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NOTE

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| From: | Presidency |
| To: | Delegations |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on interchange fees for card-based payment transactions - Presidency compromise |

Delegations will find hereby a Presidency compromise text on the above Commission proposal,
to be discussed at the 9 September Working party meeting.

With respect to the Commission's proposal, additions are set out in bold underlined font
and deletions are struck-through.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on interchange fees for card-based payment transactions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

Acting in accordance with the ordinary legislative procedure,

Whereas **[TO BE ADJUSTED AFTER THE DISCUSSION]**:

- (1) Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating direct and indirect obstacles to the proper functioning and completion of an integrated market for electronic payments, with no distinction between national and cross-border payments, is necessary for the proper functioning of the internal market.
- (2) Directive 2007/64/EC of the European Parliament and of the Council³ has provided a legal foundation for the creation of a Union-wide internal market for payments as it substantially facilitated the activity of payment service providers, creating uniform rules with respect to the provision of payment services.
- (3) Regulation (EC) No 924/2009 of the European Parliament and of the Council⁴ established the principle that charges paid by the users for a cross-border payment in euro are the same as for the corresponding payment within a Member State including card payments covered by this Regulation.

¹ OJ C , , p. .

² OJ C , , p. .

³ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

⁴ Regulation (EC) N° 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

- (4) Regulation (EC) No 260/2012 of the European Parliament and of the Council⁵ provided the rules for the functioning of credit transfers and direct debits in euro in the internal market but excluded card based payments from its scope.
- (5) Directive 2011/83/EU of the European Parliament and of the Council⁶ harmonizes certain rules on contracts concluded between consumers and traders, including rules on fees for the use of means of payment, on the basis of which Member States are to prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.
- (6) Secure, efficient, competitive and innovative electronic payments are crucial if consumers, retailers and companies are to enjoy the full benefits of the internal market, and increasingly so as the world moves towards *e-commerce*.
- (7) Preparation of legislation is under way in several Member States⁷ to regulate interchange fees, covering a number of issues, including caps on interchange fees at various levels, merchant fees, the Honour All Cards rules or steering measures. The existing administrative decisions in some Member States vary significantly. In view of the harmfulness of interchange fees to retailers and consumers, a further introduction of regulatory measures at national level aimed at addressing the level or divergencies of these fees is anticipated. Such national measures would be likely to lead to significant barriers to the completion of the internal market in the area of cards, internet and mobile payments based on cards and would therefore hinder the freedom to provide services.
- (8) Payment cards are the most frequently used electronic payment instrument for retail purchases. However, integration of the Union payment card market is far from complete as many payment solutions cannot develop beyond their national borders or new pan-Union providers are prevented from entering the market. The lack of market integration currently results in higher prices and less choice in payment services for consumers and retailers, and more limited opportunities to take advantage of the internal market. There is therefore a need to remove obstacles to the efficient functioning of the card market, including mobile and internet payments that are based on card transactions which still pose barriers to the deployment of a fully integrated market.

⁵ Regulation (EC) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

⁶ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

⁷ Italy, Hungary, Poland and the United Kingdom .

- (9) To enable the internal market to function effectively, the use of electronic payments should be promoted and facilitated to the benefit of retailers and consumers. Cards and other electronic payments can be used in a more versatile manner, including possibilities to pay online in order to take advantage of the internal market and e-commerce, whilst electronic payments also provide retailers with potentially secure payments. Card and card based payments instead of cash use could therefore be beneficial for retailers and consumers, provided the fees for the use of the payment systems are set at an economically efficient level, whilst contributing to innovation and market entry of new operators.
- (10) One of the key practices hindering the functioning of the internal market in card and card-based payments is the widespread existence of interchange fees, which are in most Member States not subject to any legislation. Interchange fees are inter-bank fees usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card transaction. Merchants in turn incorporate these card costs in the general prices of goods and services. Competition between card schemes appears in practice to be largely aimed at convincing as many issuing payment service providers (e.g. banks) as possible to issue their cards, which usually leads to *higher* rather than *lower* interchange fees on the market, in contrast with the usual price disciplining effect of competition in a market economy. Regulating interchange fees would improve the functioning of the internal market.
- (11) The currently existing wide variety of interchange fees and their level prevent the emergence of 'new' pan Union players on the basis of business models with lower interchange fees, to the detriment of potential economies of scale and scope and their resulting efficiencies. This has a negative impact on retailers and consumers and prevents innovation. As Pan-Union players would have to offer issuing banks as a minimum the highest level of interchange fee prevailing in the market they want to enter it also results in persisting market fragmentation. Existing domestic schemes with lower or no interchange fees may also be forced to exit the market because of the pressure from banks to obtain higher interchange fees revenues. As a result, consumers and merchants face restricted choice, higher prices and lower quality of payment services while their ability to use pan-Union payment solutions is restricted. In addition, retailers cannot overcome the fee differences by making use of card acceptance services offered by banks in other Member States. Specific rules applied by the payment schemes require the application of the interchange fee of the 'Point of Sale' (country of the retailer) for each payment transaction. This prevents acquiring banks from successfully offering their services on a cross border basis. It also prevents retailers from reducing their payment costs to the benefit of consumers.
- (12) The application of existing legislation by the Commission and national competition authorities has not been able to redress this situation.
- (13) Therefore, to avoid the fragmentation of the internal market and significant distortions of competition through diverging laws and administrative decisions, there is a need, in line with article 114 TFEU, to take measures to address the problem of high and divergent interchange fees, to allow payment service providers to provide their services on a cross-border basis and consumer and retailer to use cross-border services.

