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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on interchange fees for card-based payment transactions

REGULATION (EU) 2015/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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 Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 193, 24.6.2014, p. 2.

² OJ C 170, 5.6.2014, p. 78.

³ Position of the European Parliament of 10 March 2015 (not yet published in the Official Journal) and Decision of the Council of

Whereas:

- (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 Council¹ 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 Council² 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-based payment transactions covered by this Regulation.

¹ 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).

² 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 (EU) No 260/2012 of the European Parliament and of the Council¹ provided the rules for the functioning of credit transfers and direct debits in euro in the internal market but excluded card-based payment transactions from its scope.
- (5) Directive 2011/83/EU of the European Parliament and of the Council² aims to harmonise 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 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, merchants and companies are to enjoy the full benefits of the internal market, especially as the world moves towards e-commerce.

¹ Regulation (EU) 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).

² 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) Some Member States have issued or are preparing legislation to regulate directly or indirectly interchange fees and covering a number of issues, including caps on interchange fees at various levels, merchant fees, the ‘Honour All Cards’ rule and steering measures. The existing administrative decisions in some Member States vary significantly. To make the levels of interchange fees more consistent, a further introduction of regulatory measures at national level aimed at addressing the levels of, or discrepancies between, those 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 card-based payments and 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 and new pan-Union players are prevented from entering the market. There is a need to remove obstacles to the efficient functioning of the card market, including in the area of card-based payments and internet and mobile payments based on cards.

- (9) To enable the internal market to function effectively, the use of electronic payments should be promoted and facilitated to the benefit of merchants 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 merchants with potentially secure payments. Card-based payment transactions instead of payments in cash could therefore be beneficial for merchants and consumers, provided that the fees for the use of the payment card schemes are set at an economically efficient level, whilst contributing to fair competition, innovation and market entry of new operators.
- (10) Interchange fees are usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain payment card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card-based payment transaction. Merchants in turn incorporate those card costs, like all their other costs, in the general prices of goods and services. Competition between payment card schemes to convince payment service providers to issue their cards 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. In addition to a consistent application of the competition rules to interchange fees, regulating such fees would improve the functioning of the internal market and contribute to reducing transaction costs for consumers.

- (11) The 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 or no interchange fees, to the detriment of potential economies of scale and scope and their resulting efficiencies. This has a negative impact on merchants and consumers and prevents innovation. As pan-Union players would, as a minimum, have to offer issuing banks 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, merchants 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 card schemes require the application of the interchange fee of the ‘point of sale’ (country of the merchant) for each payment transaction, on the basis of their territorial licensing policies. This requirement prevents acquirers from successfully offering their services on a cross-border basis. It can also prevent merchants 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 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 of the Treaty on the Functioning of the European Union, 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 for consumers and merchants to use cross-border services.
- (14) The application of this Regulation should be 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) In order to facilitate the smooth functioning of an internal market for card-based payments and internet and mobile payments based on cards, to the benefit of consumers and merchants, this Regulation should apply to cross-border and domestic issuing and acquiring of card-based payment transactions. If merchants can choose an acquirer outside their own Member State ('cross-border acquiring'), which will be facilitated by the imposition of the same maximum level of both domestic and cross-border interchange fees for acquired transactions and the prohibition of territorial licensing, it should be possible to provide the necessary legal clarity and to prevent distortions of competition between payment card schemes.

- (16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card-based payment transactions in the Union are already carried out respecting the maximum interchange fees. In order to provide for fair competition in the market for acquiring services, the provisions relating to cross-border and to domestic transactions should apply simultaneously and within a reasonable period after the entry into force of this Regulation, taking account of the difficulty and complexity of the migration of payment card schemes, which this Regulation necessitates.
- (17) There are two main types of credit cards available on the market. With deferred debit cards, the total amount of transactions is debited from the cardholder account at a pre-agreed specific date, usually once a month, without interest to be paid. With other credit cards, the cardholder can use a credit facility in order to reimburse part of the amounts due at a later date than specified, together with interest or other costs.
- (18) All debit and credit card-based payment transactions should be subject to a maximum interchange fee rate.

