

## III

*(Preparatory acts)*

## EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 5 February 2014

**on a proposal for a regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions****(CON/2014/10)**

(2014/C 193/02)

**Introduction and legal basis**

On 31 October 2013, the European Central Bank (ECB) received a request from the Council for an opinion on a proposal for a regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions<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 since the proposed regulation contains provisions affecting the tasks of the European System of Central Banks (ESCB) to promote the smooth operation of payment systems and to contribute to the smooth conduct of policies relating to the stability of the financial system, as referred to in the fourth indent of Article 127(2), and Article 127(5) of the Treaty. 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**

1. The proposed regulation lays down uniform technical and business requirements for payment card transactions carried out within the European Union where both the payer's and the payee's payment service provider are established in the Union. The proposed regulation has two parts. The first part sets a cap on interchange fees<sup>(2)</sup> for consumer debit card transactions of no more than 0,20 % of the transaction value, and a cap for consumer credit card transactions of no more than 0,30 % of the transaction value, which will apply to domestic or cross-border<sup>(3)</sup> transactions after different transitional periods<sup>(4)</sup>. Transactions with commercial cards, cards issued by three-party card schemes, as well as cash withdrawals at automatic teller machines are exempted from the requirements of the first part of the proposed regulation.
2. The second part of the proposed regulation lays down business rules and other technical requirements that will apply to all categories of card-based payment transactions. The most significant are a separation of the payment card schemes and the processing entities<sup>(5)</sup>, changes in the application of the 'Honour

<sup>(1)</sup> COM(2013) 550 final/2.

<sup>(2)</sup> See Chapters II and III of the proposed regulation. Inter-change fees are inter-bank fees that usually apply between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain card scheme. They are the main part of the fees that acquiring payment service providers charge to merchants for every card transaction.

<sup>(3)</sup> Cross-border transactions are when consumers use their payment cards in another Member State, or when a retailer uses an acquiring payment service provider in another Member State.

<sup>(4)</sup> The caps for cross-border transactions will enter into effect two months from the entry into force of the regulation. Two years after the entry into force of the regulation, these caps will also apply to domestic transactions.

<sup>(5)</sup> Payment card schemes and entities processing card-based payments should be independent from each other in terms of legal form, organisation and decision making.

All Cards Rule' <sup>(1)</sup> and a prohibition on rules hindering or preventing co-badging <sup>(2)</sup>. There is also a new rule requiring licences delivered by payment card schemes for issuing or acquiring purposes to cover the entire Union territory, as well as rules to increase transparency in respect of charges for merchants ('unblending'), and to prohibit 'no-steering measures' in licensing agreements <sup>(3)</sup>. There are also new rules to improve the transparency of fee structures, such as prohibiting any rule that prevents merchants from disclosing to their customers the fees they pay to acquirers, and a requirement for acquiring payment service providers to provide, at a minimum, monthly statements of fees they charge to merchants, specifying the fees paid by merchants every month for each category of card and each individual brand for which the acquirer provides acquiring services.

3. The ECB welcomes the fact that the proposed regulation lays down common Union-wide rules on interchange fees and also uniform business rules and technical requirements for card-based payment transactions. The proposals are generally in line with existing Eurosystem positions. Payment cards are the most widely used electronic payment instruments for retail purchases and thus represent a large share of the payment transactions in the Union. Despite this, however, interchange fees are currently largely unregulated and, hence, very divergent across Member States. The introduction of common rules should contribute to completing the internal market for payments and support the establishment of a Single Euro Payments Area (SEPA). While the new rules have a strong competition-related aspect, they should also reduce market fragmentation and create a level playing field, which will make it easier for existing players to compete and for new providers to enter the market for card payments, thus leading to increased efficiency and a greater use of electronic payment instruments overall.