- (14) The application of this Regulation is without prejudice to the application of Union and national competition rules. It should not prevent Member States from maintaining or introducing lower caps or measures of equivalent object or effect through national legislation.
- (15) This Regulation follows a gradual approach. As a first step, it is necessary to take measures to facilitate cross-border issuing and acquiring of payment card transactions. Allowing merchants to choose an acquirer outside their own Member State ('cross border acquiring') and imposing a maximum level of cross border interchange fees for cross border acquired transactions should provide the necessary legal clarity. In addition, licences for issuing or acquiring of payment instruments should be valid without geographic restrictions within the Union. These measures would facilitate the smooth functioning of an internal market for card, internet and mobile payments, to the benefit of consumers and retailers.
- (16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card payment transactions in the Union are already carried out respecting the maximum interchanges fees applicable to the first phase of this Regulation. Therefore, the provisions relating to those transactions should enter into force quickly, creating opportunities for retailers to seek cheaper acquiring services cross-border, and incentivising domestic banking communities or schemes to lower their acquiring fees.
- (17) For domestic transactions, a transition period is necessary to provide payment services providers and schemes with time to adapt to the new requirements. Therefore, after a two year period following the entry into force of this Regulation and in order to provide for a completion of an internal market for card-based payments, the caps on interchange fees for consumer card transactions should be extended to cover all, cross-border and domestic payments.
- (18) In order to facilitate cross border acquiring all (*cross-border and domestic*) 'consumer' debit card transactions and *card based* payment transaction should have a maximum interchange fee of 0,20% and all (*cross-border and domestic*) consumer credit card transactions and *card based* payment transactions based on those should have a maximum interchange fee of 0.30%.
- (19) Those caps are based on the so-called 'Merchant Indifference Test' developed in economic literature, which identifies the fee level a merchant would be willing to pay if he were to compare the cost of the customer's use of a payment card with those of non-card (cash) payments (taking into account the fee for service paid to acquiring banks, *i.e.* the merchant service charge coming on top of the interchange fee). It thereby stimulates the use of efficient payment instruments through a promotion of those cards that provide higher transactional benefits, while at the same time preventing disproportionate merchant fees, which would impose hidden costs on other consumers. Excessive merchant fees might otherwise arise due to the collective interchange fee arrangements, as merchants are reluctant to turn down costly payment instruments for fear of losing business. Experience has shown that those levels are proportionate, as they do not call into question the operation of international card schemes and payment service providers. They also provide benefits for retailers and consumers and provide legal certainty.

