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#### **INFORMATION NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading, (Strasbourg, 11 to 14 February 2019)

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#### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Eva MAYDELL (EPP, BG), presented a compromise amendment (amendment 2) to the proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

## II. VOTE

When it voted on 14 February 2019, the plenary adopted the compromise amendment (amendment 2) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

## **Charges on cross-border payments in the Union and currency conversion charges \*\*\*I**

**European Parliament legislative resolution of 14 February 2019 on the 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 (COM(2018)0163 – C8-0129/2018 – 2018/0076(COD))**

### **(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0163),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0129/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Central Bank of 31 August 2018<sup>3</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 11 July 2018<sup>4</sup>,
  - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 19 December 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0360/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>3</sup> OJ C 382, 23.10.2018, p. 7.

<sup>4</sup> OJ C 367, 10.10.2018, p. 28.

**Position of the European Parliament adopted at first reading on 14 February 2019 with a view to the adoption of Regulation (EU) 2019/... 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<sup>5</sup>,***

Having regard to the opinion of the European Economic and Social Committee<sup>6</sup>,

Acting in accordance with the ordinary legislative procedure<sup>7</sup>,

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<sup>5</sup> OJ C 382, 23.10.2018, p. 7.

<sup>6</sup> OJ C 367, 10.10.2018, p. 28.

<sup>7</sup> Position of the European Parliament of 14 February 2019.

Whereas:

- (1) Since the adoption of ■ Regulations (EC) No 2560/2001<sup>8</sup> and ■ (EC) No 924/2009<sup>9</sup> of the European Parliament and of the Council, 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 ***such*** cross-border payments remain ***excessively*** high ***in most non-euro area Member States***, even though payment service providers ***that are located in non-euro area Member States*** have access to the same efficient infrastructures to process those transactions at very low costs as payment service providers ***that are located in*** the euro area.

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<sup>8</sup> ***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).

<sup>9</sup> ***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).

- (3) High charges for cross-border payments remain a barrier to the full integration ■ of businesses and citizens in non-euro area Member States *into the internal market, affecting their competitiveness. Those high charges* perpetuate the existence of two categories of payment service users in the Union: ■ payment service users *that* benefit from the single euro payments area (SEPA), and ■ payment service users that pay high costs for their cross-border payments in euro.
- (4) In order to facilitate the functioning of the internal market and *to* end the *inequalities* 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 corresponding *national* payments made in the *national* currency of *the* Member State *in which the payment service provider of the payment service user is located. A payment service provider is considered to be located in the Member State in which it provides its services to the payment service user.*

- (5) Currency conversion charges represent a significant cost of cross-border payments when different currencies are in use in the *Member State of the payer* and *the Member State of the payee*. Article 45 of Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>10</sup> requires ■ charges and ■ the exchange rate used *to be transparent, Article 52(3) of that Directive specifies information requirements with regard to payment transactions covered by a framework contract and Article 59(2) of that Directive covers the information requirements for parties offering currency conversion services at an automated teller machine (ATM) or at the point of sale. Those information requirements have not achieved sufficient transparency and comparability of currency conversion charges in situations in which alternative currency conversion options are offered at an ATM or at the point of sale. That* lack of transparency *and comparability* prevents competition *which would reduce* ■ 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.

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<sup>10</sup> *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC* (OJ L 337, 23.12.2015, p. 35).

- (6) *To ensure that market players are not confronted with the need to make a disproportionate level of investment to adapt their payment infrastructure, equipment and processes to provide for increased transparency, the measures to be implemented should be appropriate, adequate and cost-effective. At the same time, in situations in which the payer is confronted with different currency conversion options at an ATM or at the point of sale, the information provided should enable comparison, to allow the payer to make an informed choice.*
- (7) *To achieve comparability, currency conversion charges for all card-based payments should be expressed in the same way, namely as percentage mark-ups over the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB). A 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.*



- (8) *In accordance with the general information requirements on currency conversion charges laid down in Directive (EU) 2015/2366, providers of currency conversion services must disclose information on their currency conversion charges prior to the initiation of the payment transaction. Parties that offer currency conversion services at an ATM or at the point of sale should provide information on their charges for such services in a clear and accessible manner, for example by displaying their charges at the counter or digitally on the terminal, or on-screen in the case of online purchases. In addition to the information referred to in Article 59(2) of Directive (EU) 2015/2366, those parties should provide, prior to the initiation of the payment, explicit information on the amount to be paid to the payee in the currency used by the payee and the total amount to be paid by the payer 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 might be displayed at the check-out rather than on the payment terminal. The currency used by the payee is in general the local currency, but according to the principle of contractual freedom might in some cases be another Union currency. The total amount to be paid by the payer 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.*