### Specific observations

#### 1. *Defined terms*

The definitions in the proposed regulation <sup>(4)</sup> have been aligned to some extent, but not fully, with those of the proposal for a second Payment Services Directive (hereinafter the 'proposed PSD2') <sup>(5)</sup> and Regulation (EU) No 260/2012 of the European Parliament and of the Council <sup>(6)</sup>. There are benefits to having similar definitions of concepts that appear in closely-related Union legal acts, to avoid misperceptions and to facilitate citizens' understanding of the legal framework. Therefore, the ECB considers that the definitions of a number of key terms such as that of 'payment order', 'payment service provider' and 'payment transaction' should be further aligned with those in the proposed PSD2. Furthermore, the proposed definitions of 'card-based payment transaction' and 'payment card transaction' are very similar. The ECB would therefore suggest merging them into one definition. The Annex to this opinion provides a number of further technical comments on the definitions.

#### 2. *Other provisions*

- 2.1. The ECB welcomes the fact that there is increased clarity regarding interchange fees. If, however, the caps on cross-border interchange fees are introduced before the caps on national interchange fees, small national card acquirers could be put at a disadvantage, because they will not be able to compete with foreign acquirers that benefit from the resulting lower cross-border interchange fees. The ECB would therefore suggest introducing these caps simultaneously.

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<sup>(1)</sup> This rule pertains to card schemes or payment service providers that require merchants to accept all cards of a certain brand, meaning that merchants cannot limit acceptance to only a certain kind of card. Article 10 of the proposed regulation would allow merchants to accept only one card category of a particular brand by prohibiting the payment service provider or card scheme from requiring merchants to accept more or all categories of the same brand. In addition, the proposed regulation introduces a requirement that prevents merchants from discriminating between cards that are subject to the same regulated interchange fee, i.e. if merchants accept one debit card brand, they should also accept debit cards from all other brands.

<sup>(2)</sup> In other words, placing two or more brands on a card-based payment instrument.

<sup>(3)</sup> Merchants should not be prevented by their payment service provider or card scheme from steering consumers to the use of a preferred payment instrument, or from informing consumers about interchange fees or merchant services charges.

<sup>(4)</sup> See Article 2 of the proposed regulation.

<sup>(5)</sup> Proposal for a Directive of the European Parliament and of the Council of on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013) 547 final).

<sup>(6)</sup> 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).

- 2.2. The ECB supports the proposal that the choice of brand in cases of more than one brand on a card (co-branding) should be made at the point of sale<sup>(1)</sup>. At the same time, payers may have an incentive to choose card brands that provide them with additional benefits such as reward programmes, which might consequently lead to an increase in the use of expensive card brands. In this regard, the ECB suggests that the choice of a specific brand should be agreed upon jointly by the cardholder and the merchant at the point of sale.
- 2.3. While the ECB welcomes the fact that there is a prohibition on rules forcing merchants to accept all cards of a specific brand, the ECB is concerned by the derogation that states that merchants should be obliged to accept other payment instruments of the same brand and/or category that are subject to the same regulated interchange fee<sup>(2)</sup>. The decision on whether to accept cards, as well as the particular brands or card products which may be accepted under a certain scheme, should be a commercial decision by the merchant.
- 2.4. The ECB further suggests clarifying that payment card schemes should not discriminate against processing entities by implementing business rules that unduly restrict interoperability between processing entities.
- 2.5. In addition, payment card schemes may need some additional time to adapt to the new requirements. To this end, a transitional period for the separation requirement<sup>(3)</sup> could be considered.
- 2.6. For efficiency reasons, the ECB would suggest one single competent authority being responsible for ensuring compliance with the regulation, however being aware that this might prove difficult in practice due to diverging national set ups.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 5 February 2014.

*The President of the ECB*

Mario DRAGHI

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<sup>(1)</sup> See Article 8(5) of the proposed regulation.

<sup>(2)</sup> Article 10(1) and recital 29 of the proposed regulation.

<sup>(3)</sup> See Article 7 of the proposed regulation.