- (19) The impact assessment shows that a prohibition of interchange fees for debit card transactions would be beneficial for card acceptance, card usage, development of the single market and generate more benefits to merchants and consumers than a cap set at any higher level. Moreover, it would avoid negative effects resulting from a higher cap in those national schemes that have very low or zero interchange fees for debit transactions due to cross-border expansion or new market entrants increasing fee levels to the level of the cap. A ban on interchange fees for debit card transactions also addresses the threat of exporting the interchange fee model to new, innovative payment services such as mobile and online systems.
- (20) The caps in this Regulation 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 the merchant 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 and the interchange fee). It thereby stimulates the use of efficient payment instruments through the 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 merchants and consumers and provide legal certainty.

- (21) Nevertheless, as shown in the impact assessment, in certain Member States interchange fees have developed so as to allow consumers to benefit from efficient debit card markets in terms of card acceptance and card usage with lower interchange fees than the merchant indifference level. Member States should therefore be able to establish lower interchange fees for domestic debit card transactions.
- (22) In addition, to ensure that debit card fees are set at an economically efficient level, taking into account the structure of domestic debit card markets, the possibility to express interchange fee caps as a flat rate should be maintained. A flat rate may also promote the use of card based payments of small value amounts ('micropayments'). It should also be possible to apply such a flat rate in combination with a percentage rate, provided that the sum of such interchange fees does not exceed the specified percentage of the total annual transaction value at domestic level within each payment card scheme. Furthermore it should be possible to define a lower per transaction percentage interchange fee cap, and to impose a fixed maximum fee amount as a limit to the fee amount resulting from the applicable per transaction percentage rate.

(23) Furthermore, taking into account that this Regulation undertakes harmonisation for the first time of interchange fees in a context where existing debit card schemes and interchange fees are very different, it is necessary to provide for flexibility for domestic payment cards markets. Therefore, during a reasonable transition period, in relation to domestic debit card transactions, Member States should be able to apply to all domestic debit card transactions within each payment card scheme a weighted average interchange fee of no more than the 0,2 % of the annual average transaction value of all domestic debit card transactions within each payment card scheme. In relation to the interchange fee cap calculated on the annual average transaction value within one payment card scheme, it is sufficient that a payment service provider participates in a payment card scheme (or some other type of agreements among payment service providers) in which, for all domestic debit card transactions, a weighted average interchange fee of no more than the 0,2 % is applied. Here, too, a flat fee or a percentage fee or a combination of the two can be applied provided that the weighted average maximum cap is respected.

- (24) In order to define the relevant interchange fee caps for domestic debit card transactions, it is appropriate to allow national competent authorities entitled to ensure compliance with this Regulation to collect information regarding the volume and value of all debit card transactions within a payment card scheme or of the debit card transactions pertaining to one or more payment service providers. As a consequence, payment card schemes and payment service providers should be obliged to provide relevant data to national competent authorities as specified by those authorities and in accordance with the time limits set by them. Reporting obligations should extend to payment service providers such as issuers or acquirers and not only to payment card schemes, in order to ensure that any relevant information is made available to the competent authorities which should, in any case, be able to require that such information is collected through the payment card scheme.
- Moreover, it is important that Member States ensure an adequate level of disclosure of the relevant information concerning the applicable interchange fee caps. In light of the fact that payment card schemes are generally not payment service providers subject to prudential supervision, competent authorities may require that the information sent by these entities is certified by an independent auditor.

