

Our position

AmCham EU's position on cross-border payments



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2017, directly supports more than 4.7 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

The American Chamber of Commerce to the European Union (AmCham EU) is supportive of the objective of the proposed Regulation to increase transparency of currency conversion and offer consumers better services.

Indeed, over the years, there have been many consumer complaints concerning Dynamic Currency Conversion (DCC) and excessive fees paid when travelling abroad. Common complaints typically concern: (1) the merchant's failure to offer a choice of conversion methods (or failure to do so clearly); (2) their merchants' steering practices towards more expensive DCC methods; (3) the refusal of the merchant to undo unwanted DCC transactions; and (4) unfavourable exchange rates and/or high commission fees. This specific and targeted business model by merchants and DCC providers in the context of Automated Teller Machines (ATM) operations and point of sale transactions should not put into question the practices by all other payment providers, including issuers and payment networks. Furthermore, the current wording of the Regulation has some potentially unintended consequences and there is a general industry concern regarding the implementation timeline proposed by the European Parliament. This position paper will focus on our concerns in relation to the amendments to Articles 2 and 3.

Scope of the proposal

The proposal that has been put forward does not address the specificities of the market. For example, a citizen sending €100 to a relative in another Member State is not the same as a corporate entity transferring €100,000,000 through a real-time gross settlement system, the latter of which entails far greater risk and cost. As it currently stands, the Regulation applies equally to 'payment service users' and thus does not differentiate between corporates and consumers.

AmCham EU believes the scope of the proposal should be limited to consumers only and as such would suggest an amendment to Article 3 of the original Regulation (No 924/2009) to clarify that 'payment service users' refers to retail consumer only.

Additionally, AmCham EU has concerns in relation to the 'same charges rule' proposal only applying to cards and not credit transfers. We believe this would lead to an unlevel playing field between different types of payment methods – disadvantaging card payments compared to bank transfers. Under the proposal, financial institutions would be prohibited from directly passing on their higher costs for cross-border card payments to end consumers, while they would be allowed to continue doing this for credit transfers. This is inherently anti-competitive and goes against the foundations of the EU free market economy. It could also further undermine the objectives of Payment Services Directive 2 (PSD2) in general and the emergence of new payment solutions under the open banking provisions. Instead, banks may continue to charge higher fees, for example, in payment initiation service cross-border transactions in currencies other than the Euro. As a result, for consumers, cards are likely to remain the cheapest option for making such cross-border transfers. This would not only undermine the competitiveness of payment initiation service providers, but also for e-merchants established in non-Eurozone countries, as they would not benefit from new products/services to the same extent as those in Eurozone countries.

Unintended consequences of equalisation of fees

Article 3(1) currently states, 'Charges levied by a payment service provider on a payment service user in respect of cross-border payments in euro shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the official currency of the payment service user's Member State'. This text does not appear to take into account the numerous instances whereby cross-border payment charges are less than the corresponding national payments, for example, in the context of the services provided to the corporate sector.

If implemented as stated, a payment service provider may opt to increase its cross-border payment charges, thereby ensuring they are the same as the charges levied by that payment service provider for corresponding national payments. In this scenario, corporate payment service users might see their transaction fees increased, which would result in increased costs of the goods and services they produce for consumer consumption.

AmCham EU would suggest amending the Article 3(1) to, 'Charges levied by a payment service provider on a payment service user in respect of cross-border payments in euro shall not be greater than the same charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the official currency of the payment service user's Member State'.

Existing transparency requirements

Indeed, AmCham EU recognises consumers concerns in relation to DCC practices. However, we would contend that the transparency requirements set out in Regulation 924 are already covered by Article 49 of PSD1 and subsequent Article 59(2) of the PSD2. While other payment providers are also subject to similar transparency requirements. In addition, the payments sector has experienced significant change, particularly with instant payment schemes and contactless payments.

Considering this existing legal framework, we believe the objectives of the proposed Regulation can and should be achieved via proper enforcement by the National Competent Authorities of PSD, rather than adding another layer of Regulation. In addition to the fact that payment service providers should already abide with transparency requirements under the PSD2, the transparency requirements for currency conversion in Regulation 924 would threaten the feasibility of new services reflecting the changing market. It is unclear how these requirements would work in new environments, including in new rules around payment initiation. These can relate to standalone payments or a series of payment orders initiated at different times under an authority given by the payer to the payee.

Scope and impact assessment

AmCham EU agrees that there are excessive practices in relation to DCC. However, we contend that the newly proposed Regulation includes provisions that go beyond the scope of the Commission's impact assessment, resulting in legislation that may have adverse effects to what is intended. As already stated, the objective of this legislation was to address ATM based and point of sale based DCC transactions and not on-network or non-DCC currency conversions. These are already subject to relevant transparency requirements. Instead, the proposed Regulation suggests extending the legal requirements to non-DCC currency conversion. AmCham EU considers that these provisions in the proposal were not covered by an adequate impact assessment. The impact assessment conducted by the Commission on Transparency and Fees in Cross-border Transactions in the EU (24 July – 30 October 2017) related to providers of DCC. This consultation did not adequately consider non-DCC currency conversion services and did not demonstrate consumer harm in these business models. It did not take into account the technical and operational aspects and costs that the regulation would have on non-DCC currency conversion providers. By extending the scope of the regulatory proposal to all currency conversion services, the scope of the regulation goes beyond that of the impact assessment. This goes against the clear legal obligation to provide an adequate consultation to ensure that regulations are proportionate and will have the intended result. For these reasons, AmCham EU advocates against the inclusion of all currency conversion in the scope of the Regulation, and we encourage that a proper impact assessment is conducted before including these in the scope.

Furthermore, AmCham EU would like to highlight the technical difficulty in providing exact cost disclosure of non-DCC conversions. At the time of authorisation/authentication, when all conversion related costs need to be disclosed to the consumer, the transaction is not completed and the FX rate is not yet set. For many reasons, the latter only happens at the point of clearing, and thus there may be an FX fluctuation between the point of

disclosure and the point of transaction. This could lead to wrong cost information, misleading the consumer. Mandating the issuer to use the FX rate at the point of authentication/authorisation goes beyond transparency requirements and would be legislating the use of FX practices in a transaction. This seems to be a disproportionate measure to achieve transparency and may have the unintended consequence of bringing non-DCC conversion costs up.

The proposed Regulation should recognise this factual issue, and only be required to display the estimated exchange rate that will be applied, because if it is estimated, then the total amount of all charges should also be an estimated amount.

Implementation constrictions

Industry requires sufficient time to assess the final version of the Regulation and to consider all of its potential impacts. In particular, the Regulation should adequately allow for client notification timelines to be met and any system changes to be assessed, developed and tested. As such, and taking into account the European Parliament text adopted recently, AmCham EU would strongly support that the Regulation allows for a 12 month application period, as suggested in the Council General Approach under Article 2.