- (20) This Regulation should cover all transactions where the payer's payment service provider and the payee's payment service provider are established in the Union.
- (21) In accordance with the principle of technological neutrality set out in the Digital Agenda for Europe, this Regulation should apply to card based payment transactions regardless of the environment in which this transaction takes place, including through retail payment instruments and services which can be off-line, on-line or mobile .
- (22) Payment card transactions are generally carried out on the basis of two main business models, so-called three party payment card schemes (cardholder – acquiring and issuing scheme - merchant) and four party payment card schemes (card holder- issuing bank- acquiring bank- merchant). Many four payment card party schemes are using an explicit interchange fee, mostly multilateral. Interchange fees (fees paid by acquiring banks to incentivise card issuing and card use) are implicit in three party payment card schemes. To acknowledge the existence of implicit interchange fees and contribute to the creation of a level playing field, three party payment card schemes using payment service providers as issuers or acquirers should be considered as four party payment card schemes and should follow the same rules, whilst transparency and other measures related to business rules should apply to all providers.
- (23) It is important to ensure that the provisions concerning the interchange fees to be paid or received by payment service providers are not circumvented by alternative flows of fees to issuing payment services providers. To avoid this, the "net compensation" of fees paid and received by the issuing payment service provider from a payment card scheme should be considered as the interchange fee. When calculating the interchange fee, for the purpose of checking whether circumvention is taking place the total amount of payments or incentives received by an issuing payment services provider from a payment card scheme with respect to the regulated transactions less the fees paid by the issuing payment services provider to the scheme should be taken into account. Payments, incentives and fees considered could be direct (i.e. volume-based or transaction-specific) or indirect (including marketing incentives, bonuses, rebates for meeting certain transaction volumes).
- (24) Consumers tend to be unaware of the fees paid by merchants for the payment instrument they use. At the same time, a series of incentivising practices applied by issuing payment service providers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments generating high fees for issuing payment service providers. To counter this, the measures imposing restrictions on interchange fees should only apply to payment cards that have become mass products and merchants generally have difficulty refusing due to their widespread issuance and use (i.e. consumer debit and credit cards). In order to enhance effective market functioning in the non-regulated parts of the sector and to limit the transfer of business from the regulated to the non-regulated parts of the sector, it is necessary to adopt a series of measures , including separation of scheme and infrastructure, steering of the payer by the payee and enable selective acceptance of payment instruments by the payee.

- (25) A separation of scheme and infrastructure should allow all processors to compete for customers of the schemes. As the cost of processing is a significant part of the total cost of card acceptance, it is important for this part of the value chain to be opened to effective competition. On the basis of the separation of scheme and infrastructure, card schemes and processing entities should be independent in terms of legal form, organisation and decision making process. They should not discriminate, for instance by providing each other with preferential treatment or privileged information which is not available to their competitors on their respective market segment, imposing excessive information requirements on their competitor in their respective market segment, cross-subsidizing their respective activities or having shared governance arrangements. Such discriminatory practises contribute to market fragmentation, negatively impact market entry by new players and prevent pan-Union players from emerging, hence hindering the completion of the internal market in cards, internet and mobile payments, to the detriment of retailers, companies and consumers.
- (26) Scheme rules applied by payment card schemes and practices applied by payment service providers tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by ‘blending’ fees or prohibiting merchants from choosing a cheaper card brand on co-branded cards or steering consumers to the use of such cheaper cards. Even if merchants are aware of the different costs, the scheme rules often prevent them from acting to reduce the fees.
- (27) Payment instruments entail different costs to the payee, with certain instruments being more expensive than others. Except where a payment instrument is imposed by law for certain categories of payments or cannot be refused due to its legal tender status, the payee should be free to steer payers towards the use of a specific payment instrument. Card schemes and payment services providers impose several restrictions on payees in this respect, examples of which include restrictions on the refusal by the payee of specific payment instruments for low amounts, on the provision of information to the payer on the fees incurred by the payee for specific payment instruments or limitation imposed on the payee of the number of tills in his shop accepting specific payment instruments. Those restrictions should be abolished.
- (28) In accordance with Article 55 of the proposal COM (2013) 547 the payee can steer the payer towards the use of a specific payment instrument. However, no charges should be requested by the payee for the use of payment instruments of which interchange fees are regulated within the scope of this Regulation, as in such situations the advantages of surcharging become limited while creating complexity in the market.

