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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on interchange fees for card-based payment transactions

(Text with EEA relevance)

{SWD(2013) 288 final}

{SWD(2013) 289 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

The aim of the present proposal is to help to develop an EU-wide market for payments, which will enable consumers, retailers and other undertakings to enjoy the full benefits of the EU internal market including e-commerce, in line with Europe 2020 and the Digital Agenda.

To achieve this, and to promote EU wide services, efficiency and innovation in the field of card payment instruments, and card based payment transactions in an offline, online and mobile environment, there should be legal clarity and a level playing field. In addition, business rules and other conditions should be prohibited if they prevent consumers and retailers from having accurate information on fees paid in relation to payment transactions and thereby hinder the creation of a fully effective internal market.

General context

The regulatory and legislative framework for retail payments in the EU has been developed over the past 12 years, with the advent of the Euro acting as an accelerating factor. Regulation 2560/2001 on the equivalence of charges for national and cross-border payments in Euros prompted further initiatives on the completion of an Internal Market in payments.

The regulatory and legislative framework is complemented by a number of investigations and decisions under EU competition law by the Commission over the past years in the field of retail payments.

Secure, efficient, competitive and innovative electronic payments are crucial for the internal market in all products and services, and this has an increasing impact as the world moves beyond bricks-and-mortar trade towards *e*-commerce. In this context the achievement of an effectively functioning internal market in the area of payment cards has been hindered by the widespread application of certain restrictive business rules and practices. Such rules and practices also lead to a lack of information on costs and pricing of transactions to consumers and retailers that results in sub-optimal market outcomes including inefficient prices.

One of the key practices hindering the achievement of an integrated market reasons is the widespread use in 'four party' schemes, the most common type of card schemes, of so-called Multilateral Interchange Fees (MIFs). These are collectively agreed inter-bank fees usually between the acquiring payment service providers and the issuing payment service providers belonging to a certain scheme. Such interchange fees paid by acquiring payment service providers form part of the fees they charge to merchants (the Merchant Service Charges or MSCs), which merchants in turn pass on to consumers. Thus, high Interchange Fees paid by merchants result in higher final prices for goods and services, which are paid by all consumers. Competition between card schemes appears in practice to be largely aimed at convincing as many issuing payment service providers as possible to issue their cards, which usually leads to *higher* rather than *lower* fees, in contrast with the usual price disciplining effect of competition in a market economy .

At present, no legislation regulating interchange fees is in place in the EU, except indirectly in the case of Denmark for MSCs for face-to-face transactions. However, many national competition authorities have on-going competition law enforcement proceedings, including in the UK, Germany and Italy. Also, a number of Member States are in the process of adopting legislation, including in Poland, Hungary, the UK and Italy.

Effects on consumers

The price increases caused by interchange fees are harmful to consumers, who tend to be unaware of the fees paid by merchants for the payment instrument they use. At the same time a series of incentivising practices applied by issuing payment service providers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) steers consumers towards the use of payment instruments generating high fees for issuing payment service providers. Scheme rules applied by payment card schemes and practices applied by payment service providers tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by 'blending' fees or prohibiting merchants from choosing a cheaper card brand on co-branded cards or steering consumers to the use of such cheaper cards. Even if merchants are aware of the different costs, the scheme rules often hinder them from acting to reduce the fees. Of particular importance are so-called 'Honour All Cards Rules' (HACRs) which require merchants to accept all products issued under the same brand, even if the merchant fees for these cards can vary by a factor of 3-4 within the same card category (*i.e.* credit / debit) or by a factor of up to 25 between card categories, such as premium credit card and low-cost debit cards. The result of the collectively agreed fees and transparency reducing measures is that banks are not made to compete on this element of their fees, which leads to higher retail prices to consumers, including those who do not pay with a card or who pay with low fee cards. In fact, the latter consumers are subsidising the use by other often wealthier consumers of more expensive means of payment through higher retail prices. In addition to limited choice as regards payment service providers, reduced innovation and higher prices for payment services, the interchange fees also call into question the Commission's policy to promote and facilitate the use of electronic payments for the benefit of consumers¹. Finally, the lack of choice as regards payment service providers, including on a pan-European level, effectively prevents consumers from reaping all the benefits from the internal market, particularly as far as e-commerce is concerned.

Effects on the internal market

There currently is a wide variety of interchange fees applied within national and international payment card schemes, which gives rise to market fragmentation and prevents retailers and consumers from enjoying the benefits of an internal market for goods and services. Even considering only the international payment card schemes, interchange fees differ up to a factor of 10, which gives rise to substantial cost differences between retailers in the respective countries. As a consequence of the wide differences in fees between Member States, retailers also have difficulty formulating an EU wide price strategy for their products and services, both on-line and off line, to the detriment of consumers. Retailers cannot overcome the fee differences by making use of card acceptance services offered by banks in other Member States; specific rules applied by the payment schemes prescribe the application of the interchange fee of the 'Point of Sale' (country of the retailer) for each payment transaction. This prevents acquiring banks from successfully offering their services on a cross border basis and retailers from reducing their payment costs to the benefit of consumers.

Effects on market entry

Interchange fees also restrict market entry as their revenues for issuing payment service providers function as a minimum threshold to convince issuing payment service providers to issue payment cards or other payment instruments, such as online and mobile payment solutions, offered by new entrants. Also, market entry for pan-European players remains

¹ See for example the recent proposal on access to payment accounts with basic features (COM(2013) 266 final of 8 May 2013).

difficult, as domestic interchange fees in EU Member States vary widely and new entrants would have to offer interchange fees at least comparable to those prevailing in each market they want to enter. This has an impact on the viability of their business model *i.a.* affecting potential economies of scale and scope. This also explains why in a number of Member States, national (normally cheaper) card schemes have tended to disappear. The entry barriers interchange fees thus created for online and mobile payment solutions also result in less innovation.

As said, no legislation regulating interchange fees is currently in place in the EU, except indirectly in the case of Denmark. However, many national competition authorities have ongoing competition law enforcement proceedings. Also, a number of Member States are in the process of adopting legislation. The different time paths of the national proceedings and the intended legislation risk leading to an even more fragmented market.

The present regulation therefore proposes to create common rules for interchange fees in the European Union by introducing maximum fee levels for transactions with payment cards that are widely used by consumers and thereby difficult to refuse or surcharge by retailers. This will create a level playing field which will take away the market fragmentation currently existing as a consequence of diverging fees. It will also allow for the successful market entry of pan-European newcomers and for innovation based on an infrastructure existing of a 'level playing field'. Consumers and retailers will thus benefit from a wider choice of payment service providers (new as well as incumbent), including on a pan-European level. The regulation will in addition propose transparency measures to allow retailers and consumers to make better informed choices of payment instruments.

Existing provisions in the area of the proposal

This initiative will complement the existing legal framework for payment services within the EU, in particular with respect to the completion of an Internal Market in payments, and migration to pan-European payment instruments.

Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (the so called 'Payment Services Directive' or PSD)² aims to establish standardised conditions and rights for payment services offered in the market for the benefit of consumers and companies across the Union. This Directive, which is under revision at the same time the present proposal is prepared, creates the general framework for payments in the EU. It is complemented by several Regulations such as Regulation (EC) N°924/2009 on cross-border payments or Regulation (EC) N°260/2012 which sets migration deadlines for the transition of all credit transfers and direct debits in euros in the EU from national schemes to pan-European schemes. Regulation (EC) N° 260/2012 also clarifies that no Multilateral Interchange Fees can be charged for each direct debit transactions.

In addition to the legislative framework, over the last 20 years, the European Commission and national competition authorities have conducted a number of antitrust proceedings addressing anti-competitive practices in the card payment market. The General Court judgment of May 2012³ confirmed the Commission's finding in its MasterCard Decision of December 2007⁴ that MIFs restrict competition as they inflate the cost of card acceptance by merchants without leading to benefits for consumers. The Court rejected the argument that MIFs were

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:01:EN:HTML>

³ General Court 24 May 2012, Case T 111/08, MasterCard and others vs Commission, nyr.

⁴ Case COMP/34.579, MasterCard, Commission Decision of 19 December 2007.
http://ec.europa.eu/competition/antitrust/cases/dec_docs/34579/34579_1889_2.pdf

indispensable for the functioning of a payment card system. To address the competition concerns, the Commission has accepted commitments by Visa and MasterCard to charge lower MIFs for cross-border (and some domestic) transactions: the MasterCard undertakings of 2009 (caps for cross-border consumer MIFs to 0.2% for debit cards and 0.3% for credit cards and changes to the rules it imposes on retailers through the acquiring payment service providers), and the Visa Europe commitments of 2010 (along the lines of those of MasterCard, with caps limited to debit but also covering domestic MIFs when these are fixed by Visa Europe itself and not the national banks). In 2013, Visa Europe also offered commitments for credit card transactions cross-border regarding certain countries where these charges are set by Visa Europe, and on cross border acquiring rules. Competition proceedings are on-going in a number of other Member States, including in Poland, Hungary, Italy, Latvia, the UK, Germany and France. The French Competition Authority for instance made binding the commitments from the *Groupement des Cartes Bancaires* – the domestic card scheme – on 7 July 2011 to reduce its interchange fees to levels equivalent to the ones agreed by MasterCard and Visa for their cross-border transactions.

