

Quddiem l-Arbitru ghas-Servizzi Finanzjarji

Kaz Nru. 044/2019

SC (l-ilmentatur)

vs

Bank of Valletta p.l.c. (C-2833)

(il-provditur tas-servizz/il-Bank)

Seduta tas-17 ta' Frar 2020

L-Arbitru

Ra l-ilment fejn qed jigi sottomess illi:

Fil-15 t'April 2019 l-ilmentatur kien f'vakanza f'Santorini u xi persuna mhix maghrufa fethitlu z-zipp tal-basket zghir (*shoulder sling bag*) li kien qed igorr fuqu u serqulu l-kartiera li kien fiha zewg *BOV Cards*. Wahda kienet il-*Cashlink Card* u l-oħra kienet il-*Visa Gold Card*.

Dakinhar stess min seraqlu l-kartiera ghamel tlett '*unauthorised withdrawals*' minn *ATM* gewwa Santorini permezz tal-*Visa Gold Card* liema tranzazzjonijiet kienu ta' €203.95, €503.95 u €203.95.

Illi l-attentati li saru fuq il-*Cashlink* ma rnextewx ghaliex fallelw wara tlett attentati.

Jghid ukoll li l-*PIN number* ma kienx miktub jew storjat fil-basket, fil-kartiera jew fuq il-*cards* innifishom.

Il-Bank infurmah li peress li l-gbid sar permezz ta' *PIN number* ma setax jirrifondilu l-flus.

Jghid li hu dejjem mexa mat-*terms and conditions* tal-*card* u qatt ma zvela l-*PIN number* u dakinhar li ngibdulu l-flus il-*PIN number* ma kienx fil-pussess tieghu.

Jghid li mhux maghruf kif ingibdulu l-flus u, ghalhekk, ghandu jinghata *refund* tal-flus li nsterqulu.

Qed jitlob bhala kumpens is-somma kumplessiva ta' €935.35.

Ra r-risposta tal-Bank li bazikament tghid:

A. Ghaliex dan l-ilment ma jistax jigi milqugh.

L-esponenti jirrispondi illi t-talbiet tal-ilmentatur ma jistghux jintlaqghu ghar-ragunijiet segwenti kif ser jirrizulta f'aktar dettall f'din ir-risposta:

1. Il-Bank mhuwiex responsabbli *ai termini* tad-*Directive 1* tal-Bank Centrali ta' Malta ghall-hlas pretiz mill-ilmentatur.¹
2. L-ispejjez ta' dawn l-istanzi ghandhom jigu ssopportati mill-ilmentatur.

B. Fatti

1. L-ilmentatur jilmenta li fil-15 ta' April 2019, insterqulu zewg *cards: BOV Cashlink Visa card; BOV Visa Gold card* waqt li kien gewwa Santorini, il-Grecja.
2. Ingibdu flus biss bil-*BOV Visa Gold card* (tliet tranzazzjonijiet separati fis-segwenti ammonti: (€203.95, €503.95 and €203.95) li saru minn ATM gewwa Santorini, il-Grecja. Ta' dan il-gbid ta' flus, il-kont tal-ilmentatur gie ccargjat is-segwenti ammonti: €3.67; €4.66; €3.67 rispettivament.² Sabiex sussegwentement inharget *replacement card* lill-ilmentatur, wara li l-*BOV Visa Gold card* giet misruqa, l-ilmentatur gie ccargjat €11.50.
3. L-ahhar *POS transaction (point of sale transaction)* bil-*BOV Visa Gold card* saret fil-31 ta' Dicembru 2018, f'Marrakesh, il-Marokk. Ghalhekk huwa kwazi impossibbli, fil-prattika, li sar '*shoulder surfing*' (jigifieri li xi hadd

¹ Il-*Payment Services Directive 2 (Directive EU 2015/2366)* iddahlet fil-ligi Maltija permezz tad-*Directive 1* tal-Bank Centrali ta' Malta. Kopja tad-*Directive 1* hija disponibbli fuq is-sit tal-Bank Centrali ta' Malta

² *Vide statement* tal-*BOV Visa Gold card*, kopja annessa mal-ilment. Dan l-*istatement*, datat 02/05/2019, juri n-numru gdid tal-*card* li nharget lill-ilmentatur. In-numru jidher fuq l-*istess statement* (ezatt fuq il-lista ta' tranzazzjonijiet).

hares/spija fuq l-ilmentatur waqt li kien il-Marokk sabiex jigbor id-dettalji tal-PIN (jew dettalji ohra)) u li l-istess persuna li wettqet dan ix-*'shoulder surfing'* kienet l-istess wahda li gibdet il-flus f'Santorini.