- (29) The Honour all Cards Rule is a twofold obligation imposed by issuing payment services providers and payment card schemes on payees to, on the one hand, accept all the cards of the same brand ('Honour all *Products*' - element), irrespective of the different costs of these cards, and on the other hand irrespective of the individual issuing bank which has issued the card ('Honour all *Issuers*' –element). It is in the interest of the consumer that for the same category of cards the payee cannot discriminate between issuers or cardholders, and payments schemes and payment service providers can impose such obligation on them. Therefore, although the 'Honour all *Issuers*' element of the Honour all Cards Rule is a justifiable rule within a payment card system, since it prevents that payees from discriminating between the individual banks which have issued a card, the 'Honour all *Products*' element is essentially a tying practice that has the effect of tying acceptance of low fee cards to acceptance of high fee cards. A removal of the 'Honour all *Products*' element of the Honour All Cards Rule would allow merchants to limit the choice of payment cards they offer to low(er) cost payment cards only, which would also benefit consumers through reduced merchants' costs. Merchants accepting debit cards would then not be forced also to accept credit cards, and those accepting credit cards would not be forced to accept commercial cards. However, to protect the consumer and his ability to use the payment cards as often as possible, merchants should be obliged to accept all cards that are subject to the same regulated interchange fee. Such a limitation would also result in a more competitive environment for cards with interchange fees not regulated under this Regulation, as merchants would gain more negotiating power as regards the conditions under which they accept such cards.
- (30) For the effective functioning of the limitations to the Honour All Cards Rule certain information is indispensable. First, payees should have the means to identify the different categories of cards. Therefore, the various categories should be identifiable visibly and electronically on the device. Secondly, also the payer should be informed about the acceptance of his payment instrument(s) at a given point of sale. It is necessary that any limitation on the use of a given brand to be announced by the payee to the payer at the same time and under the same conditions as the information that a given brand is accepted.
- (31) In order to ensure that redress is possible where this Regulation has been incorrectly applied, or where disputes occur between payment services users and payment services providers, Member States should establish adequate and effective out-of-court complaint and redress procedures. Member States should lay down rules on the penalties applicable to infringements of this Regulation and should ensure that those penalties are effective, proportionate and dissuasive and that they are applied.
- (32) Since the objectives of this Regulation, namely to lay down uniform requirements for payment card transactions and internet and mobile transactions based on the card payments, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (33) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to an effective remedy or to a fair trial, the freedom to conduct a business, consumer protection and has to be applied in accordance with those rights and principles.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1 *Scope*

1. This Regulation lays down uniform technical and business requirements for payment card transactions carried out within the Union, where both the payer's payment service provider and the payee's payment service provider are established therein.
2. This Regulation does not apply to payment instruments that can be used only within a limited network designed to address precise needs through payment instruments only to be used in a limited way, because they allow the specific instrument holder to acquire goods or services only in the premises of the issuer, within a limited network of service providers under a direct commercial agreement with a professional issuer, or because they can be used only to acquire a limited range of goods or services.
3. Chapter II does not apply to the following:
 - (a) transactions with commercial cards,
 - (b) cash withdrawals at automatic teller machines and
 - (c) transactions with cards issued by three party payment card schemes.
4. Article 7 does not apply to three party payment card schemes.

Article 2 *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'acquirer' means a payment service provider contracting ~~directly or indirectly~~ with a payee to **accept and process card transactions or card based payment transactions, which results in a transfer of funds to the payee** ~~the payee's payment transactions~~; **[Recital: [...] The acquiring of payment card services is irrespective of whether the acquirer is holding the funds on behalf of the payee. Moreover, technical services, such as the mere processing and storage of data or the operation of terminals, shall not constitute acquiring]**

- (2) 'issuer' means a payment service ~~provider~~ **providing the payer** ~~contracting directly or indirectly with a payment instrument payer to initiate, process [and settle] the payer's card payment transactions or card based payment transactions;~~ **[Recital: [...]] The issuing of payment card services is based on a contractual relationship between the issuer of the payment instrument and the payer, irrespective of whether the issuer is holding the funds on behalf of the payer. The issuer makes payment cards available to the payer, authorises transactions at terminals or equivalent and guarantees payment to the acquirer for transactions that are in conformity with the rules of the relevant scheme. Therefore, the mere distribution of payment cards or technical services, such as the mere processing and storage of data, shall not constitute issuing]**
- (3) 'consumer' means a natural person who, in payment service contracts covered by this Regulation, is acting for purposes other than the trade, business or profession of that person;
- (4) 'debit card transaction' means ~~a card payment transaction included with prepaid cards linked charged directly and immediately to the payer's a current or deposit access payment account [including the e-money account] -to which a transaction is debited provided that in less than or 48 hours after the transaction has been authorised/initiated.~~ **included with prepaid cards or a card based payment transaction included with prepaid cards linked charged directly and immediately to the payer's a current or deposit access payment account [including the e-money account] -to which a transaction is debited provided that**
- (5) 'credit card transaction' means ~~a card payment transaction~~ **or card based payment transaction** where the transaction is **debited to the payer in line with a pre-arranged credit facility settled more than 48 hours at pre-agreed dates** after the transaction has been authorised/initiated;
- (6) 'commercial card' means any payment cards issued to undertakings or public sector entities that are limited in use for business expenses of employees or civil servants ~~or cards issued to self-employed natural persons engaged in a business activity that are limited in use for business expenses of those self-employed natural persons or their employees~~ **where the payments made with such cards are charged to the account of the undertaking or public sector entity;**