While no legislation is in place on interchange fees in the EU, except indirectly in Denmark⁵, a number of Member States are in the process of adopting legislation, including in Poland, Hungary, the UK and Italy. In Poland, the Parliament is considering draft legislation regulating interchange fees, with MIFs caps progressively falling to 0,5% by the start of 2016, abolishing the Honour All Cards Rule and allowing surcharging (for credit cards only). In Hungary, a legislative proposal is under discussion that would cap domestic credit and debit interchange fees at their respective cross border level, with the Hungarian Central Bank in charge of calculating these fees. In Italy, a draft Decree by the Ministry of Economy and Finance has been published for consultation in December 2012, focusing on limits to blending, comparability of interchange fees and merchant service charges, as merchant service charges should take into account the volume of transactions and should be lower for low value payments. In the UK, the Government is proposing to bring payment systems under economic regulation, establishing a new competition-focused, utility-style regulator for retail payment systems⁶.

Consistency with the other policies and objectives of the Union

The objectives of the proposal are consistent with the policies and objectives pursued by the Union. First, they will improve the functioning of the internal market for payment services and more broadly for all goods and services to the benefit of European consumers and companies. Second, they broadly support other Union policies, in particular competition policy (by establishing equal obligations, rights and opportunities for all market players and facilitating cross-border provision of payment services, thus increasing the level of competition). The impact assessment accompanying this proposal concluded that the proposed measures would promote market integration for consumers and merchants, favour pan-European market entry and result in more legal certainty on business models for existing card schemes and new entrants,. They would also address the threat of 'exporting' models based on anti-competitive practices to new, innovative payment services.

⁵ Article 80 of the Danish Payment Services and Electronic Money Act, Consolidating Act no. 365 of 26 April 2011, http://www.finanstilsynet.dk/en/Regler-og-praksis/Translated-regulations/~/_media/Regler-og-praksis/2012/C_Act365_2011_new.ashx. This regulates MSCs for face-to-face transactions and an annual fee is to be paid by merchants who are split into 8 different cost categories with the Economic Ministry deciding on the amounts

⁶ <https://www.gov.uk/government/consultations/opening-up-uk-payments>

In spite of the General Court judgement confirming the Commission's assessment that MIFs as applied within the MasterCard system restricted competition and did not lead to efficiencies outweighing their harm to merchants and consumers, international and national card schemes operating in the EU currently do not seem willing pro-actively to adjust their practices to comply with the European and national competition rules. Although National Competition Authorities, in close cooperation with the Commission, are addressing this situation, competition enforcement according to different timelines and procedures may not lead to sufficiently comprehensive and timely results to unlock the market integration and innovation that are necessary to ensure the competitiveness of the European payments market at a global level. Taking into account the EU competition rules and the Commission's experience in competition cases in payments, the present proposal therefore aims at providing legal clarity to ensure effective integration and competition, thereby improving economic welfare for all relevant stakeholders and in particular consumers. By facilitating economic transactions within the Union, this will also contribute to the attainment of the wider objectives of the EU 2020 strategy.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

On 11 January 2012, The European Commission published a Green Paper '*Towards an integrated European market for cards, internet and mobile payments*'⁷ which was followed by a public consultation. The Commission received more than 300 replies to its public consultation. The comprehensive feedback by stakeholders⁸ provided relevant information on some recent new developments and on possible requirements for changes to the existing payments framework.

A public hearing took place on 4 May 2012 and was attended by some 350 interested stakeholders.

On 20 November 2012 the European Parliament adopted a resolution '*Towards an integrated European market for card, internet and mobile payments*'⁹ which is a report on the Green Paper.

Summary of responses and how they have been taken into account

The consultation process has allowed the identification of some key messages related to the scope of this Regulation. Stakeholders from all categories consistently agreed that there was a need to provide further legal clarity on multilateral interchange fees (MIFs). This was seen by payment service providers as particularly relevant in view of the on-going competition cases launched at European and national level. Secondly, merchants in particular but also stakeholders from other categories pointed to obstacles for cross border acquiring, to be remedied for a genuine Single Market for payment services to emerge. There was also a high level of interest in discussing business rules, although views tended to be divided along the stakeholder categories.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0941:EN:NOT>

⁸ http://ec.europa.eu/internal_market/payments/docs/cim/gp_feedback_statement_en.pdf

⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0426+0+DOC+XML+V0//EN>

Payment service providers and card schemes considered that the fact that MIFs differ substantially from one country to another and for cross-border payments under the same card scheme were not problematic and did not in their view hinder market integration. On the other side, merchants, consumer organisations and some non-bank payment service providers considered that such differences are not justified and that the same MIFs should apply for national and cross-border transactions, and across Member States. Public authorities considered that MIFs should be harmonised to achieve an integrated market. Payment service providers seemed opposed to a regulatory initiative on interchange fees claiming that it would lead to higher cardholder fees, and that retailers would not pass on benefits to consumers. On the other side, retailers took the view that MIFs result in inverse competition favouring the most expensive means of payment and raise barriers to market entry, whilst creating a risk of spill-over effect from cards to mobile and internet payments. Most consumer organisations supported the merchants' analysis of the negative impact of MIFs on competition and consumers welfare but expressed concerns that reducing MIFs could lead to higher card fees and other consumer charges. Competition authorities supported the need for action to lower MIFs, in particular for mature four-party schemes. Other public authorities were divided.

As regards cross-border acquiring, most schemes and payment service providers saw the need for harmonisation of local standards and rules, whilst merchants and consumers concurred on the existence of many local obstacles to cross-border acquiring. Contrary to payment service providers and schemes, merchants favoured regulatory solutions to self-regulated standardisation. Schemes and payment service providers favoured the MIF of the country where the sale is made to apply whilst most merchants and non-bank PSPs favoured a common MIF to apply across the internal market. The need for mandatory prior authorisation for cross-border acquiring was favoured by payment service providers and incumbent card schemes only.

On business rules, there was no consensus on the benefits and the need to regulate steering and the Honour All Cards Rule (HACR) which obliges merchants to accept all cards within the same brand if they accept one category of cards in this brand. Most schemes and payment service providers were in favour of the status quo whilst merchants, consumers, competition authorities and most public authorities were in favour of allowing merchants to steer consumers towards the use of cheaper means of payment through regulation – although consumers were against surcharging. An abolition of the HACR was rejected by payment service providers and schemes but supported – through regulation – by other stakeholders as enabling the merchant to accept only cheaper means of payment and having a positive impact on competition, with consumers striking a more cautious note. A ban on the blending of merchant services charges towards retailers was supported by most stakeholders – with payment service providers and schemes of the opinion that unblending was already implemented after the MasterCard Undertakings and Visa Commitments.

A detailed overview of stakeholder and Member States views on interchange fees can be found in the Feedback Report to the public consultation on the Green Paper¹⁰.

The European Parliament in its own-initiative report on the Green Paper acknowledged the objectives and integration hurdles identified in the Green Paper and called for legislative action in a number of areas concerning card payments, while suggesting a more cautious approach regarding internet and mobile payments due to the lesser maturity of those markets. Moreover, the Parliament took a firm position in favour of providing clarity on interchange

¹⁰ http://ec.europa.eu/internal_market/payments/docs/cim/gp_feedback_statement_en.pdf

fees to market participants and expressed itself in favour of a gradual approach leading to a ban on interchange fees through regulation.

Impact assessment

The Commission carried out an impact assessment listed in the Work Programme. This impact assessment has been prepared in consultation with the ECB. The impact assessment addressed at the same time options for revision of the Payment Service Directive and for regulating Multilateral Interchange Fees.

The impact assessment discusses the issue of ineffective competition in card payment and card-based payment markets, resulting in sub-optimal market outcomes and relatively high fees which are being passed on to merchants and in turn to consumers. Limited market integration, reduced possibilities for new pan-European players to enter the market, disappearance of national (in general cheaper) card schemes and limited innovation are also highlighted in this context. Interchange Fees are identified as an important explanatory factor behind these developments. The widely diverging levels of Interchange Fees between Member States also constitute an obstacle for market integration. These effects are reinforced by a number of business rules, which impact transparency, the ability of retailers to choose an acquirer in another Member State ('cross-border acquiring'), and the ability of retailers to steer their customers towards more efficient means of payment or to refuse expensive cards (the HACR).