4. Is-segwenti hija l-kronologija tal-fatti, li l-Bank jaf dwarhom, kif graw fil-15 ta' April 2019:

(i) Fir-rigward tal-BOV *Visa Gold card*, saru s-segwenti tranzazzjonijiet/attentati:³

- 09:19:29 – l-ewwel attentat sabiex jingibdu €203.95 jfalli ghax intuza *PIN* hazin. *SMS* fir-rigward ta' dan l-ewwel attentat tintbaghat 09:19:30;
- 09:19:48 – jingibdu €203.95.
- 09:21:10 – jingibdu €503.95. *SMS* fir-rigward ta' din it-tranzazzjoni tintbaghat 09:21:10;
- 09:22:22 – attentat sabiex jingibdu €503.95 huwa *declined* ghax jeccedi l-limitu ta' kemm jistghu jingibdu flus f'jum wiehed. *SMS* fir-rigward ta' din it-tranzazzjoni tintbaghat 09:22:22;
- 09:23:27 – jingibdu €203.95 (ghax dan huwa fil-limitu). *SMS* fir-rigward ta' din it-tranzazzjoni tintbaghat 09:23:27;
- 09:26:20 – attentat sabiex jingibdu €103.95 huwa *declined* ghax jeccedi l-limitu ta' kemm jistghu jingibdu flus f'jum wiehed. *SMS* fir-rigward ta' din it-tranzazzjoni tintbaghat 09:26:21;

(ii) Fir-rigward tal-BOV *Cashlink Visa card*, saru zewg attentati (kull wahda ghall-ammont ta' €203.95) li t-tnejn fallaw ghax intuza *PIN* hazin. *SMS* fir-rigward ta' dawn l-attentati jintbaghtu fil-09:24:44 u 09:25:26.

(iii) Minkejja li l-ilmentatur ircieva diversi *SMS alerts* tal-bank fuq il-mobajl tieghu, kien rapprezentant tal-Bank stess (*mill-Card Fraud Monitoring Unit* tal-Bank) li cempel lill-ilmentatur – darbtejn.

³ *Vide* 'Dok. 1' hawn anness

It-telefonati saru:

- 09:28:44 – l-ewwel telefonata. L-ewwel haga li qal l-ilmentatur '*Qed jisirquli l-flus ta, haduli l-kartiera ...*' Tinstema' wkoll mara li ezatt wara tghid, '*Qed jigbdu hafna ghidilha*'. Meta r-rapprezentanti tal-Bank staqsa jekk kellux il-PIN mal-card, l-ilmentatur, wara silenzju qasir, irrisponda '*Issaaaa ... bhalissa mifxul ta ...*'. meta ghat-tieni darba r-rapprezentant rega' staqsih jekk kellux il-PIN mal-card, l-ilmentatur injorah (kien qed ikellem lil nies ohrajn ghalkemm ir-rapprezentant tal-Bank baqa' fuq il-linja).
- 09:32:17 – it-tieni telefonata.

Ir-rapprezentant immedjatament ibblokkja l-cards.

5. Wara l-15 ta' April 2019:

- (i) 18 April 2019 – l-ilmentatur jaghmel rapport mal-ghassa tal-Pulizija gewwa Malta;
- (ii) 22 April 2019 – l-ilmentatur jibghat ittra b'din id-data lill-Bank;⁴
- (iii) 25 April 2019 – il-Bank jirrispondi u jinforma lill-ilmentatur li qed jinvestiga;⁵
- (iv) 8 Mejju 2019 – il-Bank jinforma lill-ilmentatur li ma jistax jirrifondi l-flus peress li t-tranzazzjonijiet kienu effettwati permezz tal-PIN.⁶

6. Jirrizulta li kien hemm biss attentat wiehed fuq il-BOV Visa Gold card li ma rnexxiex minhabba li sar b'PIN hazin. Dan l-attentat ssar fid-09:19:29.

Fid-09:19:48, jigifieri inqas minn 20 sekonda wara, ingibed l-ewwel ammont (€203.95) u ntuza l-PIN il-korrett.⁷ Jigifieri wara attentat zbaljat wiehed, sussegwentement saru tliet tranzazzjonijiet bil-PIN korrett – vide d-dokument hawn anness u mmarkat 'Dok. 1' li juri li ntuza l-PIN u kif ukoll is-segwenza tat-tranzazzjonijiet validi. Jirrizulta car minn 'Dok. 1' li l-

⁴ Kopja annessa mal-ilment

⁵ Kopja annessa mal-ilment

⁶ Kopja annessa mal-ilment

⁷ Vide 'Dok. 1' hawn anness

persuna li serqet il-*card* kellha f'idejha mhux biss il-*card* izda wkoll access ghall-*PIN* tal-*card*.