## ANNEX

## Drafting proposals

| Text proposed by the European Commission | Amendments proposed by the ECB <sup>(1)</sup> |
|--|---|
|--|---|

**Amendment 1**

## Recitals 15 to 17

|  |   |
|--|---|
| <p>(15) This Regulation follows a gradual approach. As a first step, it is necessary to take measures to facilitate cross-border issuing and acquiring of payment card transactions. Allowing merchants to choose an acquirer outside their own Member State ("cross border acquiring") and imposing a maximum level of cross border interchange fees for cross border acquired transactions should provide the necessary legal clarity. In addition, licences for issuing or acquiring of payment instruments should be valid without geographic restrictions within the Union. These measures would facilitate the smooth functioning of an internal market for card, internet and mobile payments, to the benefit of consumers and retailers.</p> | <p>(15) This Regulation follows a gradual approach. As a first step, it is necessary to take measures to facilitate cross-border issuing and acquiring of payment card transactions. Allowing merchants to choose an acquirer outside their own Member State ("cross border acquiring") <del>and imposing a maximum level of cross border interchange fees for cross border acquired transactions should provide the necessary legal clarity. In addition, and</del> <b>ensuring that</b> licences for issuing or acquiring of payment instruments should be valid without geographic restrictions within the Union. <del>These measures</del> would facilitate the smooth functioning of an internal market for card, internet and mobile payments, to the benefit of consumers and retailers.</p> |
| <p>(16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card payment transactions in the Union are already carried out respecting the maximum interchanges fees applicable to the first phase of this Regulation. Therefore, the provisions relating to those transactions should enter into force quickly, creating opportunities for retailers to seek cheaper acquiring services cross-border, and incentivising domestic banking communities or schemes to lower their acquiring fees.</p>   | <p>(16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card payment transactions in the Union, <b>as well as some national transactions in certain Member States</b>, are already carried out respecting the maximum interchanges fees applicable <del>to the first phase of</del> <b>in</b> this Regulation. Therefore, <del>the provisions relating to those transactions should enter into force quickly, creating opportunities for retailers to seek cheaper acquiring services crossborder, and incentivising domestic banking communities or schemes to lower their acquiring fees.</del></p>   |
| <p>(17) For domestic transactions, a transition period is necessary to provide payment services providers and schemes with time to adapt to the new requirements. Therefore, after a two year period following the entry into force of this Regulation and in order to provide for a completion of an internal market for card-based payments, the caps on interchange fees for consumer card transactions should be extended to cover all, cross-border and domestic payments.'</p>   | <p>(17) <del>For domestic transactions, a transition period is necessary to provide payment services providers and schemes with time to adapt to the new requirements. Therefore, after a two year</del> <b>transitional</b> period following the entry into force of this Regulation <b>appears to be sufficient</b> <del>and</del> in order to provide for a completion of an internal market for card-based payments, <del>the caps on interchange fees for consumer card transactions should be extended to cover all, cross-border and domestic payments.'</del></p>   |

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>*Explanation*

*The proposed 22 months between the introduction of the caps on cross-border interchange fees and on national interchange fees, could put small national card acquirers at a disadvantage since they would not be able to compete with foreign acquirers benefiting from the lower cross-border interchange fees. Therefore, a common date for the introduction of the caps on interchange fees would be preferred; however the ECB remains neutral on the proposed timeline.*

**Amendment 2**

## Recital 24

'(24) Consumers tend to be unaware of the fees paid by merchants for the payment instrument they use. At the same time, a series of incentivising practices applied by issuing payment service providers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments generating high fees for issuing payment service providers. To counter this, the measures imposing restrictions on interchange fees should only apply to payment cards that have become mass products and merchants generally have difficulty refusing due to their widespread issuance and use (i.e. consumer debit and credit cards). In order to enhance effective market functioning in the non-regulated parts of the sector and to limit the transfer of business from the regulated to the non-regulated parts of the sector, it is necessary to adopt a series of measures, including separation of scheme and infrastructure, steering of the payer by the payee and enable selective acceptance of payment instruments by the payee.'

