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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)
Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges
- Confirmation of the final compromise text with a view to agreement

1. On 28 March 2018, the Commission submitted to the Council and the European Parliament a Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges.
2. The European Economic and Social Committee delivered its opinion on 16 July 2018¹. The European Central Bank delivered its opinion on 31 August 2018².
3. At its meeting on 27 June 2018, the Permanent Representatives Committee confirmed the mandate to start negotiations with the European Parliament on the amended text of the proposal for a Regulation as laid down in doc. 10345/18.

¹ Doc. 11242/18

² Doc. 12247/18

4. The European Parliament adopted its report in the Plenary meeting on 14 November 2018. On that basis, the Austrian Presidency has conducted negotiations with the European Parliament and the Commission with a view to a first reading agreement.
5. On 11 December 2018, and following the technical work thereafter, a provisional agreement was reached which resulted in the final compromise text as set out in the annex to this note.
6. Against this background, the Permanent Representatives Committee is invited to:
 - approve the text of the proposal for a Regulation as set out in annex to this note with a view to reaching an agreement at first reading with the European Parliament; and
 - give to the Chairman of the Permanent Representatives Committee the mandate to inform the Chair of the European Parliament's Economic and Monetary Affairs Committee that, should the European Parliament adopt the text of the proposal in the exact form as set out in Annex, the Council would adopt the proposed Regulation thus amended, subject to legal-linguistic revision by both Institutions.

ANNEX

**Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments
in the Union and currency conversion charges
(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 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 Central Bank,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

³ OJ C , , p. .

- (1) Since the adoption of, first, Regulation (EC) No 2560/2001 of the European Parliament and of the Council⁴ and subsequently Regulation (EC) No 924/2009 of the European Parliament and of the Council⁵, charges for cross-border payments in euro between Member States of the euro area have strongly decreased to levels that are insignificant in the vast majority of cases.
- (2) Cross-border payments in euro from non-euro area Member States however account for around 80% of all cross-border payments from non-euro area Member States. The charges for those specific cross-border payments remain excessively high in most non-euro area Member States, even though payment service providers have access to the same efficient infrastructures to process those transactions at very low costs as payment service providers from the euro area.
- (3) High charges for cross-border payments remain a barrier to the full integration into the single market of businesses and citizens in non-euro area Member States, affecting their competitiveness. Those high charges perpetuate the existence of two categories of payment service users in the Union: on the one hand payment service users, the vast majority of which benefit from the single euro payments area ('SEPA'), and on the other hand, payment service users that pay high costs for their cross-border payments in euro.
- (4) In order to facilitate the functioning of the Single Market and end the barriers between payment service users in the euro area and non-euro area Member States in respect of cross-border payments in euro, it is necessary to ensure that charges for cross-border payments in euro within the Union are aligned with charges for national payments made in the national currency of the Member State where the payment service provider of the payment service user is located. A payment service provider is considered located in the Member State where it provides its services to the payment services user.

⁴ **Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro** (OJ L 344, 28.12.2001, p. 13).

⁵ **Regulation (EC) No 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).

- (5) Currency conversion charges represent a significant cost of cross-border payments when different currencies are in use in the Member States of the payer and of the payee. Article 45 of Directive (EU) 2015/2366 of the European Parliament and of the Council requires transparency of charges and of the exchange rate used prior to the initiation of a payment transaction, while Article 52(3) of that Directive specifies information obligations when the payment transaction is covered by a framework contract, and article 59(2) covers the information requirement for parties offering currency conversion services at a point of sale (POS) or an automatic teller machine (ATM). These information requirements have not achieved sufficient transparency and comparability of the charges of currency conversion services when alternative currency conversion options are offered at a point of sale or at an automated teller machine (ATM). This lack of transparency and comparability prevents competition from bringing down currency conversion charges and increases the risk of payers choosing expensive currency conversion options. It is therefore necessary to introduce additional measures in order to protect consumers against excessive charges for currency conversion services and ensure that consumers are given the information they need to choose the best currency conversion option.
- (6) The measures to be implemented should be appropriate, adequate and cost-effective to avoid that market players are confronted with disproportionate investments to adapt their payment infrastructures, equipments and processes to provide for increased transparency. At the same time, in situations where the payer is confronted with different currency conversion options at the POS or at an ATM, the information provided should allow for comparability to allow the payer to make an informed choice.
- (6a) To achieve comparability, currency conversion charges for all card-based payments should be expressed in the same way, namely as a percentage mark-up over the latest available euro foreign exchange reference rate issued by the ECB. The mark-up might have to be based on a rate derived from two ECB rates in the case of a conversion between two non-euro currencies.