- (25) Some payment instruments at domestic level enable the payer to initiate card-based payment transactions that are not distinguishable as debit or credit card transactions by the payment card scheme. The choices made by the cardholder are unknown to the payment card scheme and to the acquirer; as a consequence, the payment card scheme does not have the possibility of applying the different caps imposed by this Regulation for debit and credit card transactions, which are distinguishable on the basis of the timing agreed for the debiting of the payment transactions. Taking into account the need to preserve the functionality of the existing business models while avoiding unjustified or excessive costs of legal compliance and, at the same time, considering the importance of ensuring an adequate level playing field between the different categories of payment cards, it is appropriate to apply the same rule provided by this Regulation for the debit card transactions to such domestic ‘universal cards’ payment transactions. Nevertheless, a longer time period for adaptation should be left to those payment instruments. Therefore, by way of exception and during a transition period of 18 months after the entry into force of this Regulation, Member States should be able to define a maximum share of domestic ‘universal cards’ payment transactions which are considered as being equivalent to credit card transactions. For example, the credit card cap could be applied to the defined share of the total value of the transactions for merchants or acquirers. The mathematical result of the provisions would then be equivalent to the application of a single interchange fee cap on domestic payment transactions carried out with universal cards.
- (26) This Regulation should cover all transactions where the payer’s payment service provider and the payee’s payment service provider are located in the Union.

- (27) 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.
- (28) Card-based payment 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’ (cardholder – issuing bank – acquiring bank – merchant). Many four party payment card schemes use an explicit interchange fee, which is mostly multilateral. 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. However, taking into account the specificities which exist for such three party schemes, it is appropriate to allow for a transitional period during which Member States may decide not to apply the rules concerning the interchange fee cap if such schemes have a very limited market share in the Member State concerned.

- (29) The issuing service 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 their equivalent and may guarantee 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, does not constitute issuing.
- (30) The acquiring service constitutes a chain of operations from the initiation of a card based payment transaction to the transfer of the funds to the payment account of the payee. Depending on the Member State and the business model in place, the acquiring service is organised differently. Therefore the payment service provider paying the interchange fee does not always contract directly with the payee. Intermediaries providing part of the acquiring services but without direct contractual relationship with payees should nevertheless be covered in the definition of acquirer under this Regulation. The acquiring service is provided irrespective of whether the acquirer is holding the funds on behalf of the payee. Technical services, such as the mere processing and storage of data or the operation of terminals, do not constitute acquiring.

(31) 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 issuers. To avoid this, the ‘net compensation’ of fees paid or received by the issuer, including possible authorisation charges, from or to a payment card scheme, an acquirer or any other intermediary 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 with respect to the regulated transactions less the fees paid by the issuer to the payment card 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). In checking whether circumvention of the provisions of this Regulation is taking place, issuers’ profits resulting from special programmes carried out jointly by issuers and payment card schemes and revenue from processing, licensing and other fees providing revenue to payment card schemes should, in particular, be taken into account. As appropriate, and if corroborated by further objective elements, the issuance of payment cards in third countries could also, be taken into account when assessing potential circumvention of this Regulation.

(32) 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 issuers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments, thereby generating high fees for issuers. 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 the separation of scheme and infrastructure, the steering of the payer by the payee and the selective acceptance of payment instruments by the payee.

- (33) 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 accounting, 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-subsidising 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 the area of card-based payments and internet and mobile payments based on cards, to the detriment of merchants, companies and consumers.
- (34) 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-badged 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.

- (35) Payment instruments entail different costs to the payee, with certain instruments being more expensive than others. Except where a particular 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, in accordance with Directive 2007/64/EC, to steer payers towards the use of a specific payment instrument. Card schemes and payment service 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 or her shop which accept specific payment instruments. Those restrictions should be abolished.
- (36) In situations where the payee steers the payer towards the use of a specific payment instrument, no charges should be requested by the payee from the payer 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.