'(24) Consumers tend to be unaware of the fees paid by merchants for the payment instrument they use. At the same time, a series of incentivising practices applied by issuing payment service providers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments generating high fees for issuing payment service providers. To counter this, the measures imposing restrictions on interchange fees should only apply to payment cards that have become mass products and merchants generally have difficulty refusing due to their widespread issuance and use (i.e. consumer debit and credit cards). In order to enhance effective market functioning in the non-regulated parts of the sector and to limit the transfer of business from the regulated to the non-regulated parts of the sector, it is necessary to adopt a series of measures, including separation of **the** scheme and **the processing** infrastructure, steering of the payer by the payee and enable selective acceptance of payment instruments by the payee.'

*Explanation*

*It is suggested to add this wording to clarify the context.*

**Amendment 3**

## Recital 29

'(29) [...]

However, to protect the consumer and his ability to use the payment cards as often as possible, merchants should be obliged to accept all cards that are subject to the same regulated interchange fee. Such a limitation would also result in a more competitive environment for cards with interchange fees not regulated under this Regulation, as merchants would gain more negotiating power as regards the conditions under which they accept such cards.'

'(29) [...]

~~However, to protect the consumer and his ability to use the payment cards as often as possible, merchants should be obliged to accept all cards that are subject to the same regulated interchange fee. Such a limitation would also result in a more competitive environment for cards with interchange fees not regulated under this Regulation, as merchants would gain more negotiating power as regards the conditions under which they accept such cards.'~~

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>

*Explanation*

*Merchants should be able to take commercial decisions themselves on which cards, schemes, brands or products to accept. Introducing mandatory acceptance of cards that are subject to the same regulated interchange fee seems to be unnecessarily broad.*

**Amendment 4**

Article 2(1)

'(1) "acquirer" means a payment service provider contracting directly or indirectly with a payee to process the payee's payment transactions;'

'(1) "acquirer" means a payment service provider contracting ~~directly or indirectly~~ with a payee to **accept and** process the payee's payment transactions **initiated by a payer's payment instrument;**'

*Explanation*

*This article requires amendment to capture some additional features of acquiring. The drafting suggestion is in line with the Eurosystem's proposed definition of 'acquiring of payment transactions' in its opinion on the proposed PSD2.*

**Amendment 5**

Article 2(2)

'(2) "issuer" means a payment service provider contracting directly or indirectly with a payer to initiate, process and settle the payer's payment transactions;'

'(2) "issuer" means a payment service provider ~~contracting directly or indirectly with a payer~~ **providing the payer with a payment instrument** to initiate, process and settle the payer's payment transactions;'

*Explanation*

*Amended to capture some additional features of issuing. The drafting suggestion is in line with the Eurosystem's proposed definition of 'issuing of payment instruments' in its opinion on the proposed PSD2.*

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>**Amendment 6**

## Article 2(4)

'(4) "debit card transaction" means an card payment transaction included with prepaid cards linked to a current or deposit access account to which a transaction is debited in less than or 48 hours after the transaction has been authorised/initiated.'

'(4) "debit card transaction" means a ~~an~~card payment transaction **initiated with a debit card** ~~included with prepaid cards linked to a current or deposit access account to which a transaction is debited in less than or 48 hours after the transaction has been authorised/initiated.~~

(4a) "debit card" means a card that enables its holders to make purchases and/or withdraw cash, which are to be directly and immediately charged to their payment accounts, regardless of whether these are held with the card issuer.'

*Explanation*

*It cannot be taken for granted that a debit card will be debited within 48 hours. The separation between debit and credit cards should therefore relate to the immediate debiting of the account (debit card) and debiting on pre-agreed dates (credit card). Moreover, the definition of debit card should also deviate from the definition of credit card (see below) as regards the aspect of benefits for the payee, so as to provide a non-arbitrary reasoning for the proposed difference of the respective interchange fee caps.*

**Amendment 7**

## Article 2(5)

'(5) "credit card transaction" means an card payment transaction where the transaction is settled more than 48 hours after the transaction has been authorised/initiated;'

'(5) "credit card transaction" means an card payment transaction **initiated with a credit card** ~~where the transaction is settled more than 48 hours after the transaction has been authorised/initiated;~~

(5a) "credit card" means a card that enables cardholders to make purchases and/or withdraw cash up to a prearranged credit limit. The credit granted may be either settled in full by the end of a specified period, or settled in part, with the balance taken as extended credit, on which interest is usually charged. The scheme rules and the processing of the transaction, as well as the merchant's card acceptance procedures, can be broader as compared to transactions with a debit card.'