[Recital: [...]] A clear distinction between consumer and commercial cards should be ensured by the payment service providers both on technical and commercial basis]

- (7) 'card based payment transaction' means a service used to complete a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a payment card transaction. Card based payment transactions exclude transactions based on other kinds of payment services.
- (8) 'cross-border payment transaction' means a card payment or card-based payment transaction ~~[initiated by a payer or by a payee where the payer's payment service provider and the payee's payment service provider are established in different Member States or]~~ **where the payment card or the card based payment instrument is issued by an issuing payment service provider established in a different Member State than that of the point of sale [or, in case of electronic commerce, than that of the acquiring payment service provider is established];**

- (8a) 'domestic payment transaction' means a card payment or card-based payment transaction that is not a cross-border payment transaction;**
- (9) 'interchange fee' means a fee paid for each transaction directly or indirectly (i.e. through a third party) between the payment service providers of the payer and of the payee involved in a payment card or a payment card-based transaction. **When calculating the amount of interchange fees, the net compensation will be considered as the interchange fee;**
- (9a) 'net compensation' means the total net amount of payments, rebates or incentives received by an issuing payment service provider from the payment card scheme, the acquirer or any other intermediary in relation to payment transactions or related activities;**
- (10) 'merchant service charge' means a fee paid by the payee to the acquirer for each **payment card or payment card based** transaction ~~comprising the interchange fee, the payment scheme and processing fee and the acquirer margin;~~
- (11) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (12) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
- (13) 'payment card scheme' means a single set of rules, practices, standards and/or implementation guidelines for the execution of payment transactions across the Union and within Member States, ~~and~~ which is separated from any infrastructure or payment system that supports its operation, **and which is represented by specific decision making bodies, organisations or entities accountable for the functioning of the scheme;**
- (14) 'four party payment card scheme' means a payment card scheme in which payments are made from the payment account of a ~~cardholder~~ **payer** to the payment account of a payee through the intermediation of the scheme, a payment card issuing payment services provider (on the ~~payer~~ **cardholder**'s side) and an acquiring payment services provider (on the payee's side), and *card based* transactions based on the same structure;
- (15) 'three party payment card scheme' means a payment card scheme in which payments are made from a payment account held by the scheme on behalf of the ~~cardholder~~ **payer** to a payment account held by the scheme on behalf of the payee, and *card based* transactions based on the same structure. When a three party payment card scheme licenses other payment service providers for the issuance and/or the acquiring of payment cards, ~~it is~~ considered as a four party payment card scheme;

- (16) 'payment instrument' means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user, or in its behalf, in order to initiate a payment order;
- (17) 'card-based payment instrument' means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate application, used by the payer to initiate a payment order which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012. ;
- ~~(18) 'payment application' means a computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;~~
- (18a) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;**
- (19) 'payment order' means any instruction by a payer to his payment service provider requesting the execution of a payment transaction;
- (20) 'payment card transaction' means a payment transaction made with a payment card or using the infrastructure of a payment card transaction and based on the business rules of a payment card transaction;
- (21) 'payment service provider' means natural or legal persons authorized to provide the payment services ~~provider~~ listed in the annex of Directive 2007/64/EC. A payment service provider can be an issuer or an acquirer or both;
- (22) 'payment service user' means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;
- (23) 'payment transaction' means an action, initiated by the payer or on his behalf or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee;
- (24) 'processing' means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer. ;
- (25) 'processing entity' means any natural or legal person providing payment transaction processing services;

Chapter II

INTERCHANGE FEES

Article 3

Interchange fees for ~~cross-border~~ consumer debit ~~or credit~~ card transactions

1. With effect from ~~two~~ **[x]** months after the entry into force of this Regulation, payment services providers shall not offer or request for **any** ~~cross-border~~ debit card transactions a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction **(*)**.
2. **Member States may decide to maintain or introduce caps lower than those mentioned in paragraphs 1 or measures of equivalent object or effect for interchange fees in relation to domestic payment card transactions.**

(*) Further issue to be discussed is concerning with the opportunity to adopt a flat/fixed interchange fee model for domestic debit card transactions. Moreover some Member States expressed some additional remarks concerning with the small value payments regime (see below the text in the squared brackets). To this purpose, a possible solution may be addressed as follows:

Member States may decide to allow debit card schemes to apply a fixed interchange fee *per transaction* no higher than 0,07 eurocents in relation to domestic payment card transactions.

