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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}

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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)

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 or already completed 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~~ To make the levels of interchange fees ~~to retailers and consumers, more consistent,~~ a further introduction of regulatory measures at national level aimed at addressing the level of or ~~divergencies-divergences between~~ 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 full advantage of the internal market, there is ~~therefore~~ a need to remove obstacles to the efficient functioning of the card market, integration of new card-payment options, 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 fair competition, 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~~ In most Member States, interchange fees, which are in most Member States not subject ~~are not subject~~ to any legislation but, rather, to decisions of the national competition authorities. Interchange fees are inter-bank fees usually ~~applied between the~~ passed from card-acquiring payment service providers ~~and the~~ to card-issuing payment service providers belonging to ~~a certain card~~ the relevant scheme. Interchange fees are a main ~~part~~ component of the fees charged to merchants by acquiring payment service providers for every card transaction. Merchants in turn incorporate these card costs, like all their other 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 ~~Consistent application of the competition rules to~~ interchange fees would reduce transaction costs for consumers and thus 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 or no 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 international card payment schemes require, on the basis of their territorial licensing policies, the application of the interchange fee of the 'Point of Sale' (country of the retailer) for each payment transaction. This prevents ~~acquiring banks~~ acquirers from successfully offering their services on a cross border basis. It can also ~~prevents~~ prevent 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) In order to facilitate the smooth functioning of an internal market for card, internet and mobile payments, to the benefit of consumers and retailers, this Regulation ~~follows a gradual approach. As a first step, it is necessary to take measures to facilitate~~ applies to cross-border and to national issuing and acquiring of payment card transactions. ~~Allowing merchants to~~ if merchants can choose an acquirer outside their own Member State (~~cross border~~ cross-border acquiring), ~~and imposing a~~ which will be facilitated by the imposition of the same maximum level of both domestically and cross border

interchange fees for ~~cross-border~~ acquired transactions ~~should and the prohibition of territorial licensing, it should be possible to~~ provide the necessary legal clarity ~~and to prevent distortions of competition between payment-card systems. In addition, licences for issuing or acquiring of payment instruments should be valid without geographic restrictions within the Union. These measures would facilitate the~~

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- ~~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. In order to provide for fair competition in the market for acquiring services, first phase of this Regulation. Therefore,~~ the provisions relating to ~~those cross-border and to national~~ 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. Apply simultaneously and within a reasonable period after entry into force of this Regulation, taking account of the difficulty and complexity of the migration of payment-card systems, which this Regulation necessitates.~~
- (17) ~~For domestic transactions~~ However, a ~~transition~~ transitional period is necessary to provide payment services providers and schemes with time to adapt to the new requirements. Therefore, after a ~~two-year~~ one-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'~~ All debit card transactions and *card based* payment transaction should have a maximum interchange fee of ~~0,20%~~ 0,2% 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%~~ 0,3%.
- (18a) The impact assessment shows that a prohibition of interchange fees for debit card transactions would be beneficial for card acceptance, card usage, development of the single market and generate more benefits to merchants and consumers than a cap set at any higher level. Moreover it would avoid negative effects on national systems with very low or zero interchange fees for debit transaction by a higher cap due to cross border expansion or new market entrants increasing fee levels to the level of the cap. A ban on interchange fees for debit card transactions also addresses the threat of exporting the interchange fee model to new, innovative payment services such as mobile and online systems.
- (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.
- (19a) In accordance the basic principles of the internal market, acquirers should be able to provide their services to merchants throughout the Union applying the multilateral interchange fees (MIFs) that they apply in their national market. They should not apply higher MIFs to cross-border transactions than they apply to national transactions.

- (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

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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. Three-party schemes should accept transactions made using their cards from any acquirer based on general card transaction standards and acquiring rules comparable to the merchant rules for the specific three party schemes and with interchange caps in accordance with this Regulation.

- (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, including possible authorisation charges, 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 and the monetary incentives or equivalent received by a cardholder from a payment card scheme should be taken into account. All payments, incentives and fees considered—could be, whether direct (i.e. volume-based or transaction-specific) or indirect (including marketing incentives, bonuses, rebates for meeting certain transaction volumes). In checking circumventions of this Regulation providing for the maximum amount of interchange fees, the profit of payment card issuers that results from special programmes carried out jointly by payment card issuers and payment card schemes, and revenue from processing, licensing and other fees providing revenue to card organisations should, in particular, be taken into account.
- (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.