(6b) In line with the general information obligations with regard to currency conversion charges that follow from Directive 2015/2366, the providers must disclose the information on their currency conversion charges prior to the initiation of the payment transaction. Parties that offer currency conversion services at the POS or the ATM should provide this information in a clear and accessible manner, for example by displaying their charges at the counter on a placard or digitally on the terminal or on screen in case of online purchases. In line with Article 59(2) of Directive 2015/2366, these parties should also provide, prior to the initiation of the payment, explicit information on the amount of the transaction in the currency used by the payee and the total amount to be paid after currency conversion in the currency of the payer's account. The amount to be paid in the currency used by the payee should express the price of the goods and services to be bought and could be displayed on the check-out rather than the payment terminal. The currency used by the payee will in general be the local currency but according to the principle of contractual freedom could in some cases also be another EU currency. The total amount to be paid in the currency of the payer's account should consist of the price of the goods or services, and the currency conversion charges. In addition, both amounts should be documented on the receipt or on another durable medium.

(6ba) With regard to Article 59 (2) of Directive (EU) 2015/2366, where a currency conversion service is offered at a POS or ATM, it should be possible for the payer to refuse that service and to pay in the currency used by the payee instead.

(6bb) In order to enable payers to compare the charges of currency conversion options at the POS or ATM, payers' payment service providers should not only include fully comparable information on their applicable charges for currency conversion in their terms and conditions of their framework contract, but also make this information publicly available in a broadly available and easily accessible electronic platform, in particular, on their customer websites, on their home-banking website and on their mobile banking application in an easily understandable and accessible manner. This will cater for the development of comparison websites to facilitate price comparison for consumers when travelling or shopping abroad. In addition, payers' payment service providers should remind the payer about their applicable currency conversion charges when a card-based payment is made in another currency, through the use of appropriate and widely used electronic communication channels, such as SMS messages, e-mails or push notifications through the payer's mobile banking application. PSPs should agree with PSUs through which electronic communication channel they will provide the information on the currency conversion charges, taking into consideration the most efficient channel to be able to reach the payer. PSPs should also accept requests from PSUs to opt-out from receiving the electronic messages containing information on the currency conversion charges.

(6bc) Periodic reminders are appropriate to cater for situations in which the payer stays abroad for longer periods of time for example in the case of posting or studies or is regularly using a card for payments in that particular currency for online purchases. This information obligation does not require disproportionate investments in adapting the existing business processes and payment processing infrastructures of the payment service providers, and will ensure enhanced awareness of the payer when considering the different currency conversion options.

- (7a) The Commission should submit to the European Parliament, the Council, the European Central Bank and the European Economic and Social Committee a report on the application of the rule equalising the cost of cross-border payments in euro with the cost of national transactions in national currencies and on the effectiveness of the information obligations in this Regulation on currency conversion. The Commission should also analyse further possibilities and their technical feasibility to extend the equal charges rule to all EU currencies, to further improve the transparency and comparability of currency conversion costs and of the possibility of disabling and enabling the option of accepting currency conversion by parties other than the payer's payment service provider.
- (9) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the cross-border nature of the payments, 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,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 924/2009

Regulation (EC) No 924/2009 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. This Regulation lays down rules on cross-border payments and on transparency of currency conversion charges within the Union”,

(b) in paragraph 2, the following second subparagraph is added:

Articles 3a and 3b shall apply to national and cross-border payments denominated either in euro or in a national currency of a Member State other than the euro and involving a currency conversion service.