*Explanation*

*See explanation of Amendment 6.*

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>**Amendment 8**

Article 2(7)

'(7) "card based payment transaction" means a service used to complete a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a payment card transaction. Card based payment transactions exclude transactions based on other kinds of payment services.'

'(7) "card based payment transaction" means a ~~service used to complete a payment transaction~~ **initiated** by means of any card, telecommunication, digital or IT device or software **a card based payment instrument under the rules, practices, standards and/or implementation guidelines of a card scheme** if this results in a payment card transaction. Card based payment transactions exclude transactions based on other kinds of payment services **that does not result in a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012.**'

*Explanation*

*The Commission's proposed definition of a 'card based payment transaction' is slightly wider than the definition of a 'payment card transaction' covering also transactions made without a physical card. Considering the rapid development in the area of cards and the increasing variety of payment solutions using the cards infrastructure, the ECB suggests merging the two definitions.*

**Amendment 9**

Article 2(8)

'(8) "cross-border payment transaction" means a card payment or card-based payment transaction initiated by a payer or by a payee where the payer's payment service provider and the payee's payment service provider are established in different Member States or where the payment card is issued by an issuing payment service provider established in a different Member State than that of the point of sale;'

'(8) "cross-border **card** payment transaction" means a ~~card payment or card-based~~ payment transaction initiated by a payer or by a payee where the ~~payer's payment service provider and the payee's payment service provider~~ **issuer and acquirer of that transaction** are established in different Member States or where the payment card **acquirer** is issued by an issuing payment service ~~provider~~ established in a different Member State than that of the point of sale;'

*Explanation*

*It is suggested that the wording of this definition can be simplified as indicated in the amendment above.*

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>**Amendment 10**

Article 2(9)

'(9) "interchange fee" means a fee paid for each transaction directly or indirectly (i.e. through a third party) between the payment service providers of the payer and of the payee involved in a payment card or a payment card-based transaction;'

'(9) "interchange fee" means a fee paid for each **per card-based payment** transaction directly or indirectly (i.e. through a third party) between the ~~payment service providers of the payer and of the payee involved in a payment card or a payment card-based~~ **issuer and the acquirer of that** transaction;'

*Explanation*

*It is suggested that the wording of this definition can be simplified by referring to the concepts of issuer and acquirer.*

**Amendment 11**

Article 2(10)

'(10) "merchant service charge" means a fee paid by the payee to the acquirer for each transaction comprising the interchange fee, the payment scheme and processing fee and the acquirer margin;'

'(10) "merchant service charge" means a fee paid by the payee to the acquirer for each **card-based payment** transaction ~~comprising the interchange fee, the payment scheme and processing fee and the acquirer margin~~ **services provided by the acquirer;'**

*Explanation*

*It is suggested not to limit the definition of the merchant service charge to the items listed.*

**Amendment 12**

Article 2(13)

'(13) "payment card scheme" means a single set of rules, practices, standards and/or implementation guidelines for the execution of payment transactions across the Union and within Member States, and which is separated from any infrastructure or payment system that supports its operation;'

'(13) "payment card scheme" means a ~~single~~ **single** set of rules, practices, standards and/or implementation guidelines for the execution of payment transactions **initiated by a card-based payment instrument** ~~across the Union and within Member States, and which is separated from any infrastructure or payment system that supports its operation;'~~

*Explanation*

*Amended to incorporate the element of initiation; references to the Union and the Member States should be deleted as they are not necessary.*

Text proposed by the European Commission

Amendments proposed by the ECB (1)

**Amendment 13**

Article 2(14)

'(14) "four party payment card scheme" means a payment card scheme in which payments are made from the payment account of a cardholder to the payment account of a payee through the intermediation of the scheme, a payment card issuing payment services provider (on the card holder's side) and an acquiring payment services provider (on the payee's side), and *card based* transactions based on the same structure.'