- (9) *With regard to Article 59(2) of Directive (EU) 2015/2366, where a currency conversion service is offered at an ATM or at the point of sale, it should be possible for the payer to refuse that service and to pay in the currency used by the payee instead.*
- (10) *In order to enable payers to compare the charges of currency conversion options at an ATM or at the point of sale, the payers' payment service providers should not only include fully comparable information on the applicable charges for currency conversion in the terms and conditions of their framework contract, but should also make that information public on a broadly available and easily accessible electronic platform, in particular on their customer websites, on their home-banking websites and on their mobile banking applications, in an easily understandable and accessible manner. This would cater for the development of comparison websites to make it easier for consumers to compare prices when travelling or shopping abroad. In addition, payers' payment service providers should remind payers about the applicable currency conversion charges when a card-based payment is made in another currency, through the use of broadly available and easily accessible electronic communication channels, such as SMS messages, e-mails or push notifications through the payer's mobile banking application. Payment service providers should agree with payment service users on the electronic communication channel through which they will provide the information on currency conversion charges, taking into consideration the most effective channel for reaching the payer. Payment service providers should also accept requests from payment service users to opt out of receiving the electronic messages containing information on the currency conversion charges.*

**(11) *Periodic reminders are appropriate in situations in which the payer stays abroad for longer periods of time, for example where the payer is posted or studies abroad, or where the payer regularly uses a card for online purchases in the local currency. An obligation to provide such reminders would not require disproportionate investments to adapt the existing business processes and payment processing infrastructures of the payment service provider, and would ensure that the payer is better informed when considering the different currency conversion options.***

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**(12) *The Commission should submit to the European Parliament, to the Council, to the ECB and to 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 requirements on currency conversion set out in this Regulation. The Commission should also analyse further possibilities – and the technical feasibility of those possibilities – of extending the equal charges rule to all Union currencies and of further improving the transparency and comparability of currency conversion charges, as well as the possibility of disabling and enabling the option of accepting currency conversion by parties other than the payer’s payment service provider.***

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- (13) 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 the transparency of currency conversion charges* within the Union.”,

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

“**■** Notwithstanding the first subparagraph of this paragraph, Articles 3a and 3b shall apply to ***national and*** cross-border payments **■** ***that are*** denominated ***either*** in euro or in a national currency of a Member State other than the euro ***and that involve a currency conversion service.***”;

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

***“(9) ‘charge’ means any amount levied on a payment service user by a payment service provider that is 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 (EU) 2015/2366 of the European Parliament and of the Council\* for a currency conversion service, or a combination thereof;***

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***\* Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35). ”;***

(3) 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 in which the payment service provider of the payment service user is located.”;***

(b) the following paragraph ■ 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. ■ Paragraphs 1 and 1a shall not *apply to* currency conversion charges.”;

(4) the following article ■ is inserted:

“Article 3a

Currency conversion charges *related to card-based transactions*

1. *With regard to the information requirements 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 automated teller machine (ATM) or at the point of sale, as referred to in Article 59(2) of that Directive, shall express the total currency conversion charges as a percentage mark-up over the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB). That mark-up shall be disclosed to the payer prior to the initiation of the payment transaction.*
2. *Payment service providers shall also make the mark-ups referred to in paragraph 1 public in a comprehensible and easily accessible manner on a broadly available and easily accessible electronic platform.*

3. *In addition to the information referred to in paragraph 1, a party providing a currency conversion service at an 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.*
4. *A party providing currency conversion services at an ATM or at the point of sale shall clearly display the information referred to in paragraph 1 at the ATM or at the point of sale. Prior to the initiation of the payment transaction, that party shall also inform the payer of the possibility of paying in the currency used by the payee and having the currency conversion subsequently performed by the payer's payment service provider. The information referred to in paragraphs 1 and 3 shall also be made available to the payer on a durable medium following the initiation of the payment transaction.*



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

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

6. *The payment service provider shall agree with the payment service user on the broadly available and easily accessible electronic communication channel or channels through which the payment service provider will send the message referred to in paragraph 5.*