The impact assessment considers six scenarios for interchange fees: (i) No action from the Commission, (ii) Regulating cross-border acquiring and the level of interchange fees for cross-border transactions, (iii) Mandating Member States to set domestic IFs on the basis of a common methodology, (iv) Regulating a common, EU-wide maximum level for interchange fees (a) whether the maximum IF cap – of a different level for debit and for credit cards – covers both debit and credit cards or just debit cards and (b) whether the IFs for debit card transactions are to be forbidden altogether or just reduced to a low level, (v) Whether or not to exempt (normally more expensive) commercial cards and cards issued by three party schemes from the regulation of interchange fees and (vi) regulating Merchant Service Charges *i.e.* regulating the fees paid by the retailer to its acquiring bank

The 0.2% and 0.3% caps examined under the scenarios (ii) and (iv) for debit and credit card transactions respectively. These levels are based on the so-called 'Merchant Indifference Test' developed in economic literature, which identifies the fee level a merchant would be willing to pay if he were to compare the cost of the customer's use of a payment card with those of non-card (cash) payments (taking into account the fee for service paid to acquiring banks, *i.e.* the merchant service charge). It thereby stimulates the use of efficient payment instruments through a promotion of those cards that provide higher transactional benefits, while at the same time preventing disproportionate merchant fees, which would impose hidden costs on other consumers. Excessive merchant fees might otherwise arise due to the collective interchange fee arrangements, as merchants are reluctant to turn down costly payment instruments for fear of losing business. They also take into account the levels proposed by schemes (Visa Europe, MasterCard, *Groupement Cartes Bancaires*) in competition proceedings and accepted by the competition authorities as not requiring further action

The assessment concludes that the most beneficial option appears to be a combination of:

- a series of measures to enhance effective market functioning including the limitation of the HACR and allowing merchants to determine the choice of card brand at the point of sale for *all* cards and *card-based* transactions based on four party scheme models; and

- capping the level of interchange fees for cross-border transactions with consumer debit and credit cards (in the first stage) and, in a second stage, capping the level of interchange fees also for domestic transactions with consumer credit cards and consumer debit cards.

The impact assessment and its annex also provide a detailed explanation of other measures proposed in the Regulation to ensure market transparency and effective market functioning, including the abolition of no-steering measures, allowing card identification, co-badging, the obligation to provide invoices to payees by their payment service providers, and imposing the unblending of fees.

These general transparency measures proposed in the Regulation should lead to a more effective market for *all* payment cards and *card-based* transactions based on four party (card) scheme models.

However, since certain categories of cards have become so widely used by consumers that merchants find themselves generally in a position that they cannot refuse such cards or discourage consumers from using them without the fear of ‘losing business’, further measures are necessary to ensure an integrated market, effective market functioning and the removal of anti-competitive business practices in these areas. This applies with respect to consumer debit and credit cards.

Importantly, in a first phase, allowing merchants to choose an acquirer outside their own Member State ('cross-border acquiring') and regulating the level of cross border interchange fees would provide legal clarity. Although its impact could be limited to large merchants, it would be conducive to market integration, and could, similarly to the equivalent provision in the SEPA End Date Regulation, have a disciplining and converging impact on the level of interchange fees applying in a purely domestic context.

However, in the longer term also smaller retailers should be able to benefit directly from measures leading to more efficient interchange fees and a level playing field for payment service providers. After a transitional period, the regulation of interchange fees for consumer cards should therefore be extended to cover also domestic interchange fees. Currently in eight EU Member States no or very low interchange fees apply to *debit* card transactions with no appreciable negative effects on card issuing and card usage; on the contrary, these tend to be the Member States with the highest card issuing and usage. In accordance with trends over the last ten years it is to be expected that debit card issuing and use will continue to increase in the coming years so that after the transitional period provided for in the Regulation debit cards can be regarded as ‘omnipresent’ in the EU and there will no longer be a justification to incentivise card issuing and card usage through fees passed from retailers to issuing payment service providers. Already now it is very rare to open a payment account and not have a card, which in itself entails significant cost savings for payment service providers. In addition, the proposal for a Directive¹¹ on *inter alia* access to payment account with basic features proposes that Member States shall ensure that a payment account with basic features includes payment transactions (including online payments) through a payment card. For smaller retailers to benefit directly from measures leading to more efficient interchange fees and a level playing field for payment service providers it would be necessary also to regulate domestic consumer card fees. In order to avoid discrimination between small and large retailers, who can benefit most easily from cross border acquiring, it is proposed to extend the cap proposed for *cross-border* transactions during the first phase also to *domestic* credit card

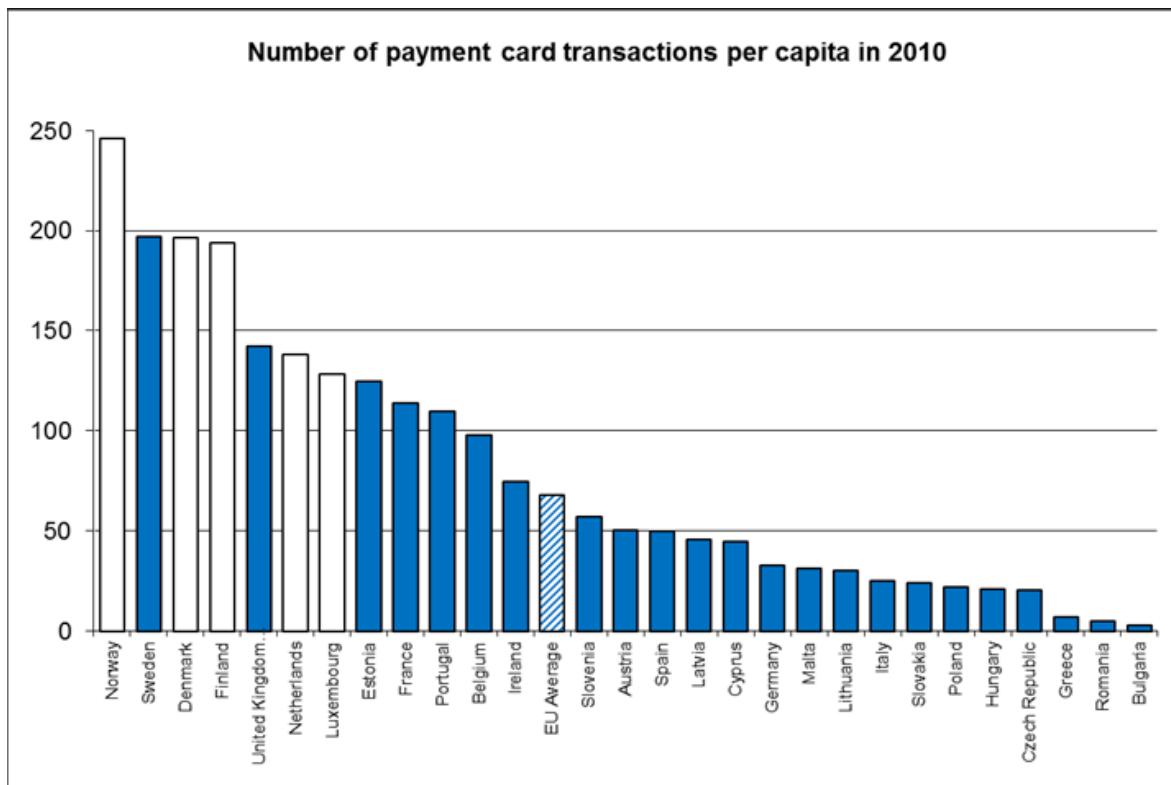
¹¹ COM (2013) 266 final

transactions in the second phase. The Commission considers however that the maturity of markets in the EEA, in particular as regards debit cards issuance and usage needs to be further investigated and the absence of a need for charging interchange fees to incentivise these must be ascertained. In the meantime, as explained above, caps of 0.2% and 0.3% for debit and credit card transactions respectively would apply.

Under the capping of interchange fees, all in all, retailers would benefit from lower fees, resulting in savings a portion of which would be passed on to consumers. Consumers already pay through the incorporation of Interchange Fees (via the MSC) in the retail prices, and banks are less likely to pass on the benefits of the Interchange Fees to their account holders than merchants to their clients, given the lower level of competition in the banking sector and the current lack of consumer mobility in the field of retail banking. Hence the pass-through by merchants should be greater in any case than the pass-through by banks. In Australia, after the intervention, 0.67 AUD reduction per purchase and 77.19 AUD reduction per account per year have been estimated. The impact may however vary from one retail sector to another, the size of the merchant, its use of payment instruments, and the 'basket of purchases'. It will always be difficult to associate the variation of a specific economic factor to the one of a specific price for a product or service in a given retail shop.

This does not mean however that costs currently bearing on retailers would automatically be transferred to consumers by their banks. Payment systems are inherently complex: the bank of the cardholder interacts with the cardholder, the bank of the merchant interacts with the merchant, and both in principle face competition with other banks and different market circumstances in their behaviour *vis-à-vis* their respective consumers. Hence capping interchange fees would be expected to have a positive effect on card acceptance, which can, on the basis of scale effects, also positively influence card issuing. A decrease of high interchange fees in most countries generally seems to be associated with a higher acceptance of cards, and it seems that in countries with low interchange fees cards usage is higher. Denmark has one of the highest card usage rates in the EU at 216 transactions per capita with a zero-Interchange Fee debit scheme. This is also true of international schemes: in Switzerland Maestro has no interchange fee and is the main debit card system. In the Netherlands, there is high and increasing card usage and acceptance, replacing cash. Both Denmark and the Netherlands are characterised by low bank account fees as compared to countries with higher Interchange Fees (e.g. France even after competition enforcement, Spain). In Spain, card use increased after the intervention, with the average transaction value for card payments decreasing by 15% from 2005 to 2010. In parallel, card transactions volume and value increased, according to official figures from the Bank of Spain¹².

