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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2018)163
Subject:	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 <i>- Mandate for negotiations with the European Parliament</i>

I. INTRODUCTION

1. On 28 March 2018, the Commission transmitted to the Council its 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 charges¹.
2. The proposal aims at bringing the benefits of Regulation 924/2009, in particular, to people and businesses in Member States outside the euro area, by putting an end to the high cost of intra-EU cross-border transactions in euro.

¹ 7844/18

3. The opinions of the ECON Committee of the European Parliament, of the European Central Bank, and of the European Economic and Social Committee are still outstanding.

II. STATE OF PLAY

4. The Bulgarian Presidency started negotiations on the proposal. The text has been examined by the Working Party on Financial Services at three working party meetings. Three compromise proposals were prepared with a view to reaching an agreement on the Council's mandate for negotiations with the European Parliament.
5. Following the last meeting of the Working Party of 20 June 2016, all delegations could agree on the mandate for negotiations with the European Parliament on the basis of the Bulgarian Presidency compromise proposal as set out in the ANNEX.
6. The DK and NL delegations maintain a parliamentary scrutiny reservation.

III. CONCLUSION

7. Against this background, the Presidency therefore suggests the Permanent Representatives Committee to:
 - agree, as an "I" item, on the mandate for negotiations with the European Parliament on the basis of the proposed Regulation as set out in the ANNEX;
 - invite the Presidency to start negotiations with the European Parliament on the basis of that mandate with a view to reaching an agreement at first reading.

2018/0076 (COD)

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

² OJ C , , p. .

Whereas:

- (1) Since the adoption of, first, Regulation (EC) No 2560/2001 of the European Parliament and of the Council³ and subsequently Regulation (EC) No 924/2009 of the European Parliament and of the Council⁴, charges for cross-border payments in euro between Member States of the euro area have strongly decreased to levels that are insignificant in the vast majority of cases.
- (2) Cross-border payments in euro from non-euro area Member States however account for a very large part of all cross-border payments from non-euro area Member States. The charges for those specific cross-border payments remain high, even though payment service providers have access to the same efficient infrastructures to process those transactions at very low costs as payment service providers from the euro area.
- (3) High charges for cross-border payments remain a barrier to the full integration into the single market of businesses and citizens in non-euro area Member States. They perpetuate the existence of two categories of payment service users in the Union: on the one hand payment service users, the vast majority of which benefit from the single euro payments area ('SEPA'), and on the other hand, payment service users that pay high costs for their cross-border payments in euro.

³ Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro (OJ L 344, 28.12.2001, p. 13).

⁴ 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).

- (4) In order to facilitate the functioning of the Single Market and end the barriers between payment service users in the euro area and non-euro area Member States in respect of cross-border payments in euro, it is necessary to ensure that charges for cross-border payments in euro within the Union are aligned with charges for national payments made in the national currency of the Member State where the payment service provider of the payment service user is located. A payment service provider is considered located in the Member State where it provides its services to payment services users.
- (5) Currency conversion charges represent a significant cost of cross-border payments when different currencies are in use in the payer's and the payee's countries. Article 45 of Directive (EU) 2015/2366 requires transparency of charges and of the exchange rate used prior to the initiation of a single payment transaction. A similar information obligation is defined in Article 52(3) of that Directive when the payment transaction is covered by a framework contract.
- (5a) Specific information obligations are defined in Article 59(2) of that Directive for cases where currency conversion is not provided by the payer's payment service provider but by another party at an ATM, point of sale or by the payee. These providers of currency conversion services are obliged to disclose to the payer prior to the initiation of the payment all the charges applied and the exchange rate used. However, in practice, the payer is often faced with a lack of transparency on the actual costs involved with accepting the currency conversion offered in such cases. It is therefore necessary to further clarify in more detail s what information should be provided to the payer in order to ensure consistent application of this obligation in the Union and to improve transparency and protect consumers against excessive charges for currency conversion services, in particular when consumers are not given the information they need to choose the best currency conversion option.
- (6) (...)

(7) (...)