'(14) "four-party payment card scheme" means a payment card scheme **where issuing and acquiring services are provided by entities other than the entity governing the card scheme** in which payments are made from the payment account of a cardholder to the payment account of a payee through the intermediation of the scheme, a payment card issuing payment services provider (on the card holder's side) and an acquiring payment services provider (on the payee's side), and *card based* transactions based on the same structure.'

*Explanation*

*It is suggested not to distinguish between three-party and four-party card schemes on the basis of the provision of issuing and acquiring services.*

**Amendment 14**

Article 2(15)

'(15) "three party payment card scheme" means a payment card scheme in which payments are made from a payment account held by the scheme on behalf of the cardholder to a payment account held by the scheme on behalf of the payee, and *card based* transactions based on the same structure. When a three party payment card scheme licenses other payment service providers for the issuance and/or the acquiring of payment cards, it is considered as a four party payment card scheme.'

'(15) "three-party payment card scheme" means a payment card scheme **where both the issuing and the acquiring of payment transactions under the scheme's brand are performed by the entity governing the card scheme** in which payments are made from a payment account held by the scheme on behalf of the cardholder to a payment account held by the scheme on behalf of the payee, and *card based* transactions based on the same structure. **If** a three party payment card scheme licenses other payment service providers for the issuance **of its card based payment instruments** and/or the acquiring of payment cards **its card based payment transactions**, it is considered as a four party payment card scheme.'

*Explanation*

*See explanation of Amendment 13.*

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>

### Amendment 15

Article 2(16)

'(16) "payment instrument" means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user, or in its behalf, in order to initiate a payment order;'

'(16) "payment instrument" means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used ~~by the payment service user, or in its behalf,~~ in order to initiate a payment order;'

#### Explanation

*This definition should be aligned with the proposed PSD 2.*

### Amendment 16

Article 2(17)

'(17) "card-based payment instrument" means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate application, used by the payer to initiate a payment order which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012;'

'(17) "card-based payment instrument" means ~~any payment instrument, including a card, or any other payment instrument providing similar features to a payment card, mobile phone, computer or any other technological device containing the appropriate application,~~ **accepted by the payee to receive a payment and** used by the payer to initiate a payment order ~~which in~~ **does not result in** a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012;'

#### Explanation

*This definition should be aligned with the drafting suggestion for 'card based payment transaction' in Amendment 8.*

### Amendment 17

Article 2(18)

'(18) "payment application" means a computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;'

'(18) "**card-based** payment application" means a computer software or equivalent loaded on a device **or accessed remotely** enabling card-based payment transactions to be initiated ~~and allowing by~~ the payer to ~~issue payment orders;~~'

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>

*Explanation*

*It is suggested to incorporate the element of remote access within this defined term.*

**Amendment 18**

Article 2(19)

'(19) "payment order" means any instruction by a payer to his payment service provider requesting the execution of a payment transaction;'

'(19) "payment order" means any instruction by a payer **or payee** to his payment service provider requesting the execution of a payment transaction;'

*Explanation*

*Payment orders for card payments could also be initiated by the payee. Additionally, the amendment aligns the definition with the proposed PSD 2.*

**Amendment 19**

Article 2(20)

'(20) "payment card transaction" means a payment transaction made with a payment card or using the infrastructure of a payment card transaction and based on the business rules of a payment card transaction;'

~~'(20) "payment card transaction" means a payment transaction made with a payment card or using the infrastructure of a payment card transaction and based on the business rules of a payment card transaction;'~~

*Explanation*

*The definition is very similar to the definition of 'card based payment transaction'. The two definitions could usefully be merged.*

**Amendment 20**

Article 2(21)

'(21) "payment service provider" means natural or legal persons authorized to provide the payment services provider listed in the annex of Directive 2007/64/EC. A payment service provider can be an issuer or an acquirer or both;'