Minn 'Dok. 1' jirrizulta wkoll li ntuzat il-*card* attwali u li l-*card* ma kenitx *cloned*. 'Dok. 1' juri t-'*transaction chip sequence*' li juri li fizikament intuzat il-*card* sabiex ingibdu l-flus u li l-flus ingibdu mill-*ATM* bil-*PIN*.

7. Skont il-*Product Information Guide* tal-*BOV Visa Gold card*,⁸ klawwola 3:

'YOUR PIN

A personal identification number (PIN) may be issued and it must be kept secret. This means that you must not disclose it to anyone else, including the police and/or Bank personnel or record it in any way, which allows another persons to discover it. Upon receipt you must destroy the PIN notification. In addition, you are to comply with any other instructions, which we may issue regarding the safekeeping of the PIN.'

8. L-Artikolu 50 tad-*Directive 1* jiprovdi:

'The payer shall bear all of the losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or failing to fulfil one or more of the obligations set out in Paragraph 45 with intent or gross negligence. In such cases, the maximum amount of EUR50 shall not apply'.

L-esponenti jirriserva d-dritt illi jressaq xhieda orali u dokumentarji sabiex isostni l-eccezzjonijiet tieghu fuq il-fatti fuq imsemmija, kif ukoll li jaghmel sottomissjonijiet, kemm orali kif ukoll bil-miktub a tenur tal-Kapitolu 555 tal-Ligijiet ta' Malta.

B'riserva wkoll ghal kull rimedju u/jew azzjoni ohra spettanti lilu skont il-ligi, il-Bank bir-rispett jitlob illi l-ilment jigi respint.

Bl-ispejjez.

Sema' lill-partijiet

⁸ *Vide* 'Dok. 2' hawn anness

Ra l-atti kollha tal-kaz

Jikkonsidra

L-Arbitru jrid jiddeciedi l-ilment b'referenza ghal dak li, fil-fehma tieghu, huwa gust, ekwu u ragonevoli fic-cirkostanzi partikolari tal-kaz.

Il-Verzjoni tal-Ilmentatur

L-ilmentatur xehed quddiem l-Arbitru⁹ fejn qal li fil-15 t'April 2019, waqt li kien Santorini, u wara li kien ha xi ritratti, dahallu messagg, u wara ftit messagg iehor fejn il-bank infurmah li kienu ingibdulu xi flus permess ta' uzu ta' *credit card*. Bdeh dehlin diversi messaggi mill-bank u rrizulta li mill-*Visa Gold Card* kienu ingibdulu mad-€900 ghax dak kien il-limitu taghha. Kien hemm tliet tranzazzjonijiet. Iz-zipp tal-basket infetah waqt li kien qed jiehu r-ritratti. Ghalkemm il-Bank qal li kellu l-*PIN numbers* huwa jichad dan. Jghid li kieku kellu l-*PIN numbers* kienu jigbdu l-flus mill-*card* l-ohera wkoll.

Apparti l-fatt li kienu insterqulu l-flus u hu ma kienx uza l-*PIN number*, il-bank xorta wahda iccargjah il-flus fuq it-tranzazzjonijiet li saru.

Il-Verzjoni tal-Provditur tas-Servizz

Ghall-provditur tas-servizz xehdet XXXX¹⁰ mis-*Section* tal-*Fraud* u *Disputes* tal-*BOV* li ilha f'dan il-mistier ghal 20 sena.

Tghid li l-ilmentatur mill-ewwel ipprova jaqbad mal-bank filwaqt li huma kienu wkoll qed jaqbd u mieghu. Wara li nvestigaw kif saru t-tranzazzjonijiet irrizultat hom li dawn ingibdu bil-*PIN Number*. Peress li rrizulta li c-*chip* inqrat *in full* u l-*PIN number* gie validat mis-sistema taghhom, huma kellhom jirrifjutaw il-*claim* tal-ilmentatur.