(7a) From a consumer protection perspective, it is essential that whenever a currency conversion is offered by a currency conversion services provider that is not the payment services provider of the payer prior to a transaction at a point of sale or at an ATM, the information is disclosed in a clear and comprehensible, non-misleading manner, enabling the consumer to choose the most advantageous option. This information should be communicated to the payer in such a way that the payer is not induced to accept one or the other option. This requires that the charges applied for a currency conversion at the point of sale or at an ATM, be presented in a way that is easily comparable with the charges applied by the payer's payment service provider after the transaction. Thus, conversion margins should be disclosed and expressed by reference to a publicly available reference exchange rate.

(7b) To support a consistent and effective application of this Regulation, the EBA should submit a report to the Commission on the implementation of the currency conversion services' transparency rules and the rule equalising the cost of cross-border payments in euro with the cost of national transactions in national currencies.

(8) (...)

(9) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the cross-border nature of the payments, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 924/2009

Regulation (EC) No 924/2009 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. This Regulation lays down rules on cross-border payments and transparency of currency conversion charges within the Union.”,

(b) in paragraph 2, the following second subparagraph is added:

“Article 3a shall apply to national and cross-border payments, denominated in euro or in a national currency of a Member State other than the euro and involving a currency conversion service offered by a party other than the payment service provider of the payer.”;

(2) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Charges levied by a payment service provider on a payment service user in respect of cross-border payments in euro shall be the same as the charges levied by that payment service provider for corresponding national payments of the same value in the national currency of the Member State where the payment service provider of the payment service user is located.”

(b) the following paragraph 1a is inserted:

“1a. Charges levied by a payment service provider on a payment service user in respect of cross-border payments in the national currency of a Member State that has notified its decision to extend the application of this Regulation to its national currency in accordance with Article 14, shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency.”,

(c) paragraph 3 is deleted,

(d) paragraph 4 is replaced by the following:

“4. Charges referred to in paragraphs 1 and 1a shall not cover currency conversion charges.”;

(3) the following Article 3a is inserted:

“Article 3a

Transparency of currency conversion charges

'With regard to the information obligations laid down in Article 59(2) of Directive (EU) 2015/2366, the charges applied shall be expressed as the difference between the total amount of the transaction in the currency of the payer's account and the amount resulting from the application of the latest available reference exchange rate of the European Central Bank (ECB). . All the information shall be provided in a neutral, clear and comprehensible manner.

(...)

(4) (...)

(4a) the following Article 14a is inserted:

"Article 14a

EBA Report

(1) By [30 months after entry into force of this Regulation] EBA shall submit a report to the Commission on:

- (a) the way payment service providers apply Article 3;
- (b) based on ongoing data collection, the development of charges for national and cross-border payments in national currencies of Member States and in euro since the adoption of this Regulation;
- (c) based on ongoing data collection, the impact of Article 3 on the development of currency conversion charges and any other potential spill-over effects;
- (d) the likely impact of amending Article 3(1) of this Regulation to cover all currencies of Member States of the Union;
- (e) how the parties offering currency conversion services have applied the requirements laid down in Article 3a of this Regulation and the national legislation implementing Article 59(2) of Directive (EU) 2015/2366 , and whether this effectively prevents consumer detriment;

(f) whether and to what extent providers of currency conversion services have faced difficulties with the practical application of Article 3a of this Regulation and the national legislation implementing Article 59(2) of Directive (EU) 2015/2366;

(g) the communication channels and technologies used by, or available to, payment service providers and providers of currency conversion services that could be used to further improve transparency of currency conversions, and their cost-effectiveness.

(2) The report referred to in paragraph (1) shall cover at least the period from [the date of entry into force of this Regulation] until [2 years after the date of entry into force of this Regulation]. It shall take account of the specificities of various payment transactions, distinguishing in particular transactions initiated at an ATM and at a point of sale as defined in Article 2(29) of Regulation (EU) 2015/751.

(5) Article 15 is replaced by the following:

“Article 15

Review

Based on the report referred to in Article 14a, the Commission shall evaluate the impact of this Regulation and, if appropriate, submit to the European Parliament and to the Council a legislative proposal that may include proposals for amending the rules on transparency of currency conversion services and Article 3(1) to cover cross-border payments in all currencies of Member States of the Union.”

(...)

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [12 months after entry into force of this Regulation].

Notwithstanding the previous sub-paragraph, Article 14a shall apply from [date of entry into force of this regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