¹² Cf. Impact Assessment p. 208



As shown above, domestic schemes with no interchange fees are also characterised with the highest levels of card usage (ECB data), with the UK and Sweden also having relatively low interchange fees.

The overall impact of interchange fee decreases on issuing and acquiring payment service providers revenues is difficult to estimate, as increases in the volume of card transactions (through higher acceptance) and the savings to PSPs on cash handling could at least partly compensate the losses due to the cap on interchange fees. Another costs saving may result from fewer ATM cash withdrawals and more limited Interchange Fee amounts they have normally to pay to ATM acquiring banks. Hence it is not obvious that issuing bank revenues decrease as a result. In terms of viability, a debit card scheme without any IF seems to be perfectly viable from a commercial perspective without raising the costs of current accounts for consumers. Denmark for example has a zero-IF on its domestic debit scheme while an average account holder pays current account fees well below the EU average. Similarly, in Switzerland the main debit card network is Maestro (part of MasterCard) which has no MIF.

In fact, there is no automatic linkage between decrease of Interchange Fees and increase of card annual fees. Card fees appear to be more related, for example, to the level of competition in retail banking. In the US banks tried to increase cardholder fees after IF regulation but had to back down due to consumers' revolt. In Switzerland there was a decrease in cardholder fees in parallel with the decrease in Interchange Fees. In Australia, cardholder fees were increasing fast before caps on interchange fees were introduced and after the reforms, the growth of cardholder fees slowed down (between 1997 and 2002: credit cards +218% and between 2003 and 2008: +122%). In Spain, since the intervention, average annual fees increased each year by 6.18€ for debit cards, and 11.45€ for credit cards. However, the banks' card portfolio increased with credit card growth significantly higher than debit, in spite of the economic crisis. Other trends may perhaps suggest that competition in the Spanish banking sector is relatively limited: for instance fees for maintaining current accounts doubled from 2007 to 2012, fees for overdrafts increased. Increases in retail banking fees seem widespread in Spain without a relation with interchange fees.

There is anecdotal evidence of price decreases happening in the USA, one year after the MIF regulation was introduced. In addition, from evidence in Australia, it seems that retailers would benefit integrally (100%) from lower IFs – as acquiring markets tend to be more competitive than issuing markets, whilst the potential increase in cardholder fees is limited to 30-40% of the amount of the IF decrease. In addition after interchange fees are capped and transparency measures introduced, consumers using low cost means of payment will no longer 'subsidise' the (often wealthier) ones using more expensive means of payment as merchants cannot steer consumers, especially for the 'must use' cards.

As competition would play its role again, consumers and retailers would benefit from new entry in the payments market. Even if cardholder fees increase – which is not a given as the impact of capping interchange fees on banking revenues is likely to be mixed - consumers are still likely to benefit from lower interchange fees through lower retail prices, even if retailers do not pass through 100% of the savings, and from new entry in the payment market. It has also to be considered that consumers are very likely to benefit from the services offered by new market entrants. A real-life example of this, for interchange fees below 0.2%, is the Netherlands, where the cheap online payment solution (Ideal) was developed largely because the low interchange fees prevailing there encouraged bank to innovate. In consequence, Dutch consumers do not have to pay high credit card subscription fees in order to shop online.

Commercial cards and cards issued by three party schemes, even though they tend to be more expensive, would not be covered – as proposed under option v - under the various caps proposed for consumer cards as they have limited market shares in the EU and different fee structures and this is not expected to change in the future. However, the measures proposed for consumer card transactions would be applied to such schemes to the extent that they issue such cards and make use of licenced payment service providers in a way that causes their scheme to effectively function in a similar way as a four party scheme. In addition, the transparency enhancing measures would apply to such schemes under all conditions.

Regulating merchant service charges as under option vi would imply covering not only interchange fees but also the other fees imposed on merchants. This would amount to *de facto* controlling prices for merchants, and to retail price regulation. By contrast, capping interchange fees would mean regulating wholesale prices to align them with the analysis in competition cases to achieve an internal market, as interchange fees are not final prices to retailers and even less to consumers.

Transparency and steering measures would remain key to prevent heavy promotion of cards with unregulated Interchange Fees. Anti-circumvention measures would also need to be included.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal is divided into two main parts.

The first part introduces rules on interchange fees. With regard to such fees the proposal creates a 'regulated' and a 'non-regulated' area. The regulated area consists of all card transactions that are widely used by consumers and therefore difficult to refuse by retailers, i.e. consumer debit and credit card, and card based payment transactions. The non-regulated area consists of all payment card transactions and *card based* payment transactions based on those that fall outside the regulated area including so called commercial cards or cards issued by three party schemes.

In the 'regulated area', during a transition period of two years following the publication of the Regulation, maximum levels of interchange fees are imposed for *cross-border* transactions (where the card holder uses their card in another Member State) or cross-border acquired transactions (where the merchant uses an acquiring PSP in another Member State) only.

Although the Impact Assessment identified a ban on interchange fees for debit cards as part of the most beneficial option, the Commission considers that the maturity of markets in the EEA, in particular as regards debit cards issuance and usage needs to be further investigated and the absence of a need for charging interchange fees to incentivise these must be ascertained before interchange fees for debit cards are entirely abolished. It is therefore proposed that after the transitional phase of only liberalising and regulating cross border acquiring, the same maximum fees that apply to cross border acquired transactions will also apply to domestic transactions. After two years following the complete entry into force of the legislation, the Commission will present to the European Parliament and to the Council a report on its application, assessing in particular the appropriateness of the level of interchange fee, taking into account the use and cost of the various means of payments and the level of entry of new players and new technology on the market.

After the transitional period all (*cross border and domestic*) 'consumer' **debit card transaction** and *card-based* payment transaction based on such a transaction will have a maximum interchange fee of 0,20% and all (*cross border and domestic*) consumer **credit card transactions** and *card based* payment transactions based on those will have a maximum interchange fee of 0.30%. These caps, since they have been accepted by competition authorities as not requiring further action, appear as reasonable benchmarks that have already been implemented without calling into question the operation of international card schemes and payment service, providers, and retailers and consumers' welfare while they also provide legal certainty.

The second part of the regulation reflects rules regarding business rules that will be applicable to *all* categories of card transactions and *card-based* payment transactions based on those. As of the entry into force of the regulation, for instance:

- The application of the 'Honour All Cards Rule' will be limited. No discrimination will be nonetheless allowed on the basis of the issuing bank or the provenance of the card holder and between the cards carrying the same interchange fee level.
- the application of any rule preventing or limiting merchants from steering customers to more efficient payments instruments ('no steering rules') will be prohibited.
- acquiring Payment Service Providers will provide at least monthly statements of fees to merchants, in which the fees paid by the merchant over the relevant month concerning each category of cards and each individual brand for when the acquirer provides acquiring services is specified;
- the application of any rule withholding merchants from disclosing to their customers fees they pay to payment services acquirers will be prohibited.

The Impact Assessment has been modified following the Impact Assessment Board meeting of 20 March 2013. Notable changes include the provision of supplementary information on the card market, its functioning and on the EU case law related to interchange fees, together with a summary of the economic litterature related to interchange fees. The possible impact of imposing maximum interchange fees on cardholder fees, overall consumers' welfare and bank revenues was presented more prominently, to streamline the presentation of impacts of the

most important options in the main text. The interdependencies between different options and packages was better explained, together with the rationale for an all-inclusive package including interchange fees, substantiating the reasons for regulating interchange fees through legislation.

Legal basis

Article 114(1) of the Treaty on the functioning of the EU.

Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s):

By its nature an integrated payments market, based on networks that reach beyond national borders, requires a Union-wide approach as the applicable principles, rules, processes and standards have to be consistent across all Member States in order to achieve legal certainty and a level playing field for all market participants. The alternative to a Union-wide approach would be a system of national regulatory and competition enforcement actions, which would be less effective than EU action and with greater complexity and higher costs than legislation at European level. A possible intervention at EU level therefore complies with the subsidiarity principle. Such an approach supports the Single Euro Payments Area (SEPA) and is consistent with the Digital Agenda, in particular the creation of a Digital Single Market. It promotes technological innovation and contributes to growth and jobs, in particular in the areas of *e*- and *m*-commerce.

Moreover, in view of the cross-border nature of payments markets, any measure taken by public authorities seeking to reduce or modify the level of wholesale fees (interchange fees) in one Member State alone would disrupt the smooth functioning of the Community wide payment market and would not be conducive to market integration as it would not result in a level playing field across the EU. This would be the case for instance of different national measures aimed at regulating interchange fees or capping them, as currently foreseen in several Member States.