(1a) in Article 2, point (9) is replaced by the following:

“(9) “charge” means an amount levied on a payment service user by a payment service provider and directly or indirectly linked to a payment transaction, any amount levied on a payment service user by a payment service provider or a party providing currency conversion services in accordance with Article 59(2) of Directive 2015/2366 for a currency conversion service, or a combination thereof.”

(2) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Charges levied by a payment service provider on a payment service user in respect of cross-border payments in euro shall be the same as the charges levied by that payment service provider for corresponding national payments of the same value in the national currency of the Member State where the payment service provider of the payment service user is located.”

(b) the following paragraph 1a is inserted:

“1a. Charges levied by a payment service provider on a payment service user in respect of cross-border payments in the national currency of a Member State that has notified its decision to extend the application of this Regulation to its national currency in accordance with Article 14, shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency.”,

(c) paragraph 3 is deleted,

(d) paragraph 4 is replaced by the following:

“4. Charges referred to in paragraphs 1 and 1a shall not cover currency conversion charges.”;

(3) the following Article 3a is inserted:

“Article 3a

Currency conversion charges related to card-based transactions

1. With regard to the information obligations on currency conversion charges and the applicable exchange rate, as set out in Articles 45(1), 52(3) and 59(2) of Directive (EU) 2015/2366, payment service providers, and parties providing currency conversion services at an ATM or point of sale as referred to Article 59(2), shall express the total currency conversion charges as a percentage mark-up over the latest available euro foreign exchange reference rates issued by the ECB. Those percentage mark-ups shall be disclosed to the payer prior to the initiation of the payment transaction. The payer's payment service provider shall also make those mark-ups publicly available in a comprehensible and easily accessible manner on a broadly available and easily accessible electronic platform.
2. In addition to the information referred to in paragraph 1, the party providing the currency conversion service at the ATM or at the point of sale shall provide the payer with the following information prior to the initiation of the payment transaction:
 - (a) the amount to be paid to the payee in the currency used by the payee;
 - (b) the amount to be paid by the payer in the currency of the payer's account.
3. The party providing currency conversion services at the ATM or at the point of sale shall display clearly at the ATM or point of sale the information referred to in paragraph 1. Upon making the payer aware of these charges, it shall inform the payer of the possibility of paying in the currency used by the payee and of having the currency conversion consequently done by the payer's payment service provider. The information on currency conversion charges referred to in paragraph 2 and in this paragraph shall be made available to the payer on a durable medium.

3a. The payer's payment service provider shall send to the payer an electronic message with the information referred to in paragraph 1, for each payment card issued to the payer by the payer's payment service provider and linked to the same account without undue delay after the payment service provider of the payer receives a payment order denominated in a given EU currency, different from the one of the payer's account, for a payment at a point of sale, or a cash withdrawal at an ATM.

Notwithstanding the first subparagraph, such a message shall be sent again once in every month that the payer's payment service provider receives a payment order from the payer denominated in that currency .

The payment service provider shall agree with the payment service user through which broadly available and easily accessible electronic communication channel or channels it will provide the information referred to in paragraph 1.

The payment service provider shall offer payment service users the possibility to opt out from receiving the electronic messages referred to in the first and second subparagraphs.

The parties may agree that this paragraph shall not apply in whole or in part when the payment service user is not a consumer.

4. The information referred in paragraphs 1 to 3a shall be provided in a neutral and comprehensible manner. The information shall be provided free of charge.