(37) The ‘Honour all Cards’ rule is a twofold obligation imposed by issuers and payment card schemes for payees to accept all the cards of the same brand, irrespective of the different costs of these cards (the ‘Honour all Products’ element) and irrespective of the individual issuing bank which has issued the card (the ‘Honour all Issuers’ element). It is in the interest of the consumer that for the same category of cards the payees cannot discriminate between issuers or cardholders, and payment card schemes and payment service providers can impose such an obligation on them. Therefore the ‘Honour all Issuers’ element of the ‘Honour all Cards’ rule is a justifiable rule within a payment card scheme, since it prevents payees from discriminating between 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 the 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 to accept credit cards, and those accepting credit cards would not be forced to accept commercial cards. However, to protect the consumer and the consumer’s ability to use the payment cards as often as possible, merchants should be obliged to accept cards that are subject to the same regulated interchange fee only if issued within the same brand and of the same category (prepaid card, debit card or credit card). 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. Those restrictions should be limited and considered acceptable only to enhance consumers’ protection, giving to the consumers an adequate level of certainty about the fact that their payment cards will be accepted by the merchants.

- (38) A clear distinction between consumer and commercial cards should be ensured by the payment service providers both on a technical and on a commercial basis. It is therefore important to define a commercial card as a payment instrument used only for business expenses charged directly to the account of the undertaking or public sector entity or the self-employed natural person.
- (39) Payees and payers should have the means to identify the different categories of cards. Therefore, the various brands and categories should be identifiable electronically and for newly issued card based payment instruments visibly on the device. In addition, the payer should be informed about the acceptance of the payer's payment instrument(s) at a given point of sale. It is necessary that any limitation on the use of a given brand 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.

- (40) In order to ensure that competition between brands is effective, it is important that the choice of payment application be made by users, not imposed by the upstream market, comprising payment card schemes, payment service providers or processors. Such an arrangement should not prevent payers and payees from setting a default choice of application, where technically feasible, provided that that choice can be changed for each transaction.
- (41) 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 service providers, Member States should establish adequate and effective out-of-court complaint and redress procedures or take equivalent measures. 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.
- (42) The Commission should present a report studying various effects of this Regulation on the functioning of the market. It is necessary that the Commission has the possibility to collect the information required to establish this report and that the competent authorities cooperates closely with the Commission for the collection of data.

- (43) Since the objectives of this Regulation to lay down uniform requirements for card-based payment transactions and internet and mobile payments based on cards cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale, 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.
- (44) 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 card-based payment transactions carried out within the Union, where both the payer's payment service provider and the payee's payment service provider are located therein.
2. This Regulation does not apply to services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:
 - (a) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
 - (b) instruments which can be used only to acquire a very limited range of goods or services;
 - (c) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer.

3. Chapter II does not apply to the following:
 - (a) transactions with commercial cards;
 - (b) cash withdrawals at automatic teller machines or at the counter of a payment service provider; and
 - (c) transactions with payment cards issued by three party payment card schemes.
4. Article 7 does not apply to three party payment card schemes.
5. When a three party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four party payment card scheme. However, until ...* in relation to domestic payment transactions, such a three party payment card scheme may be exempted from the obligations under Chapter II, provided that the card-based payment transactions made in a Member State under such a three party payment card scheme do not exceed on a yearly basis 3 % of the value of all card-based payment transactions made in that Member State.

* OJ: please insert date - 42 months after the date of entry into force of this Regulation.

Article 2

Definitions

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

- (1) ‘acquirer’ means a payment service provider contracting with a payee to accept and process card-based payment transactions, which result in a transfer of funds to the payee;
- (2) ‘issuer’ means a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer’s card-based payment transactions;
- (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-based payment transaction, including those with prepaid cards that is not a credit card transaction;
- (5) ‘credit card transaction’ means a card-based payment transaction where the amount of the transactions is debited in full or in part at a pre agreed specific calendar month date to the payer, in line with a prearranged credit facility, with or without interest;
- (6) ‘commercial card’ means any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person;