~~'(21) "payment service provider" means natural or legal persons authorized to provide the payment services provider listed in the annex of Directive 2007/64/EC. A payment service provider can be an issuer or an acquirer or both'~~ **any of the bodies referred to in Article 1(1) of the proposed PSD2<sup>(2)</sup> COM(2013)547/3 and legal and natural persons benefiting from the waiver under Article 27 of the proposed PSD2;**

| Text proposed by the European Commission | Amendments proposed by the ECB <sup>(1)</sup> |
|--|---|
|--|---|

*Explanation*

*To be aligned with the proposed PSD2.*

**Amendment 21**

Article 2(23)

|  |   |
|--|---|
| '(23) "payment transaction" means an action, initiated by the payer or on his behalf or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee;' | '(23) "payment transaction" means an action, initiated by the payer or on his behalf or by the payee of <b>placing, transferring or withdrawing</b> funds, irrespective of any underlying obligations between the payer and the payee;' |
|--|---|

*Explanation*

*To be aligned with the proposed PSD2.*

**Amendment 22**

Article 2(24)

|  |  |
|--|--|
| '(24) "processing" means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer;' | '(24) "processing" means <del>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</del> <b>any automatic data processing effected for the issuer or acquirer in the context of a card-based payment transaction;</b> ' |
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*Explanation*

*Amended to further clarify what payment transaction processing services provided by payment service providers entail.*

**Amendment 23**

Article 2(25)

|   |  |
|---|--|
| '(25) "processing entity" means any natural or legal person providing payment transaction processing services;' | '(25) "processing entity" means any <b>technical service provider of natural or legal person</b> providing payment transaction processing services;' |
|---|--|

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>*Explanation*

*Amended to emphasise the technical nature, i.e. involving IT processing of the payment services being provided.*

**Amendment 24**

Articles 3 and 4

| <p style="text-align: center;"><i>'Article 3</i><br/><i>Interchange fees for cross-border consumer debit or credit card transactions</i></p> <p>1. With effect from two months after the entry into force of this Regulation, payment services providers shall not offer or request for cross-border debit card transactions a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction.</p> <p>2. With effect from two months after the entry into force of this Regulation, payment services providers shall not offer or request for cross-border credit card transactions a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction.</p> | <p style="text-align: center;"><i>'Article 3</i><br/><i>Interchange fees for cross-border consumer debit or credit card transactions</i></p> <p><del>1. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction for any debit card based transactions.</del></p> <p><del>2. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction for any credit card based transactions.'</del></p> |
|---|--|
| <p style="text-align: center;"><i>Article 4</i><br/><i>Interchange fees for all consumer debit or credit card transactions</i></p> <p>1. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction for any debit card based transactions.</p> <p>2. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction for any credit card based transactions.'</p>                    | <p style="text-align: center;"><i>Article 4</i><br/><i>Interchange fees for all consumer debit or credit card transactions</i></p> <p>1. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction for any debit card based transactions.</p> <p>2. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a <i>per transaction</i> interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction for any credit card based transactions.'</p>                                 |

Text proposed by the European Commission

Amendments proposed by the ECB<sup>(1)</sup>*Explanation**See explanation of Amendment 1.***Amendment 25**

Article 7(3)

and Article 7(5) and (6) (new)<sup>(3)</sup>

'3. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.

[...]

'3. Any territorial discrimination **relating to the choice of processing entity in the processing**-rules operated by payment card schemes shall be prohibited.

[...]

**5. Payment card schemes should have a fair and transparent procedure to ensure that other processing entities are not unduly discriminated against and that technical interoperability with independent processing entities is not restricted.**

**6. This Article shall apply with effect from two years after the entry into force of this Regulation.'**

*Explanation*

An amendment to paragraph 3 is suggested to increase the clarity of the current wording, which, as it currently stands, could be interpreted in a way that would not leave room for country risk management at different stages of the processing, i.e. at authorisation.

A new paragraph 5 is suggested to avoid the possibility of payment card schemes discriminating against processing entities by implementing business rules that unduly restrict interoperability between processing entities.