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- (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 and payers should have the means to identify the different categories of cards. Therefore, the various categories should be identifiable visibly and electronically and for newly issued card based payment instruments also visibly on the device or on the payment terminal. 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.~~
- (30a) A payment is an agreement between the payer and the payee. In order to ensure that competition between brands is effective, it is important that the choice of payment application be made by users, not imposed by the upstream market, comprising payment card systems, payment service providers or processors. Such an arrangement should not prevent payers and payees from setting a default choice of application, where technically feasible, provided that that choice can be changed for each

transaction. If the payee selects an application supported by both, the user should be able to reject it and choose another application.

- (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

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complaint and redress procedures. Member States, following guidelines set up by the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹ 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 card-based 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-very-narrow range of goods or services.
3. Chapter II does not apply to the following:
 - (a) ~~transactions with commercial cards,~~
 - (b) cash withdrawals or transactions other than sales of goods or services performed at automatic teller machines and cash disbursements at the counter of payment service providers' premises; and
 - (c) transactions with cards issued by three party payment card schemes.
4. Article 7 does not apply to three party payment card schemes where their volume does not

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12)

exceed a threshold set by the Commission;

(a) Articles 6 and 7 shall not apply to domestic debit card schemes that operate with an average interchange fee or net compensation model which is verifiably below the threshold value in Articles 3 and 4.

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;

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- (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~~ transaction by card' means ~~an card~~ a card-based 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 is debited immediately upon being cleared, as well as a transaction with a prepaid card; the transaction has been authorised/initiated~~
- (5) 'credit ~~card-transaction~~ by card' means ~~an a~~ a card based payment transaction ~~where the transaction which is settled more than 48 hours debited at least two business days 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 or the point of sale is established in a different Member States Member State than that of the payee's payment service provider~~ 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, including where a payee uses the services of an acquirer located in another Member State;
- (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;
(a) 'payment card' means a debit or credit card which entitles the cardholder to access cardholder's funds, or enables the cardholder to make a payment through the intermediation of an acquirer and which is accepted by a payee in order to process a payment transaction;
- (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;

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- (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~~ payer 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, or issues payment cards with a co-brand partner or through an agent, 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 based payment transactions

1. With effect from ~~two months~~ one year after the entry into force of this Regulation, payment services providers shall not offer or request for ~~cross-border~~ debit ~~card~~ transactions by card a *per transaction* interchange fee or other agreed remuneration with an equivalent object or effect of more than the lower amount of 7 eurocents or 0,2 % of the value of the transaction.

2. With effect from ~~two months~~ one year after the entry into force of this Regulation, payment services providers shall not offer or request for ~~cross-border credit card~~ transactions by card 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.
(a) Member States may maintain or introduce lower caps or measures of equivalent object or effect through national legislation.

Article 4

Interchange fees for all consumer debit or credit card transactions

- ~~1. 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.~~
- ~~2. 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 service provider~~ in relation to payment transactions or related activities shall be treated as part of the interchange fee.

Competent authorities shall prevent any attempts by the payment service providers to circumvent this Regulation, including the issuance of payment cards in third countries.

Chapter III

BUSINESS RULES

Article 6

Licensing

1. 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.
2. Any territorial restrictions within the Union or rules with an equivalent effect in four party payment card scheme rules shall be prohibited.
3. 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.
4. 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.
(a) Any restrictions of the provision of payment-related services in payment card schemes rules shall be prohibited, unless it is non-discriminatory and objectively necessary to operate the payment scheme.

Article 6a
Cross-border transactions

For cross-border transactions, the interchange fee applicable shall be that of the country of the acquirer.

Article 7

Separation of payment card scheme and processing entities

1. 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.
2. Payment card schemes and issuers shall allow for the possibility that authorisation and clearing messages of single card transactions be separated and processed by different processing entities. Scheme rules and rules in licensing agreements or other contracts leading to a restriction on the freedom to choose a processor shall be prohibited.
3. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.
4. By...*[One year after the date of entry into force of this Regulation]. 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.

(a) In order to ensure consistent harmonisation of this Article, EBA shall, after consulting an advisory panel as referred to in Article 41 of Regulation (EU) No 1093/2010, develop draft regulatory technical standards establishing requirements to be complied with by payment systems, payment schemes and processing entities to ensure a fully open and competitive card processing market.

EBA shall submit those draft regulatory technical standards to the Commission by...*
[Please insert date]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

The requirements referred to in the first subparagraph shall enter into force by...*
[Two years after the date of entry into force of this Regulation].

(b) Member States may exempt newly established card-based payment schemes from applying this Article for a limited period of time by way of derogation from Articles 1 to 4b after consulting the Commission.