- (7) ‘card-based payment transaction’ means a service based on a payment card scheme’s infrastructure and business rules to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction. Card-based payment transactions exclude transactions based on other kinds of payment services;
- (8) ‘cross-border payment transaction’ means a card-based payment transaction where the issuer and the acquirer are located in different Member States or where the card-based payment instrument is issued by an issuer located in a Member State different from that of the point of sale;
- (9) ‘domestic payment transaction’ means any card -based payment transaction which is not a cross-border payment transaction;
- (10) ‘interchange fee’ means a fee paid for each transaction directly or indirectly (i.e. through a third party) between the issuer and the acquirer involved in a card-based payment transaction. The net compensation or other agreed remuneration is considered to be part of the interchange fee;
- (11) ‘net compensation’ means the total net amount of payments, rebates or incentives received by an issuer from the payment card scheme, the acquirer or any other intermediary in relation to card-based payment transactions or related activities;

- (12) ‘merchant service charge’ means a fee paid by the payee to the acquirer in relation to card-based payment transactions;
- (13) ‘payee’ means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (14) ‘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;
- (15) ‘payment card’ means a category of payment instrument that enables the payer to initiate a debit or credit card transaction;
- (16) ‘payment card scheme’ means a single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions and which is separated from any infrastructure or payment system that supports its operation, and includes any specific decision making body, organisation or entity accountable for the functioning of the scheme;
- (17) ‘four party payment card scheme’ means a payment card scheme in which card-based payment transactions are made from the payment account of a payer to the payment account of a payee through the intermediation of the scheme, an issuer (on the payer’s side) and an acquirer (on the payee’s side);

- (18) ‘three party payment card scheme’ means a payment card scheme in which the scheme itself provides acquiring and issuing services and card-based payment transactions are made from the payment account of a payer to the payment account of a payee within the scheme. When a three party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four party payment card scheme;
- (19) ‘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 in order to initiate a payment order;
- (20) ‘card-based payment instrument’ means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012;
- (21) ‘payment application’ means computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;

- (22) ‘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, including through a specific account for electronic money as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council¹;
- (23) ‘payment order’ means any instruction by a payer to its payment service provider requesting the execution of a payment transaction;
- (24) ‘payment service provider’ means any natural or legal persons authorised to provide the payment services listed in the Annex to Directive 2007/64/EC or recognised as an electronic money issuer in accordance with Article 1(1) of Directive 2009/110/EC. A payment service provider can be an issuer or an acquirer or both;
- (25) ‘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;
- (26) ‘payment transaction’ means an action, initiated by the payer or on its behalf or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee;
- (27) ‘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;

¹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7.)

- (28) ‘processing entity’ means any natural or legal person providing payment transaction processing services;
- (29) ‘point of sale’ means the address of the physical premises of the merchant at which the payment transaction is initiated. However,
- (a) in the case of distance sales or distance contracts (i.e. e-commerce) as defined in point 7 of Article 2 of Directive 2011/83/EU, the point of sale shall be the address of the fixed place of business at which the merchant conducts its business regardless of website or server locations through which the payment transaction is initiated;
 - (b) in the event that the merchant does not have a fixed place of business, the point of sale shall be the address for which the merchant holds a valid business licence through which the payment transaction is initiated;
 - (c) in the event that the merchant does not have a fixed place of business nor a valid business licence, the point of sale shall be the address for correspondence for the payment of its taxes relating to its sales activity through which the payment transaction is initiated;
- (30) ‘payment brand’ means any material or digital name, term, sign, symbol or combination thereof, capable of denoting under which payment card scheme card-based payment transactions are carried out;

- (31) ‘co-badging’ means the inclusion of two or more payment brands or payment applications of the same brand on the same card-based payment instrument;
- (32) ‘co-branding’ means the inclusion of at least one payment brand and at least one non-payment brand on the same card based payment instrument;
- (33) ‘debit card’ means a category of payment instrument that enables the payer to initiate a debit card transaction excluding those with prepaid cards;
- (34) ‘credit card’ means a category of payment instrument that enables the payer to initiate a credit card transaction;
- (35) ‘prepaid card’ means a category of payment instrument on which electronic money, as defined by Article 2 of Directive 2009/110/EC, is stored.