Hija ipprezentat 'DOK SS' li huwa rapport ta' kif sehheh it-tranzazzjonijiet. L-ewwel attentat fuq il-*Gold Card* m'ghaddiex ghax irrizulta li l-*PIN Number* ma kienx korrett; imma t-tieni attentat li sar ftit sekondi wara il-*PIN Number* kien korrett. Inqrat ic-cippa originali kollha kif immarkat fir-rapport.

⁹ A fol. 52-53

¹⁰ A fol. 57-58

Fil-kaz tal-*Cashlink Visa*, il-*PIN Number* kien skorrett jew ma kinux qed jaqrawh tajjeb.

Il-*Gold Card* hija *credit card* u l-*Cashlink* hija *debit card*. Li kieku min gibed il-flus ma kellux il-*PIN Number* kieku ma kienx ikun jista' jigbed il-flus ghaliex biex tigbed il-flus mill-*ATM* irid ikollok il-*PIN Number*. Il-*PIN Number* huwa *encrypted* mas-sistema u, ghalhekk, ghandu certa sigurtà.

Tghid li kieku ma ntuzax il-*PIN Number* ma kinetx issir it-tranzazzjoni.

Konsiderazzjoniet Ohra

Ipprezentat b'dawn iz-zewg verzjonijiet, l-Arbitru jrid jara liema wahda minnhom hija l-aktar verosimili bhala fatti. Il-provditur tas-servizz mhux qed jimputa li l-ilmentatur kien hu li gibed il-flus bil-*PIN Number* izda qed jghid li bilfors intuza l-*PIN Number* minn xi hadd biex setghu jingibdu l-flus ghax minghajr il-*PIN Number* l-*ATM* ma taghtikx flus.

Li ntuzax l-*PIN Number* gie ccertifikat mill-*Visa* u mhux mill-*BOV*. Ghalhekk ftit li xejn jista' jkun hemm dubju li l-*PIN Number* intuza.

Ghalhekk huwa verosimili wkoll li l-*PIN Number* kien fil-kartiera li nsterqet lill-ilmentatur. Huwa kwazi impossibbli li jintuza l-*PIN Number* li jkollu *cardholder* jekk dan ma jkunx ghad-dispozizzjoni ta' min ikun qed jaghmel il-gbid tal-flus. Veru li l-ewwel attentat li sar falla, però, t-tieni attentat sar ezatt fi ftit sekondi u, ghalhekk, min gibed il-flus seta' ha zball fin-numru fl-ewwel attentat, izda uza n-numru tajjeb fit-tieni attentat. U hekk baqa' jsir fl-attentati l-ohra.

L-Arbitru ma jaqbilx ma' dak li ssugeriet ix-xhud tal-provditur tas-servizz meta qalet li dwar il-*Cashlink* jew kien hemm *PIN Number* 'inkorrett jew li ma kinux qed jaqrawh tajjeb'.¹¹ Seta' kien hemm il-possibiltà wkoll li fil-kartiera kien hemm biss il-*PIN Number* tal-*Gold Card* u ma kienx hemm dak tal-*Cashlink*.

Però, l-mertu tal-kaz huwa dwar dak li nsteraq minn fuq il-*Visa Gold Card*.

¹¹ A fol. 58

L-Arbitru ma tantx jista' jkollu dubji li galadarba jirrizulta bi prova teknika li ntuza l-PIN Number tal-Visa Gold Card, l-istess PIN Number kien accessibbli ghal min uzah.

Il-Qafas Legali u Konsiderazzjonijiet Ohra

L-incident in kwistjoni sehh fil-15 t'April 2019, u l-ilment huwa bbazat fuq ir-rifjut tal-bank li jaghti *refund* ghall-ammont allegatament misruq lill-ilmentatur bil-Visa Gold Card f' dak il-jum.

Ghalhekk kienet dahlet fis-sehh il-Payments Services Directive 2 (PSD 2) u din id-direttiva li ddahlet ukoll fil-ligijiet taghna permezz ta' Directive 1¹² tal-Bank Centrali ta' Malta tipprovdi, fost ohrajn, diversi artikoli li jiddefinixxu l-obbligi kemm tal-konsumatur (*payer/payment user*) kif ukoll tal-banek.

L-Arbitru ser jaghmel biss referenza ghal dawk l-Artikoli li huma relevanti ghal dan il-kaz.

Il-konsumatur (*payer/payment user*), fost affarijiet ohra, ghandu dawn l-obbligi:

45. (1) The payment service user entitled to use a payment instrument shall:

(a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, which must be objective, non-discriminatory and proportionate;

(b) notify the payment service provider(s), or the entity specified by the latter, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

(2) For the purposes of Paragraph 45(1)(a), the payment service user shall, in particular, upon receipt of a payment instrument, take all reasonable steps to keep its personalised security credentials safe'.

