

## EU CROSS-BORDER PAYMENTS: PRICE EQUALITY AND FX TRANSPARENCY

The revised EU cross-border payments regulation is due to extend the current price equality rule for cross-border transactions in euro to ensure they are no more expensive than domestic transactions in the national currency of non-euro area member states. It will also introduce transparency requirements for currency conversion services provided in relation to card transactions and online-initiated credit transfers.

### PRICE EQUALITY

#### ***Lowering charges for cross-border euro payments in non-euro area member states***

The original cross-border payments regulation (Regulation 924/2009) introduced a requirement that fees and charges for cross-border payments denominated in euro should be no more than for an equivalent domestic euro payment. This led to low fees for cross-border transactions in euro throughout the euro area.

However, in the non-euro area, cross-border transactions in euro remain expensive. The revised regulation aims to address this issue by extending the price equality rule to non-euro area member states. The extended price equality rule provides that fees and charges for cross-border payments denominated in euro should be the same as for a corresponding payment of the same value in the national currency of the relevant member state.

The regulation does not specify which foreign exchange rate should be used to calculate the value of a corresponding payment in the member state's national currency. Therefore, it is not clear whether firms should use the latest available euro foreign exchange reference rates issued by the European Central Bank (ECB), to which the regulation refers in the context of the new transparency requirements, or some other rate.

The extended price equality rule will apply from 15 December 2019.

### Summary

The revised EU cross-border payments regulation will:

- extend the price equality rule so that it applies to cross-border euro payments in non-euro area member states (from 15 December 2019);
- require providers of currency conversion services at ATMs and point of sale to disclose information about the cost of the transaction and offer the customer a choice of paying in the payee's currency (from 19 April 2020);
- require card issuers to send electronic messages to payers informing them of currency conversion charges (from 19 April 2021); and
- require payment service providers to inform the payer about the cost of currency conversions in connection with online-initiated credit transfers (from 19 April 2021).

## TRANSPARENCY FOR CURRENCY CONVERSIONS

### ***Card-based transactions: currency conversion service providers***

Providers of currency conversion services in respect of a card-based transaction at an ATM or point of sale will be required to disclose the following information about the currency conversion both before the payment is initiated and in a durable medium following the transaction:

- the total currency conversion charges, clearly displayed and expressed as a percentage mark-up over the latest ECB euro foreign exchange reference rates;
- the amount to be paid to the payee in the currency used by the payee; and
- the amount to be paid by the payer in the currency of the payer's account.

The currency conversion service provider must provide this information free of charge and in a neutral and comprehensible manner. Before initiating the payment, the currency conversion service provider must also give the payer the choice of paying in the currency used by the payee (meaning that the currency conversion would be performed subsequently by the payer's payment service provider).

If the person providing the currency conversion is also a payment service provider, they must publicly disclose the percentage mark-up online or on an electronic platform.

These disclosure requirements will apply from 19 April 2020.

### ***Card-based transactions: card issuers***

Where a card issuer receives a payment order for an ATM cash withdrawal or point of sale transaction denominated in a different EU currency from the currency of the payer's account, it must send the payer an electronic message without undue delay setting out the total conversion charges as a mark-up over the latest ECB euro foreign exchange reference rates. The card issuer must also send this message once a month for each month in which the card issuer receives a payment order denominated in that currency. Again, this information must be provided for free and in a neutral and comprehensible manner.

The card issuer must agree the channel for sending these electronic messages with the payment service user and give them the possibility of opting out of receiving these electronic messages. This will require changes to relevant documentation. Any channel used for sending electronic messages must be broadly available and easily accessible.

These requirements are subject to the "corporate opt-out". This means that if the payment service user is not a consumer, the card issuer may agree with them that these requirements do not apply in whole or part. Again, this may mean making changes to relevant documentation.

These requirements relating to electronic messages will apply from 19 April 2021.

### ***Online-initiated credit transfers***

Where a payer initiates a credit transfer payment online directly via its payment service provider's website or mobile banking application, the payer's payment service provider must provide the payee with the following information prior to initiation of the payment in a clear, neutral and comprehensible manner:

- the estimated charges for currency conversion services applicable to the credit transfer;
- the estimated total amount that the payer's account will be debited for the credit transfer (including any transaction fee and any currency conversion charges) in the currency of the payer's account; and
- the estimated amount to be transferred to the payee in the currency used by the payee.

It seems likely that reference to the payer initiating the payment "directly" is intended to distinguish "direct" initiation of payments from instances where the payer uses a payment initiation service provider to initiate the payment. However, the regulation does not make this explicit.

The regulation is also silent as to whether the estimated charges for currency conversion services should be expressed as a percentage mark-up over the latest ECB euro foreign exchange reference rates, as for card-based transactions.

Finally, the regulation does not include an express corporate opt-out provision allowing payment service providers to agree with non-consumers that they will disapply these disclosure requirements. However, these requirements expressly supplement broader disclosure requirements under the recast Payment Services Directive (PSD2) which are subject to a corporate opt-out provision at Article 38 PSD2. Therefore, it seems arguable that the corporate opt-out under Article 38 PSD2 should also be capable of extending to these new disclosure requirements. Nevertheless, in the absence of an express indication or confirmation that this is the case, there remains a degree of uncertainty.

These disclosure requirements will apply from 19 April 2020.

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