CHAPTER II

INTERCHANGE FEES

Article 3

Interchange fees for consumer debit card transactions

1. Payment service providers shall not offer or request a per transaction interchange fee of more than 0,2 % of the value of the transaction for any debit card transaction.
2. For domestic debit card transactions Member States may either:
 - (a) define a per transaction percentage interchange fee cap lower than the one provided for in paragraph 1 and may impose a fixed maximum fee amount as a limit on the fee amount resulting from the applicable percentage rate; or
 - (b) allow payment service providers to apply a per transaction interchange fee of no more than EUR 0,05, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... *, which shall be revised every five years or whenever there is a significant variation in exchange rates. This per transaction interchange fee may also be combined with a maximum percentage rate of no more than 0,2 %, provided always that the sum of interchange fees of the payment card scheme does not exceed 0,2 % of the total annual transaction value of the domestic debit card transactions within each payment card scheme.

* OJ: please insert the date of entry into force of this Regulation.

3. Until ... *, in relation to domestic debit card transactions, Member States may allow payment service providers to apply a weighted average interchange fee of no more than the equivalent of 0,2 % of the annual average transaction value of all domestic debit card transactions within each payment card scheme. Member States may define a lower weighted average interchange fee cap applicable to all domestic debit card transactions.
4. The annual transaction values referred to in paragraphs 2 and 3 shall be calculated on a yearly basis, commencing on 1 January and ending on 31 December and shall be applied starting from 1 April of the following year. The reference period for the first calculation of such value shall commence 15 calendar months before the date of application of paragraphs 2 and 3 and shall end three calendar months before that date.
5. The competent authorities referred to in Article 13 shall, upon their written request, require payment card schemes and/or payment service providers to provide all information necessary to verify the correct application of paragraphs 3 and 4 of this Article. Such information shall be sent to the competent authority before 1 March of the year following the reference period referred to in the first sentence of paragraph 4. Any other information enabling the competent authorities to verify compliance with the provisions of this Chapter shall be sent to the competent authorities upon their written request and within the deadline set by them. The competent authorities may require that such information is certified by an independent auditor.

* OJ: please insert date - five years and six months after the entry into force of this Regulation.

Article 4

Interchange fees for consumer credit card transactions

Payment service providers shall not offer or request a per transaction interchange fee of more than 0,3 % of the value of the transaction for any credit card transaction. For domestic credit card transactions Member States may define a lower per transaction interchange fee cap.

Article 5

Prohibition of circumvention

For the purposes of the application of the caps referred to in Articles 3 and 4, any agreed remuneration, including net compensation, with an equivalent object or effect of the interchange fee, received by an issuer from the payment card scheme, acquirer or any other intermediary 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 or in payment card scheme rules for issuing payment cards or acquiring card-based payment transactions shall be prohibited.
2. 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 or in payment card scheme rules for issuing payment cards or acquiring card-based payment transactions shall be prohibited.

Article 7

Separation of payment card scheme and processing entities

1. Payment card schemes and processing entities:
 - (a) shall be independent in terms of accounting, organisation and decision making processes;
 - (b) shall not present prices for payment card scheme and processing activities in a bundled manner and shall not cross-subsidise such activities;

- (c) shall not discriminate in any way between their subsidiaries or shareholders on the one hand and users of payment card 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 partner of any other service they offer.
- 2. The competent authority of the Member State where the registered office of the scheme is located may require a payment card scheme to provide an independent report confirming its compliance with paragraph 1.
- 3. Payment card schemes shall allow for the possibility that authorisation and clearing messages of single card-based payment transactions be separated and processed by different processing entities.
- 4. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.
- 5. 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, payment card schemes shall not adopt or apply business rules that restrict interoperability among processing entities within the Union.