The per transaction interchange fee or other agreed remuneration with an equivalent object or effect shall not exceed the lower amount of 7 eurocents [or 0,2 % of the value of the transaction].

If the amount of the transaction does not exceed 20 euros, the per transaction interchange fee or other agreed remuneration with an equivalent object or effect shall not be higher than 0.1% of the value of the transaction.

2. ~~With effect from two months after the entry into force of this Regulation, payment services providers shall not offer or request for cross-border credit card transactions a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction.~~

Article 4
Interchange fees for all consumer ~~debit or~~ credit card transactions

1. With effect from ~~two years~~ **[x] months** after the entry into force of this Regulation, payment service providers shall not offer or request a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than ~~0,2~~ **0,3** % of the value of the transaction for any debit card based transactions.
2. **Member States may decide to maintain or introduce caps lower than those mentioned in paragraph 1 or measures of equivalent object or effect for interchange in relation to domestic payment card transactions.**

~~*With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a per transaction interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction for any credit card based transactions.*~~

Article 5
Prohibition of circumvention

1. For the purposes of the application of the caps referred to in Article 3 and Article 4, any net compensation received by an issuer from the payment card scheme in relation to payment transactions or related activities shall be treated as part of the interchange fee.

[Recital: It is important to ensure that the provisions concerning the interchange fees to be paid or received by payment service providers are not circumvented by alternative flows of fees to issuing payment services providers, also considering three party schemes with licensees. To avoid this, the "net compensation" of fees paid and directly or indirectly (i.e. a third-party) received by the issuing payment service provider from a payment card scheme should be considered as the interchange fee. When calculating the interchange fee, for the purpose of checking whether circumvention is taking place the total amount of payments or incentives received by an issuer from a payment card scheme, the acquirer or any intermediary with respect to the card transactions minus the fees paid by the issuer to these scheme should be taken into account. If the same payment service provider is issuing and acquiring transactions from a given scheme, the net compensation will be considered as deriving only from the consolidated interchange fees accruing to the issuing side. Payments, incentives and fees considered could be direct (i.e. volume-based or transaction-specific) or indirect (including marketing incentives,

bonuses, rebates for meeting certain transaction volumes). When checking whether circumvention of this Regulation is taking place, the profit of payment card issuers resulting from special incentive programmes carried out jointly by payment card issuers and payment card schemes, and revenues from processing, licensing and other fees providing revenues to card schemes should, in particular, be taken into account.

- ~~2. For the purposes of the application of the caps referred to in Article 3 and Article 4, any net compensation received by an issuing bank from a payment card scheme in relation to payment transactions or related activities shall be treated as part of the interchange fee.~~

Chapter III

BUSINESS RULES

Article 6 Licensing

1. Any territorial restrictions within the Union or rules with an equivalent effect in licensing agreements for issuing payment cards or acquiring payment card transactions shall be prohibited.
2. Any territorial restrictions within the Union or rules with an equivalent effect in four party payment card scheme rules shall be prohibited.
3. Any requirement or obligation to obtain a country specific licence or authorisation to operate on a cross-border basis or rule with an equivalent effect in licensing agreements for issuing payment cards or acquiring payment card transactions shall be prohibited.
4. Any requirement or obligation to obtain a country specific licence or authorisation to operate on a cross-border basis or rules with an equivalent effect in four party payment card schemes rules shall be prohibited.