The proposal therefore complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The proposal does not go beyond what is strictly necessary to achieve its objectives, namely to help develop an EU-wide market for payments, which will enable consumers, retailers and other undertakings to enjoy the full benefits of the EU internal market including e-commerce. These enhanced possibilities of entry by pan-European players, more innovation, and increased ability for national (in general cheaper) card schemes together with more limited cash use provide opportunities for retailers and payment service providers, regardless of whether these are banks or new market entrants. Effective competition in card payment and card-based payment markets will result in efficient market outcomes, wider choice of payment service providers, including pan-European ones and innovative players, and in lower costs to retailers and consumers. These cost savings should in turn be passed on by merchants to consumers through lower retail prices.

The interchange fees as such, and their widely diverging levels constitute an obstacle to market integration and to effective competition, whose effects are reinforced by a number of

business rules reducing transparency to retailers and consumers, restricting the ability for retailers to choose an acquirer in another Member State, and retailers from steering consumers towards more efficient means of payment.

On the basis of consultations of stakeholders, as summarised in the impact assessment, the Commission proposes a combination of measures to enhance effective market functioning, capping the level of interchange fees for cross-border transactions with consumer debit and credit cards (in the first stage) and, in a second stage, capping the level of interchange fees also for domestic transactions with consumer credit cards and consumer debit cards.

Not regulating would leave intact the problems of increased reliance on the two international market players with the gradual disappearance of (in general cheaper) domestic card schemes. Economies of scale and scope for potential new pan-European entrants and innovative players would remain limited, whilst merchants and consumers will continue to pay for the fragmented and expensive EU payments market (more than 1% of EU GDP or €130 billion a year, according to the ECB). Leaving these issues to competition enforcement actions, in particular on the basis of the MasterCard judgement is likely to take many years and will always be on a case-by-case basis and thus cannot provide a level playing field.

It is necessary and proportionate to cover domestic transactions and not only cross-border transactions which would mainly benefit big retailers. Cross-border transactions can be addressed rapidly, creating opportunities for retailers to seek cheaper acquiring services cross-border, and incentivising domestic banking communities or schemes to lower their acquiring fees. A similar process has recently taken place as regards direct debit. The SEPA End Date Regulation limits interchange fees for direct debit, abolishing cross-border interchange fees for direct debit while allowing domestic interchange fees to stay in place until 2017. As a result and faced with a number of merchants moving their acquirer to neighbouring countries, banks have committed to abolish their interchange fees for direct debit already by 1 September 2013¹³¹⁴.

As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, a large number of cross-border card payment transactions in the Union are already carried out respecting the maximum interchange fees applicable to the first phase of this Regulation. These elements can therefore be introduced rapidly. However, domestic interchange fees would need to be modified. It is therefore necessary to grant a transition period for domestic payment transactions. Moreover, the proposal does not prevent Member States from maintaining or introducing lower caps or measures of equivalent object or effect through national legislation

Furthermore, capping of interchange fees would benefit retailers, which are more likely to pass on these benefits to their customers than banks are, given the current lower levels of competition and switching in the banking sector.

At the same time, consumers already pay the interchange fees indirectly in retail prices, and consumers using cash or debit cards currently subsidise the use of more expensive cards by other consumers. It could be argued that decreasing interchange fees would encourage banks to increase card holder fees. However, there is no evidence of such a linkage. Card fees appear to be primarily determined by the level of competition in retail banking.

Although this proposal favours market integration, market entry and consumers and retailers welfare, a negative impact on incumbent payment service providers and banks is far from

¹³ http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=418&id_article=1895

¹⁴ http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=418&id_article=1895

certain. Capping interchange fees at these levels is expected to have a positive effect on card acceptance by merchants so would encourage consumers to an increased use of cards. Increases in the volume of card transactions (through higher acceptance) and the savings on cash handling could at least partly compensate banks for the potential losses due to the cap on interchange fees. Other cost savings could result from fewer ATM cash withdrawals.

The 0.2% and 0.3% caps envisaged are based on the so-called 'Merchant Indifference Test', which identifies the fee level a merchant would be willing to pay if he were to compare the cost of the customer's use of a payment card with those of non-card (cash) payments. The figures were calculated on the basis of this test, using data gathered by four national central banks. These figures have been accepted by Visa, MasterCard and the French domestic card scheme *Groupement Cartes Bancaires*. The proposal is therefore proportionate to the objectives mentioned above. All of the proposed rules have been subject to a proportionality test and to ensure appropriate and proportionate regulation.

Choice of instruments

Proposed instruments: Regulation.

Other means would not be adequate for the following reasons:

Interchange fees levels and restrictive business rules requires standardisation at technical level and the fullest possible harmonisation. This argues in favour of a Regulation rather than a Directive. Furthermore, due to the network character of the payment industry, most of the benefits of will only materialise once the domestic transition to Union-wide payment instruments is completed in all EU Member States. A Directive with potentially differing national implementations runs the risk of perpetuating the current payment market fragmentation. Finally, it would delay migration due to the time necessary for national transposition. It is therefore recommended to use the legal instrument of a Regulation for regulating interchange fees and restrictive business rules in the card payments market and mobile and internet based card markets.

The Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the freedom to conduct a business, the right to an effective remedy or to a fair trial and has to be applied in accordance with those rights and principles.

4. BUDGETARY IMPLICATIONS

The proposal does not have any impact on the EU Budget.

5. OPTIONAL ELEMENTS

Review/revision/sunset clause

The proposal includes a review clause.

European Economic Area

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

Detailed explanation of the proposal

The following short summary aims to facilitate the decision making process by sketching the main substance of the Regulation.

Article 1 – subject matter and scope – states that the Regulation concerns rules for the interchange fees regarding payment card transactions and card based payment transactions within the EU when the payee and its payment service provider in the payment transaction are located in the EU and business rules related to those payments.

Article 2 – definitions – aligned, as much as possible, with those used in Directive 2007/64/EC. However, given the Regulation’s limited scope in comparison with the Payment Services Directive, some of the definitions have been tailored to the needs of this proposal.

Article 3 – (Maximum interchange fee for cross-border consumer debit and credit card transactions) sets caps for interchange fees to payment service providers of 0.2% and 0.3% for for cross-border consumer debit and credit transactions, for entry into force 2 months after publication.

Article 4 – (Maximum interchange fees for all consumer debit and credit card transactions) sets caps for interchange fees to payment service providers of 0.2% and 0.3% fo the value of the transaction for all consumer debit and credit transactions, for entry into force 2 years after publication

Article 5 –(Prohibition of circumvention Fees) establishes that for the purpose of implementing the caps under articles 3 and 4, the net compensation of fees received and paid between the issuer and the scheme are integrated in the calculation of the interchange fees paid and received for the purpose of assessing possible circumvention.

Article 6 – (Licensing) sets that the licenses delivered by schemes for issuing or acquiring purposes should not be restricted to a specific territory but cover the entire Union territory

Article 7 – (Separation between scheme and processing) establishes that an organisational separation should be in place between the schemes and the entities which are processing the transactions, and prohibits territorial discrimination in processing rules whilst mandating technical interoperability of processing entities' systems

Article 8 – (Co- badging and choice of application) This article states that the issuer of the payment instrument decides whether the payment application can reside on the same card or wallet. The choice of payment application used remains with the consumer and cannot not be prescribed in advance by the issuer through automatic mechanisms on the instrument or the equipment at the point of sale.

Article 9 – (Unblending) This article clarifies that acquiring banks shall offer and charge payees individually for different categories and different brands of payment cards and not impose a single price, and provide the relevant information on the amounts applicable for the different categories and brands

Article 10 – (Honour all cards rule) This article clarifies that payment schemes and payment service providers cannot impose that a retailer accepts a category or brand if he accepts another category or brand, except if the brand or category is subject to the same regulated interchange fee as the former. For example, merchants accepting consumer debit cards may not be forced to accept consumer credit cards but can be imposed to accept other consumer debit cards

Article 11 – (Steering rules) This article clarifies that payment schemes and payment service providers schemes cannot prevent retailers from steering consumers towards the use of specific payment instruments preferred by the retailer. This is without prejudice to the rules on rebates and surcharges established under the Payment Services Directive and article 19 of the Consumer Rights Directive. Payment schemes and payment service providers schemes

cannot prevent retailers from informing consumers about interchange fees and merchant service charges

Article 12 – (Information for the payee on individual payment transactions) states the informations the payment service provider shall provide to the merchant after the execution of an individual payment transaction, and provides for the possibility for this information to be provided periodically

Article 13 – Competent authorities regulates the procedures for designating the national authorities responsible for the application of provisions in the Regulation

Article 14 – Penalties requires Member States to establish rules on sanctions for breaches of the provisions in the Regulation, and to notify the Commission of these

Article 15 – Out-of-court complaint and redress procedures requires Member States to establish specific requirements for the settlement of disputes between payees and payment service providers.