6. The European Banking Authority (EBA) may, after consulting an advisory panel as referred to in Article 41 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹, develop draft regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of point (a) of paragraph 1 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by ...*. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 8

Co-badging and choice of payment brand or payment application

1. Any payment card scheme rules and rules in licensing agreements or measures of equivalent effect that hinder or prevent an issuer from co-badging two or more different payment brands or payment applications on a card-based payment instrument shall be prohibited.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

* OJ: please insert date - six months after entry into force of this Regulation.

2. When entering into a contractual agreement with a payment service provider, the consumer may require two or more different payment brands on a card-based payment instrument provided that such a service is offered by the payment service provider. In good time before the contract is signed, the payment service provider shall provide the consumer with clear and objective information on all the payment brands available and their characteristics, including their functionality, cost and security.
3. Any difference in treatment of issuers or acquirers in scheme rules and rules in licensing agreements concerning co-badging of different payment brands or payment applications on a card-based payment instrument shall be objectively justified and non-discriminatory.
4. Payment card schemes shall not impose reporting requirements, obligations to pay fees or similar obligations with the same object or effect on card issuing and acquiring payment service providers for transactions carried out with any device on which their payment brand is present in relation to transactions for which their scheme is not used.
5. Any routing principles or equivalent measures aimed at directing transactions through a specific channel or process and other technical and security standards and requirements with respect to the handling of two or more different payment brands and payment applications on a card-based payment instrument shall be non-discriminatory and shall be applied in a non-discriminatory manner.

6. Payment card schemes, issuers, acquirers, processing entities and other technical service 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 payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument.

Payees shall retain the option of installing automatic mechanisms in the equipment used at the point of sale which make a priority selection of a particular payment brand or payment application but payees shall not prevent the payer from overriding such an automatic priority selection made by the payee in its equipment for the categories of cards or related payment instruments accepted by the payee.

Article 9

Unblending

1. Each acquirer shall offer and charge its payee merchant service charges individually specified for different categories and different brands of payment cards with different interchange fee levels unless payees request the acquirer, in writing, to charge blended merchant service charges.
2. Acquirers shall include in their agreements with payees individually specified information on the amount of the merchant service charges, interchange fees and scheme fees applicable with respect to each category and brand of payment cards, unless the payee subsequently makes a different request in writing.

Article 10

'Honour All Cards' rule

1. Payment card schemes and payment service providers shall not apply any rule that obliges payees accepting a card-based payment instrument issued by one issuer also to accept other card-based payment instruments issued within the framework of the same payment card scheme.
2. Paragraph 1 shall not apply to consumer card-based payment instruments of the same brand and of the same category of prepaid card, debit card or credit card subject to interchange fees under Chapter II of this Regulation.
3. Paragraph 1 is without prejudice to the possibility for payment card schemes and payment service providers to provide that cards may not be refused on the basis of the identity of the issuer or of the cardholder.
4. Payees that decide not to accept all cards or other payment instruments of a payment card scheme shall inform consumers of this, in a clear and unequivocal manner, at the same time as they inform consumers of the acceptance of other cards and payment instruments of the payment card scheme. Such information shall be displayed prominently at the entrance of the shop and at the till.

In the case of distance sales, this information shall be displayed on the payee's website or other applicable electronic or mobile medium. The information shall be provided to the payer in good time before the payer enters into a purchase agreement with the payee.

5. Issuers shall ensure that their payment instruments are electronically identifiable and, in the case of newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers to unequivocally identify which brands and categories of prepaid cards, debit cards, credit cards or commercial cards are chosen by the payer.

Article 11
Steering rules

1. Any rule in licensing agreements, in scheme rules applied by payment card schemes and in agreements entered into between card acquirers 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 card-based payment instruments of a given payment card scheme more or less favourably than others.
2. Any rule in licensing agreements, in scheme rules applied by payment card schemes and in agreements entered into between card acquirers and payees preventing payees from informing payers about interchange fees and merchant service charges shall be prohibited.
3. Paragraphs 1 and 2 of this Article are without prejudice to the rules on charges, reductions or other steering mechanisms set out in Directive 2007/64/EC and Directive 2011/83/EU.

