

EAPB Position Paper

on the proposed Cross-Border Payments Regulation (EC) No. 924/2009

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Generally speaking, the European Association of Public Banks (EAPB) welcomes the Commission's proposed amendments to the Cross-Border Payments Regulation, which aim to strengthen fairness and increase consumer transparency. In particular, we share the opinion that transparency may be a decisive parameter in a functioning market. However, we believe that some aspects of this proposed Regulation may have substantial impact on the EU banking sector and we would therefore like to raise the following specific comments:

Art. 3 - Charges for cross-border payments and corresponding national payments

According to the Commission's proposal, cross-border payments in euro originating in non-euro countries should not be allowed to be processed at higher charges than domestic payments in the local official currency.

- While we welcome the extension of the scope, we have reservations regarding the European Commission's choice of regulatory intervention in market price mechanisms. **It is our opinion that any direct intervention in market price mechanism is disproportionate and incompatible with the regulatory approach that dominates other areas of European payment services law.** Therefore, by choosing less onerous measures of similar suitability, the principle of proportionality could be maintained and would adequately account for the concerns of market players.
- However, should there be support for this proposal by the co-legislators, we strongly recommend to **introduce a grace period of three years after the entry into force of this Regulation** in line with the Commission proposals on currency conversion services. This would also take into consideration the historical background how the domestic and cross-border euro payments' fees were equalized over a period of grace in the Eurozone member states. Therefore, we suggest applying the same logic in respect of the non-euro zone member states.

Art. 3a Currency conversions charges

According to Art. 3a parties, who offer alternative dynamic currency conversion services, should be required to disclose not only the exchange rate but also the applied reference rate as well as the total charges of the currency conversion service before the transaction is initiated.

- While we support efforts to create greater transparency for consumers where currency conversion services are concerned, **we do not support any additional implied proposal to also furnish detailed information on the respective parameters of the currency conversion services provided by the card-issuing institute.**
- Moreover, we would like stress that the PSD 2 has already installed sufficient and well-balanced obligations to inform consumers in case of currency conversions (e.g. Art. 45 para. 1; 48; 52 no. 3; 57 para. 1 and Art. 59 PSD 2). **As a consequence, we believe that the PSD 2 reflects a well-balanced approach to split the obligation to inform between payment service providers of the payer and alternative providers of currency conversion services.**
- In addition, the proposals **may cause excessive infrastructural costs for banks whereas additional benefits to the consumer appear rather limited.** This lack of practicability could only be remedied via comprehensive expansion of the technical infrastructure or the introduction of a complete separate process. Therefore, we believe that the associated cost (expenditure) is disproportionate to the assumed enhancement of the protection level / increase in the number of the respective consumers' recorded transactions.

Considering the complex and significantly costly nature of the Commission's proposal, we strongly recommend deleting Art. 3a (and consequently Art. 3b) without substitution.

Should the commitment to new provisions regarding DCC remain, the following amendments should be taken into consideration:

- **Clear limitation of the scope of application**

The scope of Art. 3a of the Commission proposal urgently requires further clarification. The EU Cross-Border Payment Services Regulation contains no definition of currency conversion services and in its current form. The regulation seems to cover not only dynamic currency conversion, but all currency conversion services and it is therefore not clear to us, which circumstances the European Commission's regulation is intended to cover.

We believe that **card-issuing institutes, functioning as payment service provider of the payer, should be excluded from the scope of Art. 3a.** Thus, before payment is initiated, alternative payment service providers who offer their own currency conversion services should only be required to provide information on their own exchange rate, any reference rate they may have used and the total fees charged for currency conversion, and not on the respective parameters relating to currency conversion services of the card-issuing institute. Should there be an additional need for transparency, the solution has to be found within the scope of Art. 59 PSD 2 (e.g. making more detailed specifications on the manner the charges should be disclosed to the payer).

Furthermore, we urge a clear statement that the **introduction of any transparency requirements will relate exclusively to payments at ATMs and points of sale in stationary merchant stores. Furthermore, any reference to online payments in recital 6 should be deleted without substitution.**

We therefore suggest amending Art. 3a para. 1 sentence 1 of the Commission proposal as follows:

*“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 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 **at an automated teller machine (ATM) or at the point of sale (POS) of a stationary merchant store.**”*

- **No transitional fee capping (for 36 months)**

Art. 3a para. 2 sub-para. 2 of the Commission proposal includes an EBA mandate to adopt RTS specifying a maximum amount for admissible total fees that may be charges for currency conversion services. This fee capping shall apply for the 36-months transition phase until the new transparency requirements of Art. 3a para. 1 of the proposal enters into force.

Once again, we consider this proposal as a massive intervention in natural market price mechanisms. We are strongly opposed to this intervention, which in our view is neither proportionate nor urgently needed to facilitate the implementation of the new proposals. Overly strict price regulation entails risks for consumers and there is a real danger that disproportionate regulation is forcing providers from the market and therefore would have the potential to restrict consumers's choices and the variety of services. The regulatory approach to strengthen transparency for consumer would ultimately work against its own goal. In order to prevent unintended negative regulatory effects, it is necessary to ensure institutes being

able to charge adequate fees for entrepreneurial currency conversion activities according to genuine market mechanisms and effective competition.

Given this background, we recommend to delete both Art. 3a para. 2 sub-para 2 and Art. 3b of the Commission proposal.

The European Association of Public Banks (EAPB) gathers over 30 member organisations which include promotional banks such as national or regional public development banks and local funding agencies, public financial institutions, associations of public banks and banks with similar interests from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders.