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The EU Payments Package Puzzle

How smooth progress can be ensured, (or not) in the next stages of the legislative process

By Monica Monaco, TrustEUAffairs

Debate on the EU Payments Package, composed of the revised Payment Services Directive (PSD2) and the Regulation on Interchange Fees (IFR), recommenced in Brussels on Nov. 19. Although the two pieces of legislation are part of one "package," they're at different stages in the legislative process, and depending on how they progress, the transition into law could be smooth for the industry—or not.

A General Approach[1] already has been reached on the IFR and trilogues[2] just started on it, while the PSD2 Council discussions are still ongoing. This makes the Payments Package more closely resemble a puzzle—with different pieces being fitted together at various points in time—than a coherent package in terms of content and implementation deadlines.

Because the IFR and PSD2 legislative procedures aren't synchronized, one of the two proposals could become law before the other one, potentially creating competitive distortions among the various payment services providers. For example, if the PSD2, which bans surcharging for products with capped interchange, was to become law before the IFR, surcharging would not be allowed for payment instruments whose interchange fees are regulated under IFR, despite the IFR not yet being in effect. Or, if the IFR was to become law before the PSD2, interchange fees would be regulated on some payment instruments while the ones with uncapped interchange would not have to comply with the PSD2 surcharging rules until the PSD2 also was implemented.

Where We Are

A General Approach was reached at the Council level on the IFR in early November, and rumors are that the Presidency will reach a General Approach in the coming weeks on the PSD2, while negotiations between member states continue in December via a written procedure on this file. According to the European legislative procedure, once the General Approach is reached, trilogues between the Council, the Parliament and the Commission will start. According to rules 73 and 74, the Parliament negotiating team entering the trilogue must be led by the European Parliament Rapporteur[3] and must comprise at least the shadow Rapporteurs from each political group.

Despite the fact that the Rapporteurs for the various political groups have only recently been appointed—and none of them officially has started to work on the Payments Package content—they already seem to have diverging views on key issues, just as member states have had during the Council negotiations thus far.

On the PSD2, the definition of limited networks, the definition of debit and credit cards, the TPP's liabilities and the requirements for strong customer authentication have been discussed at length at the Council level, as member states approach them in different ways.

As for the IFR, the level of interchange,

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the possible inclusion of commercial cards in the scope of the regulation, the treatment of domestic schemes, the level playing field between three- and four-party systems, as well as the legal separation between card scheme management and processing, and the co-branding provision—to mention only the most controversial—seem to have been the subjects of endless politically charged exchanges. Furthermore, the deadlines for the application of cross-border interchange caps and domestic interchange caps vary significantly between the European Commission draft, the Council text and the European Parliament current text, from a minimum of two months for cross-border IFR caps to a maximum of two years for domestic interchange caps.

Will an Italian Presidency General Approach text solve this controversy by the grace of a good compromise? The will is certainly there, and the Presidency has been working without pause toward this aim. But the same national political divergences—most of them deeply rooted in diverging national economic interests—may well rise again in the Parliament in the coming months.

The trilogues are expected to be quite animated and new "last minute" amendments again could be presented before the next plenary vote in the European Parliament.

The European Parliament, newly elected for a five-year period, is due to bring the Payments Package to plenary for vote as early as February. All the involved parties may want to remember going ahead that the aim of the whole exercise, so well-described by the European Commission, is "the achievement of a further integrated and efficient European payments market."

Payments Package Timeline

Below is a snapshot of the Payments Package's path to passage.

July 2013: The draft Payments Package is published by the European Commission; it includes a Regulation on Interchange Fees (IFR)—a 0.3 percent cap on credit card fees and a 0.2 percent cap on debit card fees—and the revised Payment Services Directive (PSD2).

Feb. 2014: The European Parliament's ECON Committee voted on the 909 amendments MEPs proposed to the European Commission "Payments Package."

April 2014: During the plenary sitting of the European Parliament, the Payments Package is discussed. The Rapporteurs, Zalba Bidegain and Diogo Feio, both from the EPP (European People's Party), briefly introduce the key measures in their reports and comment on the "last minute" amendments presented to plenary for vote.

Two amendments are proposed for PSD2 concerning Article 65, which covers the attribution of liabilities for refunds of unauthorized transactions for third-party payment services providers (TPPs). The main proposed amendment on the IFR concerns the exclusion of "commercial cards" from the scope of the regulation. In the ECON Committee vote, commercial cards were included in the scope as were three-party payment cards, despite the European Commission's text excluding them. The "last minute" amendment aims at partially restoring the original proposal and excludes commercial cards from the scope of the IFR.

A substantial part of the pre-vote discussion on April 2 is devoted to commercial cards, and the Members of European Parliament appear to have diverging views.

April 3: The plenary vote confirms the ECON Committee texts in their entirety, both for the PSD2 and for the IFR. The two rapporteurs ask to postpone the vote on the legislative resolution and the postponement is approved.

July, September, October and November 2014: European Council meetings on the Payments Package fill the calendar, under the direction of the Italian Presidency.

Nov. 19: The first trilogue takes place on the IFR.

November/December 2014 and likely January 2015: Trilogues will be held on the PSD2 and the IFR preparing for a plenary vote in the European Parliament.

February 2015: A plenary vote may take place in the European Parliament.

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As for industry, my advice is to get in contact with the key European stakeholders in the European Parliament and the European Council quickly to ensure that the final rush they're engaging in does not result in harm to business models and procedures due to the highly technical content of most of the provisions in the Payments Package and the very political nature of the ongoing discussions.

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[1] A General Approach of the European Council is a formal position of the Council on a draft European law; this results from consultations between the 28 Member States of the European Union, under the direction of the European Presidency. Such a text is used by the Council as a basis for the Trilogues.

[2] Trilogues are meetings of the European Parliament, the European Commission and the European Council, which aim to reach an agreement on a compromise text of law acceptable in content and form to the three institutions.

[3] A Rapporteur is a member of the European Parliament who is responsible for drafting a report on a draft European Law for the Parliament committee in which he is a member.

[4] TPPs: entities that provide services based on access to payment accounts, in the form of: (a) payment initiation services; (b) account information services. The TPPs are payment service providers that aren't the account servicing payment service provider.