Finally, a new paragraph 6 is suggested. The payment industry might need some additional time to implement the separation of the scheme and the processing infrastructure. It is therefore suggested that this article should not apply until two years after the Regulation has entered into force.

**Amendment 26**

Article 8(3) and (5)

'3. Payment card schemes shall not impose reporting requirements, obligations to pay fees or other obligations with the same object or effect on card issuing and acquiring payment services providers for transactions carried out with any device on which their brand is present in relation to transactions for which their scheme is not used.

[...]

'3. Payment card schemes shall not impose reporting requirements, obligations to pay fees or other obligations with the same object or effect on card issuing and acquiring payment services providers for transactions carried out with any device on which their brand is present in relation to transactions for which their scheme is not used, **apart from reporting requirements imposed by regulators, supervisory authorities or central banks.**

[...]

| Text proposed by the European Commission   | Amendments proposed by the ECB <sup>(1)</sup>   |
|--|---|
| 5. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale.' | 5. Where a payment device offers the choice between different brands of payment instruments, the brand <b>to be</b> applied to the payment transaction at issue shall be <b>agreed determined</b> —by the payer <b>and the payee</b> at the point of sale.' |

#### Explanation

For oversight purposes, central banks require card schemes to report card fraud statistics. It would be a substantial burden if reporting requirements were modified to cover a larger number of providers. Therefore, as a solution to this, it is proposed to impose reporting requirements that will provide information that is actually needed by regulators, supervisory authorities or central banks. The choice of a specific brand should be jointly agreed upon by the cardholder (i.e. the payer) and the merchant (payee). If the choice lies solely with the payer, there is a risk that the payer will choose an expensive brand, which, while providing him with additional benefits, would lead to higher costs for the merchant which, ultimately, could lead to higher prices for all the merchant's customers.

#### Amendment 27

##### Article 10(1)

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|--|--|
| '1. Payment schemes and payment service providers shall not apply any rule that may oblige payees accepting cards and other payment instruments issued by one issuing payment service provider within the framework of a payment instruments scheme to also accept other payment instruments of the same brand and/or category issued by other issuing payment service providers within the framework of the same scheme, except if they are subject to the same regulated interchange fee.' | '1. Payment schemes and payment service providers shall not apply any rule that may oblige payees accepting cards and other payment instruments issued by <del>one issuing payment service provider</del> within the framework of a <b>card payment instruments</b> scheme to also accept other <b>brands, payment instruments or products</b> of the same brand and/or category <del>issued by other issuing payment service providers within the framework of the same scheme, except if they are subject to the same regulated interchange fee.</del> |
|--|--|

#### Explanation

The decision on whether to accept cards, as well as which schemes, brands or products to accept, or which cards under a certain scheme to accept, should be a commercial decision taken by the merchant. Allowing schemes and providers to apply rules forcing upon payees the mandatory acceptance of cards which are subject to the same regulated interchange fee, seems to be unnecessarily broad. The additional amendments aim to simplify the requirements set out in this paragraph. According to recital 29, the goal of this paragraph is to remove the 'Honour All Products' element of the 'Honour All Cards' rule. The conditions on issuers are not necessary in order to reach this objective.

| Text proposed by the European Commission            | Amendments proposed by the ECB <sup>(1)</sup>   |
|---|---|
| <p><b>Amendment 28</b></p> <p>Article 10(5) new</p> |   |
| No text   | <p><b>5. Merchants may decide not to accept all cards or other payment instruments if they provide a low level of security and if the acquirer does not guarantee the full payment of authorised transactions.'</b></p> |

*Explanation*

*Merchants should be allowed not to accept cards with lower security features, e.g. cards without a micro-chip, since payment where such cards were used would not be guaranteed, thus exposing them to greater financial risk.*

<sup>(1)</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.

<sup>(2)</sup> COM(2013) 547/3.

<sup>(3)</sup> Please note that the references in this opinion mirror the paragraph numbering scheme in COM(2013) final 550/2.