



Notification Number: 2016/127/UK

PhonepayPlus Code of Practice (14th Edition)

Date received : 14/03/2016

End of Standstill : 15/06/2016

Message

Message 001

Communication from the Commission - TRIS/(2016) 00791

Directive (EU) 2015/1535

Notificación - Oznámení - Notifikation - Notifizierung - Teavitamine - Γνωστοποίηση - Notification - Notificatio - Notifica -
Pieteikums - Pranešimas - Bejelentés - Notifika - Kennisgeving - Zawiadomienie - Notificação - Hlásenie-Obvestilo - Ilmoitus -
Anmälan - Нотификация : 2016/0127/UK - Notificare.

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη
προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai
nepradedami - Nem nyitja meg a késések - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Não
inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период н
прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 201600791.EN)

1. Structured Information Line

MSG 001 IND 2016 0127 UK EN 14-03-2016 UK NOTIF

2. Member State

UK

3. Department Responsible

Department for Business, Innovation and Skills

European Reform Directorate

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London, SW1H 0ET

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3. Originating Department

The Office of Communications (Ofcom)

Consumer Group,

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SE1 9HA

4. Notification Number

2016/0127/UK - V00T

5. Title

PhonepayPlus Code of Practice (14th Edition)



EUROPEAN COMMISSION
GROWTH DIRECTORATE-GENERAL

Single Market for goods
Prevention of Technical Barriers

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6. Products Concerned

The PhonepayPlus Code of Practice (14th Edition), which Ofcom is minded to approve under Section 121 of the Communications Act 2003, regulates the provision and contents of premium rate services (PRS) in the UK, and the facilities made available in the provision of such services.

PRS typically offer some form of content, product or service that is charged to users' phone bills. PhonepayPlus is the day-to-day regulator of PRS in the UK.

7. Notification Under Another Act

- On 27 March 2015, Ofcom notified the European Commission, BEREC and other Member States of its provisional decision to approve PhonepayPlus' thirteenth Code of Practice (the '13th Code') under Directive 98/34/EC. The TRIS reference number for that notification is 2015/146/UK. No comments were received by Ofcom following the end of the three-month standstill period and as a result, the 13th Code was approved by Ofcom and entered into force on 1 July 2015.

Save in those respects highlighted at point 8 below, the 14th Code which is the subject of this notification is the same as the 13th Code.

8. Main Content

The most significant changes in the 14th Code (as against the 13th Code) are in Part 4 which sets out the procedures to be followed, and PhonepayPlus' powers, in relation to investigations, procedures and sanctions.

The key changes highlighted in the Ofcom consultation are as follows:

- i) The inclusion of high-level criteria in the Code which will be used by PhonepayPlus to determine whether a case should be allocated to either a 'Track 1' or 'Track 2' investigation.
- ii) A consideration of whether it would be appropriate to impose interim measures (i.e. a revenue withhold and/or service suspension order) at an early stage in all 'Track 2' investigations which would result in the removal of the case allocation track currently known as the "Emergency Procedure".
- iii) The recommendations of the Investigations Team at various key stages of an investigation to be subject to oversight by senior members of PhonepayPlus.
- iv) Replacement of the current Code Compliance Panel with a new body - the Code Adjudication Panel (CAP) - which, unlike the CCP, will not include members of the PhonepayPlus Board. A Tribunal with members drawn from the CAP will make any decision to impose interim measures or to ratify a settlement with a PRS operator. Further, any final breach finding and sanction decision (where the parties are unable to settle) will be made by a Tribunal.
- v) A formal "Warning Notice" to be issued to PRS operators setting out details of any alleged breaches, supporting evidence and any recommended sanctions before the case is presented to a Tribunal for decision. Under the 13th Code, PhonepayPlus does not include details of any recommended sanctions under its alleged 'Breach Notice'.
- vi) A more flexible adjudication or review hearing, which allows for different levels of oral and legal representation.
- vii) Replacement of the current post-adjudication review stages and the Independent Appeals Body (IAB) with a single, limited review procedure.

The 14th Code includes other, more minor consequential changes, and it should be noted that Ofcom's approval is in relation to the entirety of the 14th Code (i.e. not just Part 4, which has been subject to the most change).