*The payment service provider shall offer payment service users the possibility of opting out of receiving the electronic messages referred to in paragraph 5.*

*The payment service provider and the payment service user may agree that paragraph 5 and this paragraph do not apply in whole or in part where the payment service user is not a consumer.*

7. *The information referred to in this Article shall be provided free of charge and in a neutral and comprehensible manner.”;*

■

- (5) *the following article ■ 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 (EU) 2015/2366, that is initiated online directly, using the website or the mobile banking application of the payment service provider, the payment service provider, with regard to Articles 45(1) and 52(3) of that Directive, shall inform the payer prior to the initiation of the payment transaction, in a clear, neutral and comprehensible manner, of the estimated charges for currency conversion services applicable to the credit transfer.*
2. *Prior to the initiation of a payment transaction, the payment service provider shall communicate to the payer, in a clear, neutral and comprehensible manner, 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. The payment service provider shall also communicate the estimated amount to be transferred to the payee in the currency used by the payee.”;*

(6) Article 15 is replaced by the following:

“Article 15

Review

1. ***By ... [36 months from the date of entry into force of this amending Regulation], the Commission shall present to the European Parliament, the Council, the ECB and the European Economic and Social Committee a report on the application and impact of this Regulation, which shall contain, in particular:***
  - (a) an evaluation of the way payment service providers apply Article 3 of this Regulation, as amended by Regulation (EU)....<sup>+</sup>;***
  - (b) an evaluation of 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 Regulation (EU)....<sup>++</sup>;***
  - (c) an evaluation of the impact of Article 3 of this Regulation, as amended by Regulation (EU)....<sup>++</sup>, on the development of currency conversion charges and other charges related to payment services, both to payers and payees;***
  - (d) an evaluation of the estimated impact of amending Article 3(1) of this Regulation to cover all currencies of Member States;***

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<sup>+</sup> ***OJ: Please insert in the text the number of the Regulation contained in document 2018/0076(COD) and insert the number, date, title and OJ reference of that Regulation in the footnote.***

<sup>++</sup> ***OJ: Please insert in the text the number of the Regulation contained in document 2018/0076(COD).***

- (e) an evaluation of 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 those rules have enhanced the transparency of currency conversion charges;*
- (f) an evaluation of 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), 52(3) and 59(2) of Directive (EU) 2015/2366;*
- (g) a cost-benefit analysis of communication channels and technologies that are used by, or are available to, providers of currency conversion services and that can further improve the transparency of currency conversion charges, including an evaluation of 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; that analysis shall also include an assessment of the technical feasibility of disclosing the information in Article 3a(1) and (3) of this Regulation simultaneously, prior to the initiation of each transaction, 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 payers to block the option of currency conversion offered by a party other than the payer's payment service provider at an ATM or at the 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 ■, to apply, when providing currency conversion services in relation to an individual payment transaction, 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 of this Article shall cover at least the period from 15 December 2019 until ... [30 months after the date of entry into force of this amending Regulation]. It shall take account of the specificities of various payment transactions, distinguishing in particular between transactions initiated at an ATM and at the point of sale.*

*When preparing its report, the Commission may use data collected by Member States in relation to paragraph 1.*

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*\* Regulation (EU) .../... of the European Parliament and of the Council of ... on ... (OJ ...).”.*

## Article 2

1. This Regulation shall enter into force on the twentieth 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) *point (6) of Article 1 shall apply from ... [date of entry into force of this amending Regulation];*
  - (b) *points (4) and (5) of Article 1, as regards Article 3a(1) to (4) and Article 3b of Regulation (EC) No 924/2009, shall apply from ... [12 months from the date of entry into force of this amending Regulation];*
  - (c) *point (4) of Article 1, as regards Article 3a(5) and (6) of Regulation (EC) No 924/2009, shall apply from ... [24 months from the date of entry into force of this amending Regulation];*
  - (d) *point (4) of Article 1, as regards Article 3a(7) of Regulation (EC) No 924/2009 insofar as it relates to Article 3a(1) to (4) of that Regulation, shall apply from ... [12 months from the date of entry into force of this amending Regulation];*

*(e) point (4) of Article 1, as regards Article 3a(7) of Regulation (EC) No 924/2009 insofar as it relates to Article 3a(5) and (6) of that Regulation, shall apply from ... [24 months from the date of entry into force of this amending Regulation].*

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

Done at █ ...,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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