(4a) The following Article 3b is inserted:

"Article 3b

Currency conversion charges related to credit transfers

1. When a currency conversion service is offered by the payer's payment service provider in relation to a credit transfer, as defined in point 24 of Article 4 of Directive 2015/2366, that is initiated online directly at the website or at the application of the payment service provider, the payment service provider shall, in accordance with Articles 45(1) and 52(3) of that Directive inform the payer, in a clear, neutral and comprehensible manner, of the estimated charges for currency conversion services applicable to the credit transfer prior to the initiation of the transaction.
2. The payment service provider shall disclose the estimated total amount of the credit transfer in the currency of the payer's account, including any transaction fee and any currency conversion charges. That amount shall be communicated in a clear and neutral manner to the payer. The payment service provider shall also disclose the estimated amount to be transferred to the payee in the currency of the payee's account.

(5) Article 15 is replaced by the following:

“Article 15

Review

- (1) By [36 months after entry into force of this Regulation] the Commission shall present to the European Parliament, the Council, the European Central Bank and the European Economic and Social Committee a report on the application and impact of this Regulation, which shall contain, in particular, an evaluation of:
 - (a) the way payment service providers apply Article 3;

- (b) the development of volumes and charges for national and cross-border payments in national currencies of Member States and in euro since the adoption of this Regulation;
- (c) the impact of Article 3 on the development of currency conversion charges and other payment services related charges, both to payers and payees;
- (d) the estimated impact of amending Article 3(1) of this Regulation to cover all currencies of Member States of the Union;
- (e) how providers of currency conversion services apply the information requirements laid down in Articles 3a and 3b of this Regulation and the national legislation implementing Articles 45(1), 52(3) and 59(2) of Directive (EU) 2015/2366, and whether these rules have enhanced the transparency of currency conversion charges ;
- (f) whether and to what extent providers of currency conversion services have faced difficulties with the practical application of Articles 3a and 3b of this Regulation and the national legislation implementing Articles 45(1) and 52(3), 59(2) of Directive (EU) 2015/2366;
- (g) A cost-benefit analysis of communication channels and technologies that can be used by, or are available to providers of currency conversion services and that can further improve transparency of currency conversion charges, including whether there are certain channels which payment service providers should be required to offer for the sending of the information referred to in Article 3a. This analysis shall also include an assessment of the technical feasibility of disclosing the information in Article 3a paragraph 2 and 3 simultaneously prior to the transactions for all currency conversion options available at an ATM or at the point of sale;

- (h) A cost-benefit analysis of introducing the possibility for card-holders to block the option of currency conversion offered by a party other than the payer's payment service provider at an ATM or at a point of sale and to change their preferences in this regard;
 - (i) A cost-benefit analysis of introducing a requirement for the payer's payment service provider providing currency conversion services in relation to an individual payment transaction, to apply the currency conversion rate applicable at the moment of initiation of the transaction when clearing and settling the transaction.
- (2) The report referred to in paragraph (1) shall cover at least the period from 15 December 2019 until [30 months after the date of entry into force of this Regulation]. It shall take account of the specificities of various payment transactions, distinguishing in particular transactions initiated at an ATM and at a point of sale as defined in point (29) of Article 2 of Regulation (EU) 2015/751.

For its report, the Commission shall be allowed to make use of the data collected by the Member States during the reporting period in relation to paragraph 1.

Article 2

1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 15 December 2019, except for the following:
 - (a) Article 1(5) shall apply from [date of entry into force of this regulation];
 - (b) Article 1(3) and (4a), as regards paragraphs 1 to 3 of Article 3a and Article 3b of Regulation 924/2009 shall apply from [12 months from the date of entry into force of this regulation].
 - (c) Article 1(3) as regards paragraph 3a of Article 3a of Regulation 924/2009 shall apply from [24 months from the date of entry into force of this regulation].
 - (d) Article 1(3) as regards paragraph 4 of Article 3a of Regulation 924/2009 insofar as it relates to paragraphs 1 to 3 of Article 3a of that Regulation shall apply from [12 months from the date of entry into force of this regulation].
 - (e) Article 1(3) as regards paragraph 4 of Article 3a of Regulation 924/2009 insofar as it relates to paragraph 3a of Article 3a of that Regulation shall apply from [24 months from the date of entry into force of this regulation].

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

Done at Brussels,