Article 16 – (Review clause) four years after the entry into force, dealing in particular with the interchange level. This article sets out the mechanisms for assessing the effective application of the provisions in the Directive and, if needed, propose changes to it

Article 17 – (entry into force) states the date upon which the Regulation enters into force

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on interchange fees for card-based payment transactions

(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(1) 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 Economic and Social Committee¹⁵,

Having regard to the opinion of the European Central Bank¹⁶,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating direct and indirect obstacles to the proper functioning and completion of an integrated market for electronic payments, with no distinction between national and cross-border payments, is necessary for the proper functioning of the internal market.
- (2) Directive 2007/64/EC of the European Parliament and of the Council¹⁷ has provided a legal foundation for the creation of a Union-wide internal market for payments as it substantially facilitated the activity of payment service providers, creating uniform rules with respect to the provision of payment services.
- (3) Regulation (EC) No 924/2009 of the European Parliament and of the Council¹⁸ established the principle that charges paid by the users for a cross-border payment in euro are the same as for the corresponding payment within a Member State including card payments covered by this Regulation.

¹⁵ OJ C , , p. .

¹⁶ OJ C , , p. .

¹⁷ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

¹⁸ Regulation (EC) N° 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) Regulation (EC) No 260/2012 of the European Parliament and of the Council¹⁹ provided the rules for the functioning of credit transfers and direct debits in euro in the internal market but excluded card based payments from its scope.
- (5) Directive 2011/83/EU of the European Parliament and of the Council²⁰ harmonizes certain rules on contracts concluded between consumers and traders, including rules on fees for the use of means of payment, on the basis of which Member States are to prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.
- (6) Secure, efficient, competitive and innovative electronic payments are crucial if consumers, retailers and companies are to enjoy the full benefits of the internal market, and increasingly so as the world moves towards *e-commerce*.
- (7) Preparation of legislation is under way in several Member States²¹ to regulate interchange fees, covering a number of issues, including caps on interchange fees at various levels, merchant fees, the Honour All Cards rules or steering measures. The existing administrative decisions in some Member States vary significantly. In view of the harmfulness of interchange fees to retailers and consumers, a further introduction of regulatory measures at national level aimed at addressing the level or divergencies of these fees is anticipated. Such national measures would be likely to lead to significant barriers to the completion of the internal market in the area of cards, internet and mobile payments based on cards and would therefore hinder the freedom to provide services.
- (8) Payment cards are the most frequently used electronic payment instrument for retail purchases. However, integration of the Union payment card market is far from complete as many payment solutions cannot develop beyond their national borders or new pan-Union providers are prevented from entering the market. The lack of market integration currently results in higher prices and less choice in payment services for consumers and retailers, and more limited opportunities to take advantage of the internal market. There is therefore a need to remove obstacles to the efficient functioning of the card market, including mobile and internet payments that are based on card transactions which still pose barriers to the deployment of a fully integrated market.
- (9) To enable the internal market to function effectively, the use of electronic payments should be promoted and facilitated to the benefit of retailers and consumers. Cards and other electronic payments can be used in a more versatile manner, including possibilities to pay online in order to take advantage of the internal market and *e-commerce*, whilst electronic payments also provide retailers with potentially secure payments. Card and card based payments instead of cash use could therefore be beneficial for retailers and consumers, provided the fees for the use of the payment systems are set at an economically efficient level, whilst contributing to innovation and market entry of new operators.

¹⁹ Regulation (EC) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

²⁰ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

²¹ Italy, Hungary, Poland and the United Kingdom .

- (10) One of the key practices hindering the functioning of the internal market in card and card-based payments is the widespread existence of interchange fees, which are in most Member States not subject to any legislation. Interchange fees are inter-bank fees usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card transaction. Merchants in turn incorporate these card costs in the general prices of goods and services. Competition between card schemes appears in practice to be largely aimed at convincing as many issuing payment service providers (e.g. banks) as possible to issue their cards, which usually leads to *higher* rather than *lower* interchange fees on the market, in contrast with the usual price disciplining effect of competition in a market economy. Regulating interchange fees would improve the functioning of the internal market.
- (11) The currently existing wide variety of interchange fees and their level prevent the emergence of 'new' pan Union players on the basis of business models with lower interchange fees, to the detriment of potential economies of scale and scope and their resulting efficiencies. This has a negative impact on retailers and consumers and prevents innovation. As Pan-Union players would have to offer issuing banks as a minimum the highest level of interchange fee prevailing in the market they want to enter it also results in persisting market fragmentation. Existing domestic schemes with lower or no interchange fees may also be forced to exit the market because of the pressure from banks to obtain higher interchange fees revenues. As a result, consumers and merchants face restricted choice, higher prices and lower quality of payment services while their ability to use pan-Union payment solutions is restricted. In addition, retailers cannot overcome the fee differences by making use of card acceptance services offered by banks in other Member States. Specific rules applied by the payment schemes require the application of the interchange fee of the 'Point of Sale' (country of the retailer) for each payment transaction. This prevents acquiring banks from successfully offering their services on a cross border basis. It also prevents retailers from reducing their payment costs to the benefit of consumers.
- (12) The application of existing legislation by the Commission and national competition authorities has not been able to redress this situation.
- (13) Therefore, to avoid the fragmentation of the internal market and significant distortions of competition through diverging laws and administrative decisions, there is a need, in line with article 114 TFEU, to take measures to address the problem of high and divergent interchange fees, to allow payment service providers to provide their services on a cross-border basis and consumer and retailer to use cross-border services.
- (14) The application of this Regulation is without prejudice to the application of Union and national competition rules. It should not prevent Member States from maintaining or introducing lower caps or measures of equivalent object or effect through national legislation.
- (15) This Regulation follows a gradual approach. As a first step, it is necessary to take measures to facilitate cross-border issuing and acquiring of payment card transactions. Allowing merchants to choose an acquirer outside their own Member State ('cross border acquiring') and imposing a maximum level of cross border interchange fees for cross border acquired transactions should provide the necessary legal clarity. In addition, licences for issuing or acquiring of payment instruments should be valid without geographic restrictions within the Union. These measures would facilitate the

smooth functioning of an internal market for card, internet and mobile payments, to the benefit of consumers and retailers.

- (16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card payment transactions in the Union are already carried out respecting the maximum interchanges fees applicable to the first phase of this Regulation. Therefore, the provisions relating to those transactions should enter into force quickly, creating opportunities for retailers to seek cheaper acquiring services cross-border, and incentivising domestic banking communities or schemes to lower their acquiring fees.
- (17) For domestic transactions, a transition period is necessary to provide payment services providers and schemes with time to adapt to the new requirements. Therefore, after a two year period following the entry into force of this Regulation and in order to provide for a completion of an internal market for card-based payments, the caps on interchange fees for consumer card transactions should be extended to cover all, cross-border and domestic payments.
- (18) In order to facilitate cross border acquiring all (*cross-border and domestic*) 'consumer' debit card transactions and *card based* payment transaction should have a maximum interchange fee of 0,20% and all (*cross-border and domestic*) consumer credit card transactions and *card based* payment transactions based on those should have a maximum interchange fee of 0.30%.
- (19) Those caps are based on the so-called 'Merchant Indifference Test' developed in economic literature, which identifies the fee level a merchant would be willing to pay if he were to compare the cost of the customer's use of a payment card with those of non-card (cash) payments (taking into account the fee for service paid to acquiring banks, *i.e.* the merchant service charge coming on top of the interchange fee). It thereby stimulates the use of efficient payment instruments through a promotion of those cards that provide higher transactional benefits, while at the same time preventing disproportionate merchant fees, which would impose hidden costs on other consumers. Excessive merchant fees might otherwise arise due to the collective interchange fee arrangements, as merchants are reluctant to turn down costly payment instruments for fear of losing business. Experience has shown that those levels are proportionate, as they do not call into question the operation of international card schemes and payment service providers. They also provide benefits for retailers and consumers and provide legal certainty.
- (20) This Regulation should cover all transactions where the payer's payment service provider and the payee's payment service provider are established in the Union.
- (21) In accordance with the principle of technological neutrality set out in the Digital Agenda for Europe, this Regulation should apply to card based payment transactions regardless of the environment in which this transaction takes place, including through retail payment instruments and services which can be off-line, on-line or mobile .
- (22) Payment card transactions are generally carried out on the basis of two main business models, so-called three party payment card schemes (cardholder – acquiring and issuing scheme - merchant) and four party payment card schemes (card holder- issuing bank- acquiring bank- merchant). Many four payment card party schemes are using an explicit interchange fee, mostly multilateral. Interchange fees (fees paid by acquiring banks to incentivise card issuing and card use) are implicit in three party payment card schemes. To acknowledge the existence of implicit interchange fees and contribute to

the creation of a level playing field, three party payment card schemes using payment service providers as issuers or acquirers should be considered as four party payment card schemes and should follow the same rules, whilst transparency and other measures related to business rules should apply to all providers.