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Article 8

Co-badging and choice of application

1. Any schemes rules and rules in licensing agreements or measures of equivalent effect 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.
(a) When entering into a contractual agreement with a payment services provider, the consumer may decide to have two or more different brands of payment instruments on a payment card, telecommunication, digital or IT device. In good time before the contract is signed, the payment service provider shall provide the consumer with clear and objective information on all the payment brands available and their characteristics, including their functionality, cost and security.
2. Any difference in treatment of issuers or acquirers in schemes rules and rules in licensing agreements concerning co-badging or equivalent co-residing of different brands or applicationhs on a card, telecommunication, digital or IT device shall be objectively justified and non-discriminatory.
3. Payment card schemes shall not impose reporting requirements, obligations to pay fees or ~~other similar~~ 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.
4. Any routing principles or equivalent measures 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 or equivalent on a card, telecommunication, digital or IT device shall be non-discriminatory and shall be applied in a non-discriminatory manner.
5. 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.
6. 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-on~~ equipment applied at the point of sale which limit the choice of application by the payer and the payee when using a co-badged payment instrument. Payees shall retain the option of installing automatic mechanisms in the equipment used at the point of sale which make a priority selection of a particular brand or application. However, payees shall not prevent the payer, for the categories of cards or related payment instruments accepted by the payee, from overriding an automatic priority selection made by the payee in its equipment.

Article 9

Unblending

1. Acquirers shall offer and charge payees individually specified merchant service charges for different categories and different brands of payment cards with different interchange fee levels unless merchants request in writing acquiring payment services providers to charge blended merchant services charges.
2. 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.

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Article 10
Honour All Card rules

1. 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 which, moreover, complies with the caps set under this Regulation.
2. 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.
3. 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.
4. By...* [One year after the date of entry into force of this Regulation], issuing payment service providers shall ensure that their payment instruments are ~~visibly and~~ electronically identifiable, and, in the case of their newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers 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

1. 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.
2. 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.
3. Paragraphs 1 and 2 of this Article are without prejudice to the rules on charges, reductions or other steering set out in Article 55 of ~~the proposal COM (2013)547~~ Directive 2014/.../EU (PSD) and in Article 19 of Directive 2011/83/EU²².

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Article 12

Information to the payee on individual payment transactions

1. 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.

2. 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.

(a) When entering into a contractual agreement with a payment services provider, the consumer shall also be provided with clear and objective periodical information about the payment characteristics and payment fees applied to payment transactions.

Chapter IV

FINAL PROVISIONS

Article 13

Competent authorities

1. Member States shall designate competent authorities that are empowered to ensure enforcement of this Regulation and that are granted investigation and enforcement powers.
2. Member States may designate existing bodies to act as competent authorities.
3. Member States may designate different competent authorities.
4. 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.
5. The designated competent authorities referred to in paragraph 1 shall have adequate resources for the performance of their duties.
6. Member States shall require the competent authorities to monitor compliance with this Regulation effectively and take all necessary measures to ensure such compliance.
7. Member States shall ensure that the designations referred to in paragraph 1 are subject to the right of appeal.

Article 14

Sanctions

1. Member States shall lay down rules on ~~the sanctions penalties~~ applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. ~~Such sanctions shall be~~ EBA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 in order to ensure that those penalties are effective, proportionate and dissuasive.
2. 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

1. Member States shall establish independent, 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. Payment service providers shall adhere to at least one alternative dispute resolution body.
2. Member States shall notify the Commission of those bodies by two ~~years~~ months after the date of entry into force of this Regulation. They shall notify the Commission without delay of any subsequent change concerning those bodies.
(a) Member States shall ensure that payment service providers participate in complaints procedures pursuant to paragraph 1.

Article 16

Review clause

~~Four years after the entry into force of this Regulation, By...*~~ [Two years after the date of entry into force of this Regulation] the Commission shall ~~present~~ submit 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 and innovative business models on the market.

The assessment should, in particular, consider:

- (a) the development of cardholder fees;
- (b) the level of competition among payment card providers and schemes;
- (c) the effects on costs for the payer and the payee;
- (d) the levels of merchant pass-through of the reduction in interchange levels;
- (e) the technical requirements and its implications for all the parties involved;
- (f) the effects of co-badging on user-friendliness, in particular for the elderly and other vulnerable users.

The report by the Commission shall, if appropriate, be accompanied by a legislative proposal that may include a proposed amendment of the maximum cap for interchange fees.

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

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