Viewpoint

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Inside the EC Payments Package and the Aggressive Timeline for Passage

By Monica Monaco, TrustEUAffairs

The European Parliament's ECON Committee on Feb. 20 voted on the 909 amendments MEPs proposed to the European Commission "Payments Package." More precisely, the revised Payment Services Directive (PSD2) was subject to 591 amendments, while the Regulation on Interchange Fees (IFR) was subject to 318. The end result is legislative text that differs significantly from the EC draft proposal.

The committee's vote included several compromise amendments, with the aim of combining MEPs' positions on key provisions, while reducing the total number of amendments up for a vote. After some initial confusion due to the distribution of different versions of the voting list, 36 MEPs participated in what was a very fragmented vote. While many amendments failed to reach the required majority, most were accepted by small majorities (e.g., 19-17 or 18-17). This shows how, despite the very technical content of the Payments Package, the vote had political relevance.

One change from PSD1 that has the potential to affect the prepaid industry involves a narrower definition of the exemption for "limited networks" in the PSD2 and IFR. Today, limited networks (such as mall cards) that provide access to a "limited range of goods and services" are exempt from regulation. The proposed regulation adopted by the ECON Committee defines a limited network as one that enables cardholders to acquire a "very narrow range of goods and services." Despite appearing minimal at first sight, this change in wording could have big implications because it determines whether a network is or is not subject to regulation. The narrower the definition of a limited network, the greater number of regulated networks.

More concretely, recital 12 of the PSD2 explains that feedback from the market shows the payment activities covered by the limited network exemption often comprise massive payment volumes and values, and offer consumers hundreds or thousands of different products and services, which does not fit the purpose of the limited network exemption as provided in Directive 2007/64/EC. A more precise description of a limited network, in line with Directive 2009/110/EC, is therefore necessary, according to the EC. A payment instrument should thus be considered to be used within such a limited network if it can be used only for the purchase of goods and services in a specific store or chain of stores or for a very narrow range of goods or services, regardless of the geographical location of the point of sale. Such instruments could include store cards, petrol cards, membership cards, public transport cards, meal vouchers or vouchers for specific services, according to the Recital. However, where such a specific-purpose instrument develops into a general purpose instrument, the exemption from the scope of the directive should no longer apply.

Moving Fast, Broadening Interchange Caps

The EC Payments Package and its approved amendments are fast-approaching an April plenary vote. Below are highlights on some of the changes that will affect the industry as well as a look at the aggressive timeline for implementation.

As far as the IFR implementation/transitional periods are concerned, the

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timing proposed by the EC was two months for cross-border interchange fees and 24 months for national interchange fees. The ECON vote results indicate that the transitional period would be one year for both the cross-border and the national interchange fees. The committee favors a quicker implementation compared to the EC's more gradual approach. While the transitional period is longer for cross-border interchange fees after the ECON vote, for national interchange fees it has been cut in half.

In terms of application of interchange caps, the EC text proposed 0.2 percent per transaction for debit cards and 0.3 percent per transaction for credit cards. The ECON vote results confirm the cap for credit card interchange at 0.3 percent of the transaction value, while the proposed cap on debit transactions is amended to 0.2 percent per transaction with a 7-cent maximum above 35 euros.

The committee also has expanded the scope of the interchange caps. The EC proposal included consumer cards and excluded transactions with commercial cards as well as transactions with cards issued by three-party payment cards schemes. As a result of the vote, consumer and commercial cards are included in the scope as are three-party payment cards, unless "their volume does not exceed a threshold set by the European Commission," in which case they still would be excluded from the interchange caps.

For cross-border acquiring, the possibility for a merchant to use the services of an acquirer in another member state is confirmed by the ECON vote. A new provision added by the MEPs says the interchange fee of the country of the acquirer shall apply to cross-border transactions; this is very important in Europe as interchange fees vary between the 28 member states.

