

# European Payment Institutions Federation

Commission's proposal on the cross-border payment fees and currency conversion  
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## ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

**EPIF**, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorised payment institutions in Europe. Our diverse membership includes a broad range of business models, including:

- 3-party Card Network Schemes
- Acquirers Money Transfer Operators
- FX Payment Providers
- Mobile Payments
- Payment Processing Service Providers
- Card Issuers
- Third Party Providers
- Digital Wallets

**EPIF** seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).

## 1. Introduction

The regulation proposed was not properly consulted on nor was an appropriate study commissioned. There was not sufficient consultation on credit transfers and online payments to warrant inclusion in the extension of the regulation, as the majority of the consultation pertained to Dynamic Currency Conversion. The study into the extension of the cross-border payment regulation almost entirely investigated credit transfers and did not explicitly look into Dynamic Currency Conversion. Combining these two actions into one regulation has meant that there has not been sufficient review of either issue, therefore it is not appropriate to propose this legislation.

## 2. Cross-border payment fees

### FEES FOR CROSS-BORDER PAYMENTS

Whilst EPIF agrees with the objective of the legislative proposal there are a number of areas where we provide feedback which are detailed below. Furthermore, as proven by Deloitte's study, we agree that cross-border transactions in currencies other than the euro are still governed by unmodernised processes without centralised infrastructure which remain costly.

### REGULATING PRICING HARMS COMPETITION

Pricing legislation is fundamentally flawed because it does not reduce costs sustainably by reducing competition. Incumbents are naturally advantaged due to access to SEPA, which reduces their cost of goods. Right now non-bank PSPs cannot join SEPA direct, therefore they will always have higher cost than banks who are able to join SEPA direct. Non-bank PSPs will need to pay a percentage per transaction to their partners with direct access, for them to process SEPA transactions on the PSPs behalf. Moreover, it is more easy and difficult to join SEPA either direct or indirect in different Member States giving the countries licensed out of easier Member States an advantage.

As evidenced by the downward trajectory of prices across the EU, innovation is helping to drive costs down. New players entering the market will increase competition, improve consumer benefits and reduce costs.

EU policymakers must continue to deliver initiatives that maintain and strengthen a high level of competition instead of following an approach that would involve legislative price controls in the internal market.

### THE DEFINITION OF CORRESPONDING NATIONAL PAYMENT NEEDS GREATER CLARITY

Many providers charge much higher costs for Euro transactions than domestic payments because it requires holding an account denominated in Euro which many banks charge considerably more for. By extending the regulation to Euro payments in non-Euro Member States there could therefore be no change because providers do not deem their payments corresponding. Differing payments have different costs. SEPA payments have different costs. SEPA credit transfers are the cheapest, with Target 2 more expensive and then SEPA instant the most expensive.

### THE COST OF SUPERVISION WILL NOT BE CHEAP

We disagree with the assessment that "the cost of hiring supervisors to ensure that payment service providers comply with the Regulation will be negligible." This is based on our experience that there are still infractions of SEPA that are difficult for cross-border firms to challenge. There should be an easier way for firms to redress SEPA compliance issues, especially once this regulation brings more transactions in scope.

### BUSINESS AND CONSUMER EFFECT

Whilst the objective is to reduce the cost for businesses and consumers it is not clear in the proposed regulation what the scope of the regulation is. In particular will this regulation apply if a PSP provides cross-border services to a corporate client as an intermediary.

### **Arguments relating to expanding SEPA to non-Euro countries:**

This would be unachievable given the higher cost of cross-border transactions due to: a) payment infrastructure access b) currency transfer c) Compliance (even intra-EU). A domestic transfer only involves cost from the two banks and the payment instrument used for transfer. An international or cross-border transfer requires transfer between the payer's domestic bank to the payee's domestic bank via the payer and payee's national banks and involves international payment networks such as SWIFT and potentially correspondent banking all of which are much more expensive than a domestic payment. This network cost is separate to the cost of currency transfer, which is influenced by macroeconomic factors. Cross-border payments also come with increased costs for compliance (even within the European Union) as additional Customer Due Diligence is required. In summary, unless and until full harmonisation occurs across the EU, there will continue to be different costs of accessing different payment infrastructures. There will always continue to be differing costs for currency conversion due to risk and volatility. There will also continue to be differing costs for customer due diligence in different states. Therefore cross-border will continue to cost more than domestic transactions, both for providers and for users.

EPIF views the provision of cross-border transactions in any currency to be a diverse and innovative marketplace at present, in which market forces should be encouraged through open access, transparency and information. This consultation focusses on Cost. However, cost per se should not be viewed in isolation. Cost is composed of a number of different components and in making the judgements about cost it is essential that proper consideration be given to cost such as ensuring the security of remittance payments, prevention of fraud, measures to combat money laundering and terrorist financing. All of these items, as well as the ability to send cash in minutes to geographies in different time zones, with different legislation and market structures in place contribute to the true cost of money transfer. All these factors need to be taken into account rather than pushing for an overly simplistic price cap.