Article 12

Information to the payee on individual card-based payment transactions

1. After the execution of an individual 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 card-based payment transaction;
 - (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
 - (c) the amount of any charges for the card-based payment transaction, indicating separately the merchant service charge and 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 one or more competent authorities.
4. Member States shall notify the Commission of those competent authorities by ... *. 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 effectively compliance with this Regulation, including to counter attempts by the payment service providers to circumvent this Regulation, and take all necessary measures to ensure such compliance.

* OJ: please insert date - 12 months after the entry into force of this Regulation.

Article 14

Penalties

1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied.
2. Member States shall notify those provisions to the Commission by ... * 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 ensure and promote adequate and effective out-of-court complaint and redress procedures or take equivalent measures 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. The bodies shall be independent from the parties.
2. Member States shall notify the Commission of those bodies by ... **. They shall notify the Commission without delay any subsequent change concerning those bodies.

* OJ: please insert date - 12 months after the entry into force of this Regulation.

** OJ: please insert date - two years after the entry into force of this Regulation.

Article 16

Universal cards

1. For the purposes of this Regulation, in relation to domestic payment transactions that are not distinguishable as debit or credit card transactions by the payment card scheme, the provisions on debit cards or debit card transactions are applied.
2. By derogation from paragraph 1, until ...*, Member States may define a share of no more than 30 % of the domestic payment transactions referred to in paragraph 1 of this Article that are considered to be equivalent to credit card transactions to which the interchange fee cap set in Article 4 shall apply.

Article 17

Review clause

By ...**, the Commission shall submit a report on the application of this Regulation to the European Parliament and to the Council. The Commission's report shall look in particular at the appropriateness of the levels of interchange fees and at steering mechanisms such as charges, taking into account the use and cost of the various means of payments and the level of entry of new players, new technology and innovative business models on the market. The assessment shall, in particular, consider:

- (a) the development of fees for payers;
- (b) the level of competition among payment card providers and payment card schemes;

* OJ: please insert date - 18 months after the entry into force of this Regulation.

** OJ: please insert date - four years after the entry into force of this Regulation.

- (c) the effects on costs for the payer and the payee;
- (d) the levels of merchant pass-through of the reduction in interchange fee levels;
- (e) the technical requirements and their implications for all the parties involved;
- (f) the effects of co-badging on user-friendliness, in particular for the elderly and other vulnerable users;
- (g) the effect on the market of the exclusion of commercial cards from Chapter II, comparing the situation in those Member States where surcharging is prohibited with those where it is permitted;
- (h) the effect on the market of the special provisions for interchange fees for domestic debit card transactions;
- (i) the development of cross-border acquiring and its effect on the single market, comparing the situation for cards with capped fees and cards which are not capped, to consider the possibility of clarifying which interchange fee applies to cross-border acquiring;
- (j) the application in practice of the rules on separation of payment card scheme and processing, and the need to reconsider legal unbundling;
- (k) the possible need, depending on the effect of Article 3(1) on the actual value of interchange fees for medium and high value debit card transactions, to revise that paragraph by providing that the cap should be limited to the lower amount of EUR 0,07 or 0,2 % of the value of the transaction.

The report by the Commission shall, if appropriate, be accompanied by a legislative proposal that may include a proposed amendment of the maximum cap for interchange fees.

Article 18

Entry into force

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 ... *, with the exception of Articles 3, 4, 6 and 12, which shall apply from ... **, and of Articles 7, 8, 9 and 10, which shall apply from ... ***.

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

Done at ...,

For the European Parliament
The President

For the Council
The President

* OJ: please insert date of entry into force of this Regulation.
** OJ: please insert date - six months after the entry into force of this Regulation.
*** OJ: please insert date - one year after the entry into force of this Regulation.