



## Viewpoint

# EC Payments Package Update

*What we know and what we can do before the final Plenary European Parliament vote on the Payments Package.*

*By Monica Monaco, TrustEUAffairs*

As a consequence of the European Parliament plenary sitting vote on the Payments Package, which took place on April 3, the payments industry has a second chance, of sorts, to influence members of the European Parliament on important aspects of the Payments Package. Why? The Payments Package will need, as a result of the vote, to be voted upon again in a new plenary sitting of the European Parliament after the European elections.

On April 3, the Plenary Tabling Service had compiled the voting lists; such voting lists were composed of four parts: the vote on the Reports in their entirety—as approved by the ECON Committee vote in February—the vote on the “last minute” amendments on these Reports; the votes on the Commission proposal; and, finally, the vote on the “legislative resolution.”

The vote on the “legislative resolution” is a vote that provides to each Report its precise legal validity: If it takes place, it means that the text voted upon represents the final position of the European Parliament on the matter. If only the other parts of the vote take place, but the vote “on the legislative resolution” is postponed, this

means the European Parliament will only hold its final vote in a future plenary session. In essence, the European Parliament position on the matter is not final. Such a situation will also allow the European Parliament to reach an agreement with the Council and the Commission before voting on the text in question in a plenary sitting again.

And this is exactly what happened with the April 3 vote. The “legislative resolution” vote was postponed.

### The Detail Leading to the Postponement

On April 2, the Payments Package was discussed in the plenary sitting<sup>1</sup> of the European Parliament for 38 minutes. These 38 minutes were very long for those, like me, who were following the discussion with the goal of understanding how the European Parliament members were likely to vote the next day on the two Payments Package Reports: the Report on the revised Payment Services Directive (PSD2) and the Report on the Regulation on Interchange Fees (the Regulation).

The rapporteurs,<sup>2</sup> Pablo Zalba Bidegain (Spain) and Diogo Feio (Portugal), both of the European Peoples Party (EPP), briefly

introduced the key measures in their reports and commented on the “last minute” amendments presented to plenary for vote.

### • Last-Minute Amendments to PSD2

The two “last minute” amendments<sup>3</sup> that were proposed to the PSD2 involved Article 65, which covers refunds for unauthorized payment transactions.

The first proposed amendment replaced the word “immediately” in the proposed EC text—as well as the “24 hours delay” wording approved by the ECON Committee vote—with the phrase “without undue delay.” Under Article 65, when dealing with unauthorized payment transactions, the payer’s payment service provider (PSP), upon notification, must refund “immediately” to the payer the amount of the transaction upon notification. Replacing “immediately” with “without undue delay” would have allowed the PSP to proceed to investigations, when necessary, and also would have avoided abuse by cardholders.

The second proposed amendment addressed assignment of liabilities for refunds of unauthorized transactions between third-party payment services providers (TPPs),<sup>4</sup> when the consumer uses their services, and the account servicing PSP. This amendment more clearly defined the responsibilities of TPPs and responded to the request of the

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## EC Payments Package Update cont.

traditional payments industry to bind contractually TPPs to both user and account-holding PSPs and make TPPs fully and directly liable to users.

### • Last-Minute Amendments to the Regulation

The primary last minute amendment to the Regulation concerned whether “commercial cards” would be included or excluded from the scope of the regulation.

Although commercial cards and transactions made with cards issued by three-party payment schemes were excluded from the EC’s original proposal, both found their way back into the regulation based on a vote by the ECON Committee. More precisely, for three-party schemes, they would be included according to the ECON Committee text, unless “their volume does not exceed a threshold set by the European Commission,” in which case they are still excluded from the scope.

A last-minute amendment proposed by the Europe of Freedom and Democracy (EFD) political group attempted to partially restore the original EC proposal, excluding again commercial cards from the Regulation scope. The rapporteur explained that commercial cards should be excluded from the scope of the Regulation as they are different from consumer cards and were not meant to be covered by the EC. The EC supported this position, commenting that when writing the Interchange Fees Regulation (IFR) text, it believed commercial cards and three-party schemes should be out of scope as “they are payment instruments limited in scope.”

The EC, nevertheless, added that it will consider adding commercial cards if this view was to be confirmed by the plenary vote the day after. Other MEPs from the Alliance of Liberals and Democrats for Europe (ALDE) and Greens political groups, as well as one from the EPP political group, insisted that commercial

cards should be covered by the Regulation, as they are, in their view, expensive products for merchants to accept.

### The April 3 Vote

During the April 3 vote, the plenary confirmed the ECON Committee texts in their entirety, both for the PSD2 and for the Regulation. This means all the “last minute” amendments presented to plenary, on both the PSD2 and the Regulation, as described above, were rejected.

Of the 766 MEPs who compose the European Parliament, 611 were present for this vote. The commercial cards amendment (aimed at excluding again commercial cards from the scope of the Regulation) failed by a few votes. This is relevant to understand how the Parliament is nearly divided in half about commercial cards, making it vital for the European payments industry to educate the MEPs, as each vote counts.

Importantly, however, both rapporteurs asked to postpone the vote on the legislative resolution and the postponement was carried by the plenary.

This postponement is very important for the payments industry, as it provides extra time for industry to enter into discussions with the European Council (i.e., Permanent Representations of Member States), with a view of influencing their thoughts about the Payments Package. Furthermore, the postponement gives industry additional time to discuss its views with the new MEPs, who will be elected at the end of May, and who will, when the European Parliament resumes work on July 1, bring to the plenary a vote on the Payments Package Reports.


In essence, the European Parliament Reports on the Payments Package may change in content between now and the new plenary. New “last minute” amendments also could be presented before such a vote.

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### The European Council Continues Its Work on the Package

Under the ordinary legislative procedure, for the EC Payments Package to be final, it needs an agreement within a tripartite meeting of representatives of the European Commission, European Parliament and the Council) for a final adoption.

The European Council is consequently separately working on the Package and while the European Parliament prepares for elections, discussions on the proposal also are progressing within the Council of the European Union under the current Greek Presidency, but at a much slower pace. Four council meetings took place thus far, and another one is scheduled for the end of April. The Italian Presidency, which starts its semester in July, will be instrumental as far as progress on the Payments Package is concerned.

The dialogues will start in July, when the newly elected Parliament will resume work from the current Parliament, with the goal of presenting the Package again to a plenary vote, likely to take place in the autumn. 

<sup>1</sup> A plenary sitting is the name given to a full session of the European Parliament attended by all MEPs (Members of the European Parliament); plenary sittings represent the culmination of the legislative work done in the European Parliament Committees and enable the Parliament to express its viewpoint vis-à-vis the Commission and Council.

<sup>2</sup> A rapporteur is the liaison officer of a committee and performs key functions, including reporting committee findings to the plenary and following proposals through the legislative process.

<sup>3</sup> Members of the European Parliament can change the text submitted to them by presenting “last minute” amendments, which may seek to delete, reformulate, replace or add to the content of the text under consideration.

<sup>4</sup> 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 are not the account servicing payment service provider.