Fost affarijiet ohra, il-bank ghandu :

46. (1) The payment service provider issuing a payment instrument shall:

¹²Directive No. 1 - The Provision and Use of Payment Services, li ddahlet bis-sahha tal-Kap. 204 tal-Ligijiet ta' Malta

(a) make sure that the personalised security credentials are not accessible to parties other than the payment service user that is entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Paragraph 45;

(b) refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;

(c) ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Paragraph 45(1)(b) or to request unblocking of the payment instrument pursuant to Paragraph 44(4);

(d) on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that the payment service user made a notification as referred to in Paragraph 46(1)(c);

(e) provide the payment service user with an option to make a notification pursuant to Paragraph 45(1)(b) free of charge and to charge, if at all, only replacement costs directly attributed to the payment instrument;

(f) prevent all use of the payment instrument once notification pursuant to Paragraph 45(1)(b) has been made.

(2) The payment service provider shall bear the risk of sending a payment instrument or any personalised security credentials relating to it to the payment service user.

Ma giex ippruvat li l-Bank ma qediex dawn l-obbligi.

Imbaghad, skont l-Art. 49 tal-istess *Directive*, il-bank huwa obbligat li jaghti rimbors lill-klijent jekk tkun saret tranzazzjoni minghajr l-awtorizzazzjoni tieghu sakemm ma jkunx hemm prova li l-konsumatur ikun agixxa b'mod fraudolenti.

Izda din l-eventwalità ghar-rimbors hija kkwalifikata bl-Art. 50 tal-istess *Directive* li, fost ohrajn, tghid illi jekk il-*card* tkun intuzat minn xi hadd li jkun seraqha lill-*cardholder* jew jekk tkun sehhet mizapproprjazzjoni, il-konsumatur ibati s-somma ta' €50.

Izda dan ma japplikax jekk:

'The payer shall bear all of the losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or failing to fulfil one or more of the obligations set out in Paragraph 45 with intent or gross negligence. In such cases, the maximum amount of EUR 50 shall not apply.'

Ghalhekk l-Arbitru jrid jara jekk l-ilmentatur agixxiex b'mod frawdolenti u jekk naqasx mill-osservanza fl-obbligi tieghu fl-uzu tal-card¹³ b'*intent jew gross negligence*'.

Mill-provi prodotti, l-Arbitru huwa konvint li m'hemm l-ebda dell fuq l-ilmentatur li seta' agixxa b'mod frawdolenti, jew li kellu xi intenzjoni li jitlef il-card jew li jghaddi l-uzu tal-PIN lil haddiehor. Ghalhekk tibqa' l-konsiderazzjoni wahdanija jekk fl-agir tieghu l-ilmentatur agixxiex bi *gross negligence*.

La fid-Direttiva tal-Unjoni Ewropea u lanqas fid-*Directive* tal-Bank Centrali m'hemm definizzjoni ta' x'inh *gross negligence*.

F'decizjonijiet ohra,¹⁴ l-Arbitru ghamel distinzjoni kif tintfieh *gross negligence* f'sistemi ta' *common law* bhar-Renju Unit u kif tintfieh f'pajjizi fejn tintuza l-ligi civili bhall-kaz taghna. L-Ingliزي jinterpretaw *gross negligence* bhala negligenza fi grad oghla minn negligenza normali. Fis-sistema taghna, il-Qrati interpretaw *gross negligence* fis-sens tal-*culpa lata* fejn ikun hemm, jew kwazi jkun hemm, element ta' *dolo*.

Barra minn hekk, f'kaz minnhom li ddecieda l-Arbitru, il-Kaz 007/2018, dan sehh meta kienet *in vigore* l-PSD1, filwaqt li l-kaz odjern sehh wara d-dhul fis-sehh tal-PSD2. Il-kaz l-iehor¹⁵ kien differenti wkoll ghaliex kien jittratta kaz ta' frodi.