The very controversial EC proposal for a separation between the card scheme and the transaction processing in terms of organizational and legal separation is approved by the ECON Committee vote and any territorial discrimination in processing rules is prohibited. Furthermore, the parliament adds to the text a possible exemption for newly established card-based payment schemes and for domestic debit card schemes operating below the caps.

On the co-badging provision, the prohibition on pre-selecting a brand in case of co-branded cards or mobile phones by payment schemes and payment service providers is confirmed by the ECON vote. The parliament also added a new provision enabling retailers to set up priority selections at the point of sale, but these can be overridden by the payer. In other words, the merchant can choose which brand to use for the transaction to take place, unless the cardholder expresses a brand preference at the point of sale.

Finally, the "honour all cards rule" provision in the IFR—which prohibits schemes and Payment Service Providers (PSPs) from requiring a retailer to accept any category or brand if he accepts another, except when the brand or category is subject to the same regulated interchange fee—is confirmed by the ECON vote. In other words, retailers would not have to accept all cards of a specific scheme.

The PSD2 Vote

As for the PSD2 vote, the directive scope includes new players, the Third Party Payment Service Providers (TPPs). According to the traditional payments industry, the TPPs provisions may have a negative impact on the European payments market if the legislation does not succeed in clearly defining the contractual relationships and allocation of liabilities and rights between TPPs, PSPs and users. The ECON Committee vote confirms the EC's proposal on the addition of TPPs to the regulation and also notes that TPPs shall not be required to enter into contractual relationships with account serving PSPs, which means they will not need to have a contract in place with the bank of their clients. This new provision has many in the traditional payments industry concerned about the security of the payment transactions and about the way in which liabilities toward the user will be shared.

Another change coming out of the committee vote that could prove difficult for the industry involves refunds for unauthorized transactions. While the commission proposed that refunds be applied "immediately," the committee is requiring that refunds for unauthorized payment transactions would have to be provided within 24 hours after notification. According to the traditional payments industry, the Payments Package text resulting from the ECON vote could increase costs for consumers as a consequence of IFR content and can also reduce payments security as a result of the TPPs provisions in the PSD2. Furthermore, the PSD2 and IFR texts present, as a result of the vote, a number of inconsistencies in terms of language used and in terms of applicability of the provisions.

The ECON Committee motion for a resolution will be put to vote at one of the upcoming plenary sessions, most likely the last plenary session before the European elections, which will take place in the third week of April. This time all the MEPs will need to vote on the proposal, not only the MEPs on the ECON Committee. It remains to be seen whether the full house—more than 700 MEPs—will express the same views on the Payments Package as the 36 MEPs in the committee. What's more, we could hear a number of oral amendments in an attempt to modify the proposal at the last minute.

While the European Parliament prepares for a controversial plenary vote on the Payments Package, 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. A council meeting took place during the last week of February and another meeting is scheduled in late March. Should the proposal be adopted in first reading, it would then need an

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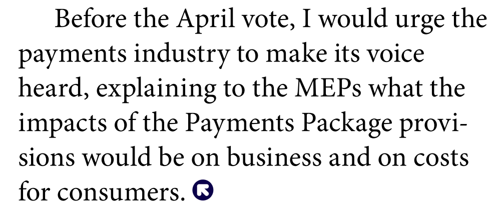
agreement within a trilogue (EC, EP and the council) for final adoption. However, the upcoming European Parliament elections—with the large quantity of legislative proposals to be finalized before the May 2014 deadline—might delay the process as well as the appointment of a new EC after summer.

The timeline for the negotiations with the council is uncertain. And the text resulting from the ECON Committee vote differs substantially from the EC's original proposal. While the aim of the Payments Package was—in the EC's view—to improve the functioning of the internal market for payment services for the benefit of European consumers and companies, the EP motion for resolution text appears fragmented, contradictory in a number of provisions and inconsistent in terms of language used. Member states in the council may have a hard time finalizing the text.

Before the April vote, I would urge the payments industry to make its voice heard, explaining to the MEPs what the impacts of the Payments Package provisions would be on business and on costs for consumers.



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