, wrong merchants)
 - **Merchant** is liable for errors in the fulfillment of the order (e.g., wrong items, wrong size, wrong color)
 - **Issuers** will likely clarify in their T&Cs that they are not liable for those errors

General consumer's refund right

Authorised transactions (but 'unwanted')

Consumer Rights Directive (CRD) gives consumers a 'no question asked' **14-day right to withdraw from online contracts**

- ✓ Consumer is entitled to a **full refund from the merchant** without incurring any costs (other than the costs of returning the goods)
- ✓ This CRD refund right applies, in principle, to **Agentic Commerce transactions**
 - Limited **exceptions** apply (e.g., customized or perishable goods)
- But questions remain as to how **liability is allocated between the merchant and the Agent** for Agent mistakes.

TRANSPARENCY

Transparency

Unfair Commercial Practices Directive (UCPD) prohibits unfair practices in consumer contracts

- Agent providers must **not mislead consumers** in their purchasing decisions
- Commercial models based on **referral fees or other commercial arrangements** between Agent providers and merchants **are in principle allowed**
- However, consumers must be able to:
 - Easily distinguish **paid placements** from other results
 - Understand when **merchant's sponsorship** influences the selection, placement or ranking of the results displayed by the Agent

KEY TAKEAWAYS

Key takeaways

Authentication

- ✓ Cardholder Initiated Transactions (CIT) are compliant with SCA by design
- Agent Initiated Transactions (AIT) require regulatory alignment (possibly by analogy with MITs or with the introduction of a new exemption)

Liability for fraud

- ✓ Cardholder is generally refunded for fraud

Consumer Protection

- ✓ Consumers have a 14-day unconditional right of refund from the merchant
- Consumers should be refunded for Agents' mistakes (e.g., hallucinations)

Transparency

- Agents should disclose when results are sponsored

OPEN QUESTIONS

Open questions

- 1. Redress.** How to “operationalize” consumer rights against the Agent for hallucinations (e.g., extension of the chargeback mechanism)?
- 2. Market concentration.** Will Agents prefer to contract with a few selected large merchants?
- 3. Role allocation.** Who will be “intelligent” here, the Agent or the merchant?
 - Will the Agent be a simple pass-through of the cardholder’s intent to the merchant?
 - Will the Agent really know cardholder’s preferences, or will it defer this to the merchant?
- 4. Steering.** Will the Agent make its decisions based on cardholder’s preferences, or based on its referral fees from merchants?
- 5. Access and incentives for SMEs.** Which legal and policy levers to encourage Agents to contract with small and medium-sized merchants?

Thank you for your attention!

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