- (23) It is important to ensure that the provisions concerning the interchange fees to be paid or received by payment service providers are not circumvented by alternative flows of fees to issuing payment services providers. To avoid this, the "net compensation" of fees paid and received by the issuing payment service provider from a payment card scheme should be considered as the interchange fee. When calculating the interchange fee, for the purpose of checking whether circumvention is taking place the total amount of payments or incentives received by an issuing payment services provider from a payment card scheme with respect to the regulated transactions less the fees paid by the issuing payment services provider to the scheme should be taken into account. Payments, incentives and fees considered could be direct (i.e. volume-based or transaction-specific) or indirect (including marketing incentives, bonuses, rebates for meeting certain transaction volumes).
- (24) Consumers tend to be unaware of the fees paid by merchants for the payment instrument they use. At the same time, a series of incentivising practices applied by issuing payment service providers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments generating high fees for issuing payment service providers. To counter this, the measures imposing restrictions on interchange fees should only apply to payment cards that have become mass products and merchants generally have difficulty refusing due to their widespread issuance and use (i.e. consumer debit and credit cards). In order to enhance effective market functioning in the non-regulated parts of the sector and to limit the transfer of business from the regulated to the non-regulated parts of the sector, it is necessary to adopt a series of measures, including separation of scheme and infrastructure, steering of the payer by the payee and enable selective acceptance of payment instruments by the payee.
- (25) A separation of scheme and infrastructure should allow all processors to compete for customers of the schemes. As the cost of processing is a significant part of the total cost of card acceptance, it is important for this part of the value chain to be opened to effective competition. On the basis of the separation of scheme and infrastructure, card schemes and processing entities should be independent in terms of legal form, organisation and decision making process. They should not discriminate, for instance by providing each other with preferential treatment or privileged information which is not available to their competitors on their respective market segment, imposing excessive information requirements on their competitor in their respective market segment, cross-subsidizing their respective activities or having shared governance arrangements. Such discriminatory practises contribute to market fragmentation, negatively impact market entry by new players and prevent pan-Union players from emerging, hence hindering the completion of the internal market in cards, internet and mobile payments, to the detriment of retailers, companies and consumers.
- (26) Scheme rules applied by payment card schemes and practices applied by payment service providers tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by 'blending' fees or prohibiting merchants from choosing a cheaper card brand on co-branded cards or steering consumers to the use of such cheaper cards. Even if merchants are aware of the different costs, the scheme rules often prevent them from acting to reduce the fees.

- (27) Payment instruments entail different costs to the payee, with certain instruments being more expensive than others. Except where a payment instrument is imposed by law for certain categories of payments or cannot be refused due to its legal tender status, the payee should be free to steer payers towards the use of a specific payment instrument. Card schemes and payment services providers impose several restrictions on payees in this respect, examples of which include restrictions on the refusal by the payee of specific payment instruments for low amounts, on the provision of information to the payer on the fees incurred by the payee for specific payment instruments or limitation imposed on the payee of the number of tills in his shop accepting specific payment instruments. Those restrictions should be abolished.
- (28) In accordance with Article 55 of the proposal COM (2013)547 the payee can steer the payer towards the use of a specific payment instrument. However, no charges should be requested by the payee for the use of payment instruments of which interchange fees are regulated within the scope of this Regulation, as in such situations the advantages of surcharging become limited while creating complexity in the market.
- (29) The Honour all Cards Rule is a twofold obligation imposed by issuing payment services providers and payment card schemes on payees to, on the one hand, accept all the cards of the same brand ('Honour all *Products*' - element), irrespective of the different costs of these cards, and on the other hand irrespective of the individual issuing bank which has issued the card ('Honour all *Issuers*' –element). It is in the interest of the consumer that for the same category of cards the payee cannot discriminate between issuers or cardholders, and payments schemes and payment service providers can impose such obligation on them. Therefore, although the 'Honour all *Issuers*' element of the Honour all Cards Rule is a justifiable rule within a payment card system, since it prevents that payees from discriminating between the individual banks which have issued a card, the 'Honour all *Products*' element is essentially a tying practice that has the effect of tying acceptance of low fee cards to acceptance of high fee cards. A removal of the 'Honour all *Products*' element of the Honour All Cards Rule would allow merchants to limit the choice of payment cards they offer to low(er) cost payment cards only, which would also benefit consumers through reduced merchants' costs. Merchants accepting debit cards would then not be forced also to accept credit cards, and those accepting credit cards would not be forced to accept commercial cards. However, to protect the consumer and his ability to use the payment cards as often as possible, merchants should be obliged to accept all cards that are subject to the same regulated interchange fee. Such a limitation would also result in a more competitive environment for cards with interchange fees not regulated under this Regulation, as merchants would gain more negotiating power as regards the conditions under which they accept such cards.
- (30) For the effective functioning of the limitations to the Honour All Cards Rule certain information is indispensable. First, payees should have the means to identify the different categories of cards. Therefore, the various categories should be identifiable visibly and electronically on the device. Secondly, also the payer should be informed about the acceptance of his payment instrument(s) at a given point of sale. It is necessary that any limitation on the use of a given brand to be announced by the payee to the payer at the same time and under the same conditions as the information that a given brand is accepted.
- (31) In order to ensure that redress is possible where this Regulation has been incorrectly applied, or where disputes occur between payment services users and payment services providers, Member States should establish adequate and effective out-of-court

complaint and redress procedures. Member States should lay down rules on the penalties applicable to infringements of this Regulation and should ensure that those penalties are effective, proportionate and dissuasive and that they are applied.

- (32) Since the objectives of this Regulation, namely to lay down uniform requirements for payment card transactions and internet and mobile transactions based on the card payments, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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.
- (33) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to an effective remedy or to a fair trial, the freedom to conduct a business, consumer protection and has to be applied in accordance with those rights and principles.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation lays down uniform technical and business requirements for payment card transactions carried out within the Union, where both the payer's payment service provider and the payee's payment service provider are established therein.
2. This Regulation does not apply to payment instruments that can be used only within a limited network designed to address precise needs through payment instruments only to be used in a limited way, because they allow the specific instrument holder to acquire goods or services only in the premises of the issuer, within a limited network of service providers under a direct commercial agreement with a professional issuer, or because they can be used only to acquire a limited range of goods or services.
3. Chapter II does not apply to the following:
 - (a) transactions with commercial cards,
 - (b) cash withdrawals at automatic teller machines and
 - (c) transactions with cards issued by three party payment card schemes.
4. Article 7 does not apply to three party payment card schemes.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'acquirer' means a payment service provider contracting directly or indirectly with a payee to process the payee's payment transactions;

- (2) 'issuer' means a payment service provider contracting directly or indirectly with a payer to initiate, process and settle the payer's payment transactions;
- (3) 'consumer' means a natural person who, in payment service contracts covered by this Regulation, is acting for purposes other than the trade, business or profession of that person;
- (4) 'debit card transaction' means an card payment transaction included with prepaid cards linked to a current or deposit access account to which a transaction is debited in less than or 48 hours after the transaction has been authorised/initiated.
- (5) 'credit card transaction' means an card payment transaction where the transaction is settled more than 48 hours after the transaction has been authorised/initiated;
- (6) 'commercial card' means any payment cards issued to undertakings or public sector entities that are limited in use for business expenses of employees or civil servants or cards issued to self-employed natural persons engaged in a business activity that are limited in use for business expenses of those self-employed natural persons or their employees;
- (7) 'card based payment transaction' means a service used to complete a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a payment card transaction. Card based payment transactions exclude transactions based on other kinds of payment services.
- (8) 'cross-border payment transaction' means a card payment or card-based payment transaction initiated by a payer or by a payee where the payer's payment service provider and the payee's payment service provider are established in different Member States or where the payment card is issued by an issuing payment service provider established in a different Member State than that of the point of sale;
- (9) 'interchange fee' means a fee paid for each transaction directly or indirectly (i.e. through a third party) between the payment service providers of the payer and of the payee involved in a payment card or a payment card-based transaction;
- (10) 'merchant service charge' means a fee paid by the payee to the acquirer for each transaction comprising the interchange fee, the payment scheme and processing fee and the acquirer margin;
- (11) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (12) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
- (13) 'payment card scheme' means a single set of rules, practices, standards and/or implementation guidelines for the execution of payment transactions across the Union and within Member States, and which is separated from any infrastructure or payment system that supports its operation;
- (14) 'four party payment card scheme' means a payment card scheme in which payments are made from the payment account of a cardholder to the payment account of a payee through the intermediation of the scheme, a payment card issuing payment services provider (on the card holder's side) and an acquiring payment services provider (on the payee's side), and *card based* transactions based on the same structure;

- (15) 'three party payment card scheme' means a payment card scheme in which payments are made from a payment account held by the scheme on behalf of the cardholder to a payment account held by the scheme on behalf of the payee, and *card based* transactions based on the same structure. When a three party payment card scheme licenses other payment service providers for the issuance and/or the acquiring of payment cards, it is considered as a four party payment card scheme;
- (16) 'payment instrument' means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user, or in its behalf, in order to initiate a payment order;
- (17) 'card-based payment instrument' means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate application, used by the payer to initiate a payment order which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012. ;
- (18) 'payment application' means a computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;
- (19) 'payment order' means any instruction by a payer to his payment service provider requesting the execution of a payment transaction;
- (20) 'payment card transaction' means a payment transaction made with a payment card or using the infrastructure of a payment card transaction and based on the business rules of a payment card transaction; '
- (21) 'payment service provider' means natural or legal persons authorized to provide the payment services provider listed in the annex of Directive 2007/64/EC. A payment service provider can be an issuer or an acquirer or both;
- (22) 'payment service user' means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;
- (23) 'payment transaction' means an action, initiated by the payer or on his behalf or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee;
- (24) 'processing' means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer. ;
- (25) 'processing entity' means any natural or legal person providing payment transaction processing services;

Chapter II

INTERCHANGE FEES

Article 3

Interchange fees for cross-border consumer debit or credit card transactions

1. With effect from two months after the entry into force of this Regulation, payment services providers shall not offer or request for cross-border debit card transactions a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction.