Article 7
Separation of payment card scheme and processing entities

1. **With effect from [x] months after the entry into force of this Regulation, ~~P~~payment card schemes and processing entities shall be independent ~~separated~~ in terms of ~~accounting and~~ legal form, organisation and decision making. Payment card schemes shall not present their prices for payment card scheme and processing activities in a bundled manner, and shall not cross-subsidise these activities.** They shall not discriminate in any way between their subsidiaries or shareholders on the one hand and users of these schemes and other contractual partners on the other hand and shall not in particular make the provision of any service they offer conditional in any way on the acceptance by their contractual party of any other service they offer. **[Recital: In addition, they should keep separate accounts for the activities associated with scheme and the activities associated with processing business in the same manner, as would be the case if these activities were carried out by legally independent companies]**

With effect from [3] years after the entry into force of this Regulation, payment card schemes and processing entities shall also be separated in terms of legal form and decision making process. [Recital: Legal separation does not imply full ownership separation; therefore the payment card scheme and processing entity may be part of the same holding structure] (*)

2. Payment card schemes shall allow for the possibility that authorisation and clearing messages of single card transactions be separated and processed by different processing entities.
3. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.
4. **With effect from [x] months after the entry into force of this Regulation, ~~P~~processing entities within the Union shall ensure that their system is technically interoperable with other systems of processing entities within the Union through the use of standards developed by international or European standardisation bodies. In addition, processing entities shall not adopt or apply business rules that restrict interoperability with other processing entities within the Union.**

(*) A further issue to be discussed is concerning with the possibility that card schemes may appoint a Trustee entrusted with the task of monitoring on a regular basis compliance with the above provisions with no legal separation.

Article 8
Co-badging and choice of application ()*

1. Any schemes rules and rules in licensing agreements that hinder or prevent an issuer from co-badging two or more different brands of payment instruments on a card, telecommunication, digital or IT device shall be prohibited.
2. Any difference in treatment of issuers or acquirers in schemes rules and rules in licensing agreements concerning co-badging on a card, telecommunication, digital or IT device shall be objectively justified and non-discriminatory.
3. Payment card schemes shall not impose reporting requirements, obligations to pay fees or other obligations with the same object or effect on card issuing and acquiring payment services providers for transactions carried out with any device on which their brand is present in relation to transactions for which their scheme is not used.
4. Any routing principles aimed at directing transactions through a specific channel or process and other technical and security standards and requirements with respect to the handling of more than one payment card brand on a card, telecommunication, digital or IT device shall be non-discriminatory and shall be applied in a non-discriminatory manner.
5. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale.
6. Payment card schemes, issuers, acquirers, **[payees], processing entities and other technical service providers** and ~~payment card handling infrastructure providers~~ shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of application by the payer when using a co-badged payment instrument.

(*) The Commission believe that it is important to remove the power of the card schemes to limit co-badging, especially when cards will be replaced by mobile wallet, etc. However, some Member States has expressed some concern about the risk of excessive regulatory burden in some provisions (i.e. art. 8.1). The issue needs to be discussed during the meeting.

Article 9
Unblending

1. Acquirers shall offer and charge payees ~~individually specified~~ merchant service charges **individually specified** for different categories and different brands of payment cards unless merchants request in writing acquiring payment services providers to charge blended merchant services charges.
2. **With effect from [x] month after the entry into force of this Regulation,** Agreements between acquiring payment services providers and payees shall include individually specified information on the amount of the merchant services charges **and** interchange fees ~~and scheme fees~~ applicable with respect to each category and brand of payment cards.

[Recital: [...] ‘unblending’ results in a transparent pricing mechanism in which differences in fees of schemes, brands or products should be reflected in the merchant fees applied by the acquirer]

Article 10
Honour All Card rules

1. **If payees accept debit cards from a given brand or scheme, they shall accept all debit cards issued by the same and other card issuing payment service providers. If payees accept consumer credit cards from a given brand or scheme, they shall accept all consumer credit cards issued by the same and other issuing payment service providers** ~~Payment schemes and payment service providers shall not apply any rule that may oblige payees accepting cards and other payment instruments issued by one issuing payment service provider within the framework of a payment instruments scheme to also accept other payment instruments of the same brand and/or category issued by other issuing payment service providers within the framework of the same scheme, except if they are subject to the same regulated interchange fee.~~
- 1a. Payment schemes and payment service providers shall not apply any other rule that may oblige payees accepting cards subject to a regulated interchange fee and other payment instruments issued within the framework of a scheme to accept cards and other payment instruments that are subject to different levels of regulated interchange fee or remain outside the scope of Chapter II.**
2. The restriction of Honour all card rules referred to in paragraph 1 is without prejudice to the possibility for payments schemes and payment service providers to provide that ~~certain~~ cards may not be refused on the basis of the identity of the issuing payment service provider or of the cardholder.