Tajjeb jinghad li kemm il-PSD1 u anke l-PSD2 ma jaghtux definizzjoni ta' x'inh *gross negligence*, però, hemm differenza bejn iz-zewg Direttivi ghaliex filwaqt li fil-PSD1 ma tinghata l-ebda hjiel ta' x'jista' jwassal ghal *gross negligence*, fil-PSD2 iddahhal *recital*¹⁶ 72 li huwa f'dan is-sens:

¹³ Skont Art. 45

¹⁴ Kaz Nru. 007/2018

¹⁵ Kaz Nru. 152/2018

¹⁶ Preambolu jista' jkollu, qabel il-parti dizpozittiva ta' Direttiva, kemm *Citations* kif ukoll *Recitals*. L-iskop tar-*Recitals* huwa: '*Recitals set out the reasons for the contents of the enacting terms (i.e. the articles) of an act.* <http://publications.europa.eu/code/en/en-120200.htm>

*'In order to assess possible negligence or gross negligence on the part of the payment service user, account should be taken of all of the circumstances. The evidence and degree of alleged negligence should generally be evaluated according to national law. However, while the concept of negligence implies a breach of a duty of care, gross negligence should mean more than mere negligence, involving conduct exhibiting a significant degree of carelessness; **for example, keeping the credentials used to authorise a payment transaction beside the payment instrument in a format that is open and easily detectable by third parties.**'¹⁷ Contractual terms and conditions relating to the provision and use of a payment instrument, the effect of which would be to increase the burden of proof on the consumer or to reduce the burden of proof on the issuer should be considered to be null and void ...'*

F'dan il-preambolu, hemm ezempju identiku għall-kaz in ezami, u fejn xi hadd izomm il-PIN No. hdejn il-card jitqies skont dan il-preambolu li jkun agixxa bi *gross negligence*.

Hemm kontroversja x'sahha legali għandu preambolu f'Direttiva tal-Unjoni Ewropea. Però, il-linja generali, anke kif stabbilita mill-Qorti Ewropea, hija li l-preambolu m'għandux rabta legali (*binding force*):

'The preamble to a Community act has no binding legal force and cannot be relied on as a ground for derogating from the actual provisions of the act in question'.¹⁸

B'danakollu, il-preambolu jista' jintuza għal skop ta' interpretazzjoni li ma tistax tkun kuntrarja għall-provediment li jorbot fl-istess Direttiva.

Intqal li:

'Recitals can help to explain the purpose and intent behind a normative instrument. They can also be taken into account to resolve ambiguities in the legislative provisions to which they relate'.¹⁹

¹⁷ Enfasi tal-Arbitru

¹⁸ Case C-162/97, Nilsson, [1998] ECR I-7477, para. 54. As quoted in 19TH QUALITY OF LEGISLATION SEMINAR 'EU Legislative Drafting: Views from those applying EU law in the Member States' EUROPEAN COMMISSION SERVICE JURIDIQUE - QUALITY OF LEGISLATION TEAM Brussels, 3 July 2014, Complexity of EU law in the domestic implementing process.

¹⁹ Case C-244/95, Moskof, [1997] ECR I-6441, paras. 44-45, As quoted in footnote 18

Jintqal ukoll li:

'Recitals can help to establish the purpose of a provision²⁰ or its scope'.²¹

Ghalhekk, fil-kuntest ta' dan kollu, l-Arbitru jista' juza l-preambolu 72 tal-*PSD2 Directive* biex jinterpreta l-Artikolu 50 tad-*Directive 1* tal-Bank Centrali li tat effett lill-istess *PSD2 Directive* fil-ligi taghna.

Minn dan kollu jirrizulta, li **issa**, permezz tal-*PSD2 Directive*, li dahlet fis-sehh permezz tad-*Directive 1*, fit-18 ta' Jannar 2019, l-Arbitru jista' jifhem ahjar x'kellu f'mohhu l-legizlatur Ewropew bi *gross negligence* fil-kuntest biss ta' kazi fejn il-*cardholder* ikun halla l-*PIN No.* flimkien mal-*card*. Il-preambolu jsemmi din l-istanza biss u l-ebda eżempju iehor. F'kazi differenti ohra tista' tapplika l-interpretazzjoni tal-ligi domestika tal-Istat li jkun.

Ghalhekk, peress li jitqies li sehhet *gross negligence* min-naha tal-ilmentatur, il-Bank m'huwiex obligat li jirrestitwili l-flus li ngibdu bil-*VISA Gold Card*.

Ghaldaqstant l-Arbitru qed jichad l-ilment.

Minhabba n-natura novella ta' dan l-ilment kull parti thallas l-ispejjez taghha.

Dr Reno Borg
Arbitru ghas-Servizzi Finanzjarji

²⁰ *Case C-173/99 BECTU* [2001] ECR I-4881, *paras* 37-39), *op.cit*

²¹ *Case C-435/06, C* [2007] ECR I-10141, *paras.* 51-52), *op.cit*