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From: Mr Mario DRAGHI, President of the European Central Bank  
date of receipt: 31 August 2018  
To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: Opinion of the European Central Bank of 31 August 2018  
on a proposal for a regulation amending Regulation (EC) No 924/2009 as  
regards certain charges on cross-border payments in the Union and  
currency conversion charges

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Delegations will find attached the above mentioned opinion.



## OPINION OF THE EUROPEAN CENTRAL BANK

of 31 August 2018

on a proposal for a regulation on certain charges on cross-border payments in the  
Union and currency conversion charges

(CON/2018/38)

### Introduction and legal basis

On 27 June 2018 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges<sup>1</sup> (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, in conjunction with the fourth indent of Article 127(2) of the Treaty and the fourth indent of Article 3.1 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, as the proposed regulation contains provisions concerning the smooth operation of payment systems. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

#### General observations

The proposed regulation intends to provide all citizens and companies in the Union transferring euro cross-border, whether between euro area and non-euro area Member States or between non-euro area Member States, with the low levels of fees which are currently available in respect of domestic payments made in the official currency of a Member State. In so doing, the proposed regulation improves transparency and consumer protection, enhances the Internal Market for payment services in euro and reinforces the euro as the currency of choice for intra-EU payments, pending adoption of the euro as the currency of all Member States of the Union.

#### Specific observations

##### **1. Scope of provisions relating to currency conversion charges**

The provisions of the proposed regulation relating to currency conversion charges are stated to apply to all cross-border payments, irrespective of whether they are denominated in euro or in a national currency of a Member State other than the euro. However, as a technical matter, cross-border payments denominated in euro from payment accounts denominated in euro, where both the payment service

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<sup>1</sup> COM(2018) 163 final.

provider (PSP) of the payer and of the payee are located in euro area Member States, should not normally be subject to any conversion. Hence, in reality, these provisions should apply to cross-border payments in euro only where the currency of the payment account is not euro or where the PSPs of the payer and the payee, or of the payee only, are located outside the euro area. The ECB suggests that this point should be clarified in the proposed regulation.

As the proposed regulation addresses payments through PSPs only, it does not include the possibility of a merchant providing the currency conversion service independently of a PSP. The ECB suggests that this point should be clarified in the proposed regulation.

## **2. Alternative currency services and options**

The proposed regulation does not contain an article on definitions, although it introduces new and important concepts into Regulation (EC) No 924/2009 of the European Parliament and of the Council<sup>2</sup>. For instance, the terms ‘alternative currency conversion services’ or ‘alternative currency conversion options’ could be combined in one term, which could usefully be defined. More specifically, it could be made clear whether these services refer to those offered by the PSP and its affiliates, and, if so, the extent of the obligation of the PSP to search for and advertise services offered by its direct competitors. It should also be clarified that currency conversion services could be offered by non-regulated providers.

## **3. Regime applicable to currency conversion charges and transitional period**

- 3.1 Under the proposed regulation the European Banking Authority is entrusted with the task of developing regulatory technical standards for ensuring transparency and price comparability of currency conversion service options.
- 3.2 For the benefit of consumer protection, it is suggested that the transitional period for compliance with transparency obligations in respect of the full cost of currency conversion services should be reduced to 12 months from the proposed regulation’s entry into force.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on the ECB’s website.

Done at Frankfurt am Main, 31 August 2018.



*The President of the ECB*

Mario DRAGHI

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<sup>2</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).

Technical working document

produced in connection with ECB Opinion CON/2018/38<sup>3</sup>

Proposal for a regulation on certain charges on cross-border payments in the Union and  
currency conversion charges

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB <sup>4</sup>
Amendment 1 Article 1(1)(b)	
<p>‘(b) in paragraph 2, the following second subparagraph is added:</p> <p>“However Articles 3a and 3b shall apply to all cross-border payments, irrespective of whether those payments are denominated in euro or in a national currency of a Member State other than the euro.”;</p>	<p>‘(b) in paragraph 2, the following second subparagraph is added:</p> <p>“However Articles 3a and 3b shall apply to: <b>(i) all cross-border payments denominated in euro, where the payment account is in a currency other than the euro or where the payment service providers of the payer or the payee or both are located in non-euro area Member States; and (ii) all cross-border payments, irrespective of whether those payments are denominated in euro or in a national currency of a Member State other than the euro. No currency conversion charges apply for cross-border payments denominated in euro where the payment service providers of both the payer and the payee are located in euro area Member States.</b>”;</p>

<sup>3</sup> This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB’s website alongside the opinion itself.

<sup>4</sup> Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB <sup>4</sup>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>In accordance with paragraph 1 of the Opinion, this amendment clarifies the scope of the provisions relating to currency conversion charges, given that no conversion charges apply to intra-euro area payment transactions denominated in euro.</i></p>	
<p style="text-align: center;">Amendment 2</p> <p style="text-align: center;">Article 1(A) (new definition)</p>	
<p>No text</p>	<p><b>(1A) in Article 2, the following definition is added:</b></p> <p><b>‘16. “alternative currency conversion services” means currency conversion services disclosed by the payment service provider as being available in relation to a non-initiated cross-border payment transaction, including by an entity other than such payment service provider, its affiliates or a non-regulated provider.’</b></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>In accordance with paragraph 2 of the Opinion, this amendment defines the term ‘alternative currency conversion services’, making it clear that these refer to services offered by the relevant payment service provider (PSP), its affiliates, as well as other competing PSPs and non-regulated providers.</i></p>	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">Article 1(3)</p>	
<p>‘(3) the following Article 3a is inserted:</p> <p>“Article 3a</p> <p>Currency conversion charges</p> <p>1. From [OP please insert date 36 months after the entry into force of this Regulation], payment service providers shall inform payment service users of the full cost of currency conversion services, and where applicable, those of</p>	<p>‘(3) the following Article 3a is inserted:</p> <p>“Article 3a</p> <p>Currency conversion charges</p> <p>1. From [OP please insert date <b>12 36</b> months after the entry into force of this Regulation], payment service providers shall inform payment service users of the full cost of currency conversion services, and <b>where applicable,</b></p>

Text proposed by the Commission	Amendments proposed by the ECB <sup>4</sup>
<p>alternative currency conversion services prior to the initiation of a payment transaction, in order that payment service users can compare alternative currency conversion options and their corresponding costs. To that effect, payment service providers shall disclose the exchange rate applied, the foreign exchange reference rate used and the total amount of all charges applicable to the conversion of the payment transaction.'</p>	<p>those of alternative currency conversion services <b>providers</b> prior to the initiation of a payment transaction, in order that payment service users can compare alternative currency conversion <b>services</b> <del>options</del> and their corresponding costs. To that effect, payment service providers shall disclose the exchange rate applied, the foreign exchange reference rate used and the total amount of all charges applicable to the conversion of the payment transaction.'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>In accordance with paragraph 3 of the Opinion, and in order to enhance consumer protection, it is also suggested that the transitional period for PSP compliance with transparency obligations in respect of the full cost of currency conversion services should be reduced to 12 months from the proposed regulation's entry into force.</i></p>	