3. Merchants deciding not to accept all cards or other payment instruments of a payment card scheme shall inform consumers in a clear and unequivocal manner at the same time as they inform the consumer on the acceptance of other cards and payment instruments of the scheme. That information shall either be displayed prominently at the entrance of the shop, at the till or on the website or other applicable electronic or mobile medium, ~~and or~~ shall be provided to the payer in good time before he enters into a purchase agreement with the payee.
4. Issuing payment service providers shall ensure that their payment instruments are visibly and electronically identifiable, enabling payees to identify unequivocally which brands and categories of prepaid, debit, credit or commercial cards or card based payments based on these are chosen by the payer.

Article 11 *Steering rules*

1. Any rule in licensing agreements, scheme rules applied by payment card schemes and in agreements entered into between card acquiring payment services providers and payees preventing payees from steering consumers to the use of any payment instrument preferred by the payee shall be prohibited. This prohibition shall also cover any rule prohibiting payees from treating payment devices of a given scheme more or less favourably than others.
2. Any rule in licensing agreements, scheme rules applied by payment card schemes and in agreements entered into between card acquiring payment services providers and payees preventing payees from informing payers about interchange fees and merchant service charges shall be prohibited.
3. Paragraphs 1 and 2 are without prejudice to the rules on charges, reductions or other steering set out in Article 55 of the proposal COM (2013)547 and in Article 19 of Directive 2011/83/EU⁸.

Article 12 *Information to the payee on individual payment transactions*

1. After the execution of an individual card payment transaction or card based payment transaction, the payee's payment service provider shall provide the payee with the following information:
 - (a) the reference enabling the payee to identify the payment transaction;
 - (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;

⁸ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights...

- (c) the amount of any charges for the payment transaction, indicating separately the amount of the interchange fee.

With the payee's prior and explicit consent the information referred to in the first subparagraph may be aggregated by brand, application, payment instrument categories and rates of interchange fees applicable to the transaction.

- 2. Contracts between acquirers and payees may include a provision that the information referred to in the first subparagraph of paragraph 1 shall be provided or made available periodically, at least once a month, and in an agreed manner which allows payees to store and reproduce information unchanged.

Chapter IV

FINAL PROVISIONS

Article 13 *Competent authorities*

1. Member States shall designate competent authorities that are empowered to ensure enforcement of this Regulation and that are granted investigation and enforcement powers.
2. Member States may designate existing bodies to act as competent authorities.
3. Member States may designate ~~different~~ **one or more** competent authorities.
4. Member States shall notify the Commission of those competent authorities by ~~two~~ **x** months after the entry into force of this Regulation. They shall notify the Commission without delay of any subsequent change concerning those authorities.
5. The designated competent authorities referred to in paragraph 1 shall have adequate resources for the performance of their duties.
6. Member States shall require the competent authorities to monitor compliance with this Regulation effectively and take all necessary measures to ensure such compliance.
7. Member States shall ensure that the designations referred to in paragraph 1 are subject to the right of appeal.

Article 14 *Sanctions*

1. Member States shall lay down rules on the sanctions applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. Such sanctions shall be effective, proportionate and dissuasive.
2. Member States shall notify those provisions to the Commission by ~~two~~ **x** months after the entry into force of this Regulation and shall notify without delay of any subsequent amendment affecting them.

Article 15
Settlement, out of court complaints and redress procedures

1. Member States shall establish adequate and effective out-of-court complaint and redress procedures for the settlement of disputes arising under this Regulation between payees and their payment service providers. For those purposes, Member States shall designate existing bodies, where appropriate, or establish new bodies.
2. Member States shall notify the Commission of those bodies by two years after the entry into force of this Regulation. They shall notify the Commission without delay of any subsequent change concerning those bodies.

Article 16
Review clause

Four years after the entry into force of this Regulation, the Commission shall present to the European Parliament and to the Council a report on the application of this Regulation. The Commission's report shall look in particular at **the appropriateness of the levels of separation between payment card schemes and processing entities,** the ~~_~~appropriateness of the levels of interchange fees **and the inclusion in the scope of this Regulation of the commercial cards** ~~-and at~~ steering mechanisms such as **sur**charges, taking into account the use and cost of the various means of payments and the level of entry of new players and new technology on the market.

Article 17
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President