

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 January 2021

on a proposal for a regulation on cross-border payments in the Union

(CON/2021/3)

(2021/C 65/04)

Introduction and legal basis

On 15 October 2020 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Regulation of the European Parliament and of the Council on cross-border payments in the Union (codification) ⁽¹⁾ (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 (TFEU), in conjunction with the fourth indent of Article 127(2) TFEU and the fourth indent of Article 3.1 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, as the proposed regulation contains provisions concerning the smooth operation of payment systems. 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

The proposed regulation aims to codify Regulation (EC) No 924/2009 of the European Parliament and of the Council ⁽²⁾, as last amended by Regulation (EU) 2019/518 of the European Parliament and of the Council ⁽³⁾. While the ECB generally welcomes the codification exercise, it notes, as outlined in the explanatory memorandum of the proposed regulation, that instruments affected by codification do not contain substantive changes, but only formal amendments as are required by the codification exercise itself. The ECB also adopted an opinion ⁽⁴⁾ on the proposal for Regulation (EU) 2019/518 ⁽⁵⁾. However, certain provisions of Regulation (EU) 2019/518 were introduced in the context of the Union legislative procedure after the submission of the Commission proposal to the ECB and were therefore not part of the Council's consultation request to the ECB. Therefore, in view of the lack of opportunity to opine previously, and given that the proposed regulation will be adopted in accordance with the ordinary legislative procedure, the ECB takes this opportunity to opine on one provision of the proposed regulation that was introduced by Regulation (EU) 2019/518.

⁽¹⁾ COM(2020) 323 final.

⁽²⁾ 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).

⁽³⁾ Regulation (EU) 2019/518 of the European Parliament and of the Council of 19 March 2019 amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges (OJ L 91, 29.3.2019, p. 36).

⁽⁴⁾ See Opinion of the European Central Bank CON/2018/38 of 31 August 2018 on a proposal for a regulation on certain charges on cross-border payments in the version charges (OJ C 382, 23.10.2018, p. 7). All ECB Opinions are published on the ECB's website at www.ecb.europa.eu

⁽⁵⁾ 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, COM(2018) 163 final.

1. Specific observations

1.1 *Reference to the euro foreign exchange reference rates issued by the ECB*

Article 4(1) of the proposed regulation, which aims to supplement the transparency and information requirements set out in Directive (EU) 2015/2366 of the European Parliament and of the Council ⁽⁶⁾ (hereinafter the 'Payment Services Directive') with regard to currency conversion services ⁽⁷⁾, requires payment service providers and parties providing currency conversion services at an automated teller machine or at the point of sale to express the total currency conversion charges as a percentage mark-up over the latest available euro foreign exchange reference rates issued by the ECB.

Since 1998 the ECB has published euro foreign exchange reference rates (ECBRRs) on the basis of a framework approved by the ECB Governing Council in 1998 and subsequently amended in 2015 ⁽⁸⁾ (hereinafter the 'ECBRR Framework'). The ECBRRs are provided as a public good for individual citizens and institutions ⁽⁹⁾ and are used by a wide range of institutions. The aim of the ECBRR Framework is to preserve the integrity of the ECBRRs by: (i) discouraging trading on the ECBRR; and (ii) limiting their use to reference purposes. Using the ECBRR for transaction purposes is strongly discouraged and the ECBRRs are published for information purposes only ⁽¹⁰⁾. In this regard the ECBRR Framework aims to reinforce the difference between the ECBRR and exchange rate benchmarks which are intended for transaction purposes.

The reference to the ECBRRs in the proposed regulation could, contrary to the objectives of the ECBRRs, create incentives for some market participants to trade at the ECBRRs. Therefore, the ECB recommends that the reference in Article 4 of the proposed regulation to the ECBRRs is removed and replaced by an appropriate reference to a foreign exchange benchmark rate which falls within the scope of the Union benchmark regulation ⁽¹¹⁾, and which may be used in the context of the currency conversion charges. The accuracy and integrity of such benchmarks, which is ensured by the regime for benchmark administrators introduced by that regulation, protects the interests of customers of payment service providers and parties providing currency conversion services.

Where the ECB recommends that the proposed regulation is amended, a specific drafting proposal is set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 25 January 2021.

The President of the ECB
Christine LAGARDE

⁽⁶⁾ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

⁽⁷⁾ See Recital 8 of the proposed regulation.

⁽⁸⁾ See the ECB's Framework for the euro foreign exchange reference rates available on the ECB's website at www.ecb.europa.eu

⁽⁹⁾ See the ECB's press release of 7 December 2015 on the ECB's introduction of changes to euro foreign exchange reference rates.

⁽¹⁰⁾ The ECBRR Framework expressly provides that 'the term "reference rate" is taken to mean an exchange rate that is not intended to be used in any market transactions, whether directly or indirectly (as an underlying benchmark). The rates are intended for information purposes only.'

⁽¹¹⁾ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).