2. With effect from two months after the entry into force of this Regulation, payment services providers shall not offer or request for cross-border credit card transactions a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction.

Article 4

Interchange fees for all consumer debit or credit card transactions

3. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,2 % of the value of the transaction for any debit card based transactions.
4. With effect from two years after the entry into force of this Regulation, payment service providers shall not offer or request a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than 0,3 % of the value of the transaction for any credit card based transactions.

Article 5

Prohibition of circumvention

5. For the purposes of the application of the caps referred to in Article 3 and Article 4, any net compensation received by an issuing bank from a payment card scheme in relation to payment transactions or related activities shall be treated as part of the interchange fee.

Chapter III

BUSINESS RULES

Article 6

Licensing

6. Any territorial restrictions within the Union or rules with an equivalent effect in licensing agreements for issuing payment cards or acquiring payment card transactions shall be prohibited.
7. Any territorial restrictions within the Union or rules with an equivalent effect in four party payment card scheme rules shall be prohibited.
8. Any requirement or obligation to obtain a country specific licence or authorisation to operate on a cross-border basis or rule with an equivalent effect in licensing agreements for issuing payment cards or acquiring payment card transactions shall be prohibited.
9. Any requirement or obligation to obtain a country specific licence or authorisation to operate on a cross-border basis or rules with an equivalent effect in four party payment card schemes rules shall be prohibited.

Article 7

Separation of payment card scheme and processing entities

10. Payment card schemes and processing entities shall be independent in terms of legal form, organisation and decision making. They shall not discriminate in any way

between their subsidiaries or shareholders on the one hand and users of these schemes and other contractual partners on the other hand and shall not in particular make the provision of any service they offer conditional in any way on the acceptance by their contractual party of any other service they offer.

11. Payment card schemes shall allow for the possibility that authorisation and clearing messages of single card transactions be separated and processed by different processing entities.
12. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.
13. Processing entities within the Union shall ensure that their system is technically interoperable with other systems of processing entities within the Union through the use of standards developed by international or European standardisation bodies. In addition, processing entities shall not adopt or apply business rules that restrict interoperability with other processing entities within the Union.

Article 8

Co-badging and choice of application

14. Any schemes rules and rules in licensing agreements that hinder or prevent an issuer from co-badging two or more different brands of payment instruments on a card, telecommunication, digital or IT device shall be prohibited.
15. Any difference in treatment of issuers or acquirers in schemes rules and rules in licensing agreements concerning co-badging on a card, telecommunication, digital or IT device shall be objectively justified and non-discriminatory.
16. Payment card schemes shall not impose reporting requirements, obligations to pay fees or other obligations with the same object or effect on card issuing and acquiring payment services providers for transactions carried out with any device on which their brand is present in relation to transactions for which their scheme is not used.
17. Any routing principles aimed at directing transactions through a specific channel or process and other technical and security standards and requirements with respect to the handling of more than one payment card brand on a card, telecommunication, digital or IT device shall be non-discriminatory and shall be applied in a non-discriminatory manner.
18. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale.
19. Payment card schemes, issuers, acquirers and payment card handling infrastructure providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of application by the payer when using a co-badged payment instrument.

Article 9

Unblending

20. Acquirers shall offer and charge payees individually specified merchant service charges for different categories and different brands of payment cards unless merchants request in writing acquiring payment services providers to charge blended merchant services charges.

21. Agreements between acquiring payment services providers and payees shall include individually specified information on the amount of the merchant services charges interchange fees and scheme fees applicable with respect to each category and brand of payment cards.

Article 10
Honour All Card rules

22. Payment schemes and payment service providers shall not apply any rule that may oblige payees accepting cards and other payment instruments issued by one issuing payment service provider within the framework of a payment instruments scheme to also accept other payment instruments of the same brand and/or category issued by other issuing payment service providers within the framework of the same scheme, except if they are subject to the same regulated interchange fee.
23. The restriction of Honour all card rules referred to in paragraph 1 is without prejudice to the possibility for payments schemes and payment service providers to provide that certain cards may not be refused on the basis of the identity of the issuing payment service provider or of the cardholder.
24. Merchants deciding not to accept all cards or other payment instruments of a payment card scheme shall inform consumers in a clear and unequivocal manner at the same time as they inform the consumer on the acceptance of other cards and payment instruments of the scheme. That information shall be displayed prominently at the entrance of the shop, at the till or on the website or other applicable electronic or mobile medium, and shall be provided to the payer in good time before he enters into a purchase agreement with the payee.
25. Issuing payment service providers shall ensure that their payment instruments are visibly and electronically identifiable, enabling payees to identify unequivocally which brands and categories of prepaid, debit, credit or commercial cards or card based payments based on these are chosen by the payer.

Article 11
Steering rules

26. Any rule in licensing agreements, scheme rules applied by payment card schemes and in agreements entered into between card acquiring payment services providers and payees preventing payees from steering consumers to the use of any payment instrument preferred by the payee shall be prohibited. This prohibition shall also cover any rule prohibiting payees from treating payment devices of a given scheme more or less favourably than others.
27. Any rule in licensing agreements, scheme rules applied by payment card schemes and in agreements entered into between card acquiring payment services providers and payees preventing payees from informing payers about interchange fees and merchant service charges shall be prohibited.

28. Paragraphs 1 and 2 are without prejudice to the rules on charges, reductions or other steering set out in Article 55 of the proposal COM (2013)547 and in Article 19 of Directive 2011/83/EU²².

Article 12

Information to the payee on individual payment transactions

29. After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee with the following information:
- (a) the reference enabling the payee to identify the payment transaction;
 - (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
 - (c) the amount of any charges for the payment transaction, indicating separately the amount of the interchange fee.

With the payee's prior and explicit consent the information referred to in the first subparagraph may be aggregated by brand, application, payment instrument categories and rates of interchange fees applicable to the transaction.

30. Contracts between acquirers and payees may include a provision that the information referred to in the first subparagraph of paragraph 1 shall be provided or made available periodically, at least once a month, and in an agreed manner which allows payees to store and reproduce information unchanged.

Chapter IV

FINAL PROVISIONS

Article 13

Competent authorities

31. Member States shall designate competent authorities that are empowered to ensure enforcement of this Regulation and that are granted investigation and enforcement powers.
32. Member States may designate existing bodies to act as competent authorities.
33. Member States may designate different competent authorities.
34. Member States shall notify the Commission of those competent authorities by two months after the entry into force of this Regulation. They shall notify the Commission without delay of any subsequent change concerning those authorities.
35. The designated competent authorities referred to in paragraph 1 shall have adequate resources for the performance of their duties.
36. Member States shall require the competent authorities to monitor compliance with this Regulation effectively and take all necessary measures to ensure such compliance.

²² Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights...

37. Member States shall ensure that the designations referred to in paragraph 1 are subject to the right of appeal.

Article 14
Sanctions

38. Member States shall lay down rules on the sanctions applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. Such sanctions shall be effective, proportionate and dissuasive.
39. Member States shall notify those provisions to the Commission by two months after the entry into force of this Regulation and shall notify without delay of any subsequent amendment affecting them.

Article 15
Settlement, out of court complaints and redress procedures

40. Member States shall establish adequate and effective out-of-court complaint and redress procedures for the settlement of disputes arising under this Regulation between payees and their payment service providers. For those purposes, Member States shall designate existing bodies, where appropriate, or establish new bodies.
41. Member States shall notify the Commission of those bodies by two years after the entry into force of this Regulation. They shall notify the Commission without delay of any subsequent change concerning those bodies.

Article 16
Review clause

Four years after the entry into force of this Regulation, the Commission shall present to the European Parliament and to the Council a report on the application of this Regulation. The Commission's report shall look in particular at the appropriateness of the levels of interchange fees and at steering mechanisms such as charges, taking into account the use and cost of the various means of payments and the level of entry of new players and new technology on the market.

Article 17
Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President