Remember to Make Your Disclosures.
The Cross-Border Payments Regulations

By: Siobhan Moore and Giedre Mitkute

Just keeping business operating “as usual” at this time is occupying most, if not all, of everyone’s time. In spite of this, it seems there is no relaxation of the looming implementation deadline imposed on payment service providers (PSPs) by Regulation (EU) 2019/518 (amending the Regulation (EC) 924/2009 on cross-border payments) (CBP2).

CBP2 imposes additional disclosure requirements on PSPs. Some of the new rules on currency conversion rate disclosures come into force on 19 April 2020.

Re-cap on CBP2 Requirements
CBP2 imposes several requirements relating to charges on cross-border payments and currency conversion rate disclosure with different application dates.

Equality of Charges
The changes relating to the equality of charges rules applied from 15 December 2019. Those rules required charges for cross-border payments in Euro must be the same as those for corresponding national payments of the same value in the national currency of the member state where the PSP is located. This also applies to non-Euro payments in the national currency of a member state which has extended the application of these rules to its own currency. This equality of charges requirement does not apply to currency conversion charges.

Pre-Transaction Disclosure Requirements
The imminent requirements (applicable from 19 April 2020) concern pre-transaction currency conversion rate disclosure requirements for card-based transactions and disclosures on charges applicable to currency conversion services provided with credit transfers.

1. Card-Based Transactions

Under the new requirements, PSPs must express their total conversion charges as a percentage mark-up over the latest Euro foreign exchange reference rates issued by the European Central Bank (ECB). The mark-up must be disclosed:

(a) to the payer prior to the initiation of the payment e.g. as part of the pre-contractual information required under the Second Payment Services Directive (EU) 2015/2366 (PSD2). This is often provided in the framework contract such as the cardholder terms and conditions; and

(b) in a comprehensible and easily accessible manner on a “broadly available and easily accessible electronic platform” e.g. on a customer-facing website or mobile banking app.

Firms providing currency conversion services at an ATM or point of sale, commonly known as dynamic currency conversion or “DCC” must also disclose, before initiation of the payment:

(a) their total conversion charges as a percentage mark-up over the ECB reference rate to the payer and clearly display this information at the ATM or point of sale e.g. on-screen for online transactions or on POS terminals; and
provide the payer the amount to be paid to the payee (i.e. merchant) in the currency used by the payee and the amount to be paid by the payer in the currency of the payer’s account.

In each case, the above information must be available to the payer on a durable medium after the initiation of the payment (presumably by way of a downloadable on-screen confirmation for online purchases or receipt).

In addition, DCC providers must, before initiation of a payment, inform the payer of a choice of paying in the currency used by the payee (i.e. local currency).

2. Credit Transfers

PSPs who offer currency conversion services in relation to credit transfers initiated directly via their website or mobile banking app must inform (e.g. as part of the PSD2 pre-contractual information) the payer prior to the initiation of the payment in a clear, neutral and comprehensible manner of the estimated currency conversion charges applicable. PSPs must also communicate to the payer the estimated total amount of the credit transfer in the currency of the payer’s account and the estimated amount to be transferred to the payee in the currency used by the payee.

On-going Disclosure Requirements for Card-Based Payments

CBP2 also introduces other on-going disclosure requirements relating to card-based transactions. From 19 April 2021:

- whenever the payer uses a card for a cash withdrawal at an ATM or payment at the point of sale in any member state currency (other than the currency of the relevant payment account), the PSPs must without undue delay, send to the payer the mark-up over the ECB rate information (as discussed above) via an “electronic message” e.g. by text, email or in-app push notification. This electronic message must be sent once every month in which the PSP receives the cash withdrawal/point of sale transaction order denominated in the same currency as the first withdrawal/point of sale payment. This is to serve as a reminder to the payer of the markup rate that the payer was informed of when it made its first transaction.

- PSPs must agree with its payment service users (e.g. in its cardholder terms and conditions) on the “broadly available and easily accessible electronic communication channel(s)” through which such notifications will be sent and provide the option for the user to opt out of receiving it. A corporate opt can be applied for users who are not consumers.

COVID-19 Impact

At a time where resources are diverted to manage the COVID-19 fallout, a lot of PSPs may well be struggling to meet this looming implementation deadline.

The European Banking Federation (EBF) together with other banking groups have reportedly written to the European Banking Authority and the European Commission to ask for an urgent postponement of the 19 April 2020 implementation deadline of the CBP2 requirements. However, until and unless any such postponement is confirmed, PSPs would be wise to continue with their preparations for the implementation.

Brexit

The future status of Cross Border Payments Regulation in the UK after the Brexit transition period (to expire at the end of 2020) is also not certain. In September 2018 the UK government proposed not to retain this regulation after Brexit (in which case the requirements would not apply to PSPs authorised in the UK). It said that it would re-examine the position after the final version of CBP2 was in place. Subsequently, in October 2019 there were reports of HM Treasury indicating that the UK Government did not have plans to retain this regulation. However, this gives no relief to UK PSPs because the imminently effective part of CBR2 requirements come into force before the end of the
transition period and thus will apply to them. It is also possible, given the disclosure requirements have a consumer protection aspect, that CBP2 may well be retained by the UK government, at least in part. There is also the practical issue that many PSPs operate cross border, so whilst the UK may choose to bow out of CBP2, PSPs will be bound by these requirements through their activities in the other member states.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

Siobhan Moore | +44 (0) 20 7861 9021 | shmoore@lockelord.com
Giedre Mitkute | +44 (0) 20 7861 9027 | giedre.mitkute@lockelord.com

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