## **3. Currency Conversion**

### **TRANSITIONAL CAP ON CURRENCY CONVERSION FEES**

The Commission should recognise that until full banking harmonisation exists across the EU, there will continue to be different costs of accessing different member state payment infrastructures and differing costs for currency conversion due to risk and volatility. We are concerned that the introduction of a transitional cap on currency conversion fees could mean market participants would potentially be forced to provide a service at less than cost price. As a consequence, businesses maybe be forced to exit from operating in some Member States – ultimately to the detriment of competition and as a consequence to consumers. Moreover, there are different costs associated with providing currency conversion services at an ATM or at the POS. Card based POS transactions are far less expensive to operate than ATM transactions. POS terminals have moderate cost to procure, install and maintain. The costs of maintaining and operating an ATM network includes site rents, cash supply, cash delivery, hardware maintenance, security, insurance and card scheme fees. The costs of maintaining and operating ATMs also varies widely, with ATMs located outside bank branches being far more expensive to operate than ATMs located within bank branches. Even amongst off branch ATM locations, ATMs in tourist locations or remote locations are more expensive to operate due to higher site rents or operating costs. Those higher costs

must be supported by increased revenues, otherwise the alternative source of foreign currency would be mostly over the counter foreign exchange services.

Price regulation must be the last resort for EU policymakers as it should only be used when there is market failure. Moreover, this is a key tenet of EU policy making. The European Union's powers are regulated by the principle of proportionality as enshrined in Article 5 of the Treaty on the European Union and the Protocol on the application of the principles of subsidiarity and proportionality. Draft legislative acts must be sufficient to achieve the objective but should not put undue burdens on corporate entities in order to comply with these principles. There is no proof that there is any acute urgency for the pricing regulation. Pricing regulation is therefore disproportionate until we see whether the transparency measures achieve the objective of the regulation.

The payments market, including remittances and other forms of payment and money transmission is particularly competitive, with innovation coming from existing and new entrants. This competition and innovation is bringing prices down, as lower-cost routes to market are pursued. Regulating prices would be interference in the market process that is unacceptable from a commercial and legal point of view, and runs counter to the principles of a free market economy. As stated above – to introduce such legislation now ignores the dynamic changes in the market – resulting from the market disruptors and FinTechs all of which have been made possible by PSD. The direct price controls suggested by this proposal (the broad scope of which was not adequately consulted on in breach of the principles of natural justice) could also constitute substantial interference in constitutional basic rights (freedom to exercise an occupation, general freedom of action) and could infringe Community fundamental rights which the objective of ensuring benefits for consumers does not justify. The EU should continue to focus on the transparency of costs for consumers, and also promote EU harmonisation through legislation such as the Payment Services Directive. Ultimately rather than bringing prices down the introduction of a transitional cap on currency conversion fees may have the perverse consequence of creating a higher 'price ceiling' as is well understood in economic theory.

## NON-DYNAMIC CURRENCY CONVERSION (DCC) CURRENCY CONVERSION SERVICES

The principle focus of Commission's consultation document on Transparency and Fees in Cross-Border Transactions in the EU (24 July 2017 - 30 October 2017) was on the practice of DCC and the ways in which transparency for DCC could be improved. We do not believe that consultation gave due consideration to the various business models providing non-DCC currency conversion services, including cards, and no consumer harm has been demonstrated, either in public studies or consumer complaints. As such the impact assessment failed to take into account the technical and operational costs that would impact on non-DCC providers. Before requirements relating to transparency and price comparability of different currency conversion service options are finalised, there is a clear legal obligation to provide adequate consultation to ensure regulation will have the intended result and is proportionate. Failure to conduct a consultation would be a clear breach of the principles of natural justice.

Hence, we urge the European Commission, the European Council and the European Parliament to apply the necessary rigour in the fullness of time in order to arrive at a well-considered and justified approach. Anything else would run against the idea of good legislation, all the more as there is a considerable risk that core elements of the proposal (transparency and information requirements, interim maximum amount of all charges allowed) will not be developed under the legislative authority of the European Parliament and the Council but be given away to the European Banking Authority (EBA).

As regards the proposed transparency obligation to provide the client with the underlying reference rate; this is neither helpful nor realistic. The 'Reference rate' is not defined in the proposal, but working on the assumption that it is the rate that a PSP negotiates with its own bank – a retail customer would not be able to convert currency at such a rate so provision of it would only confuse matters rather than clarify them.

The Commission should clarify who will benefit from these new rules. Like under PSD2, the few transparency rules are directed at retail clients and micro enterprises. These rules should equally apply to this body of clients and therefore corporate clients should be expressly excluded or subject to an opt out. Politically and economically speaking, the focus on foreign exchange fees and transparency should be a matter for retail consumers only.

The proposal should further clarify that this article applies solely to a currency conversion service – where such service is an option that the consumer may or may not choose to use – and not to any service where the currency conversion is an intrinsic part of the service.

We are also concerned that the transparency requirements for currency conversions in the proposed regulations and the Regulatory Technical Standards will threaten the feasibility of services which currently enable payments to be initiated by or through the payee, whether these relate to standalone payment orders or a series of several payment orders initiated from time to time under an enduring authority given by the payer to the payee.

## PROPOSALS

The Commission's Impact Assessment (Section 8.2.3) recognises that a thorough investigation will be necessary '*in order to ensure that transparency obligations provide a suitable solution to the technical framework*' and to '*guarantee that the final transparency requirements are precise, proportionate*', however the proposed amendments to the Regulation on cross-border payments are significantly more prescriptive. We are concerned that when the European Banking Authority develops the Regulatory Technical Standard it will not have the flexibility to take into account its own detailed assessment of non-DCC currency conversion services.

## REGULATORY TECHNICAL STANDARDS (RTS)

The EBA is not the appropriate organization to be making policy decisions – i.e. relating what value a transitional cap should be set at. Moreover, a three-year transition period will not provide sufficient time for the EBA to conduct an impact assessment, develop and have approved an RTS and then allow industry to make any necessary operational or technical changes to meet these new requirements. We would ask the Commission to include a specific implementation period following the ratification of the RTS, to allow industry to make the necessary changes.