Having regard inter alia to the provisions of the 14th Code and subject to any comments received following this consultation, Ofcom is minded to approve the 14th Code.

9. Brief Statement of Grounds

PhonepayPlus regulates PRS via its Code of Practice, which is approved by Ofcom under section 121 of the Communications Act 2003. Ofcom may only approve the Code where certain statutory requirements are met, including that (i) the Code's provisions are transparent, objectively justifiable, proportionate, and not unduly discriminatory, and (ii) it appears to Ofcom that it would be appropriate for it to approve the Code.



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PhonepayPlus reviews and updates its Code, and Ofcom considers its approval, from time to time, to ensure it is appropriate in light of factors such as: (i) regulatory developments, (ii) changes in the markets for PRS services and in technology; (iii) the need to ensure consumers receive the right level of protection from the risk of harm; and (iv) the need to ensure that the Code allows for fair, effective and efficient enforcement procedures which, in turn, allow for timely decision making and enforcement, for the benefit of consumers and providers. Doing so helps build consumer confidence in the markets for premium rate services.

The provisions of the 14th Code, and the changes in it from the 13th Code in particular, have been the subject of stakeholder engagement by PhonepayPlus since the Part 4 review was launched in May 2015. This included a number of industry workshops, a consultation document published by PhonepayPlus on 23 November 2015, and a decision document published on 10 March 2016. The responses to the PhonepayPlus consultation have been the subject of careful consideration and Ofcom provisionally considers that the provisions of the 14th Code are, amongst other requirements, transparent, objectively justifiable, proportionate, and not unduly discriminatory. Further, Ofcom provisionally considers it appropriate for it to approve the 14th Code

In particular, Ofcom provisionally considers that the proposed changes in the draft Code, represent a transparent, accessible and proportionate set of enforcement proceedings, including adequate rights of defence and appeal for PRS providers. Overall, it appears to Ofcom that the ability of parties under investigation to engage constructively with PPP during enforcement proceedings (including during adjudication decisions) and to have the opportunity to find an earlier resolution to their case, has been enhanced by a number of the proposed changes to the Code. This in turn is likely to be beneficial for consumers as earlier resolution of cases could mean that consumer harm is addressed earlier and/or redress is made available sooner than would be the case under the current procedures.

At the same time, a significant amount of unnecessary complexity has been removed from the enforcement process which includes replacing the current post-adjudication review stage and the Independent Appeals Body (IAB) with a single, limited review procedure. We note, in particular, that parties genuinely seeking to contest the lawfulness of a decision reached by PPP will remain entitled to do so through the revised review mechanism and, ultimately, through judicial review.

It is pertinent to note that previous PhonepayPlus Codes have been subject to EC notification, which resulted in two specific rules being introduced into earlier editions of the Code. These have been retained in the 14th Code as follows:

- the Code will apply to premium rate services which are also 'information society services', but only where the conditions set out in Article 3.4 (read, as appropriate, in accordance with Article 3.5) of Directive 2000/31/EC on Electronic Commerce are satisfied (see rule 5.2.1 of the Code); and
- the Code will prevent PhonepayPlus from requiring a party to provide information where to do so would be contrary to Directive 2000/31/EC, including Article 15 thereof (see rule 5.2.2 of the Code).

Subject to the outcome of this consultation, the 14th Code is expected to come into force in July 2016.

10. Reference Documents - Basic Texts

References of the Basic Texts: The PhonepayPlus decision statement and draft code is available at:

<http://www.phonepayplus.org.uk/news-and-events/news/2016/march/statement-following-consultation-on-the-14th-code-of-practic>

11. Invocation of the Emergency Procedure

No

12. Grounds for the Emergency

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13. Confidentiality

No

14. Fiscal measures

No

15. Impact assessment





PhonepayPlus has included an impact assessment of the changes to Part 4 of the Code of Practice in its consultation and decision documents which can be found on its website.

Ofcom has undertaken an impact assessment as part of its consultation on whether the Code should be approved by Ofcom.

16. TBT and SPS aspects

TBT aspect

No - The draft has no significant impact on international trade

SPS aspect

No - The draft has no significant impact on international trade

No - The draft is not a sanitary or phytosanitary measure

European Commission

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