Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (Text with EEA relevance)

REGULATION (EU) 2015/751 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2015

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 Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

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 Council[(4)] 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 Council[(5)] established the principle that charges paid by users for a cross-border payment in euro are the same as for the corresponding payment within a Member State including card-based payment transactions covered by this Regulation.

(4) Regulation (EU) No 260/2012 of the European Parliament and of the Council[(6)] provided the rules for the functioning of credit transfers and direct debits in euro in the internal market but excluded card-based payment transactions from its scope.

(5) Directive 2011/83/EU of the European Parliament and of the Council[(7)] aims to harmonise certain rules on contracts concluded between consumers and traders,

Changes to legislation: *Regulation (EU) 2015/751 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

including rules on fees for the use of means of payment, on the basis of which Member States 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, merchants and companies are to enjoy the full benefits of the internal market, especially as the world moves towards e-commerce.

(7) Some Member States have issued or are preparing legislation to regulate directly or indirectly interchange fees and covering a number of issues, including caps on interchange fees at various levels, merchant fees, the 'Honour All Cards' rule and steering measures. The existing administrative decisions in some Member States vary significantly. To make the levels of interchange fees more consistent, a further introduction of regulatory measures at national level aimed at addressing the levels of, or discrepancies between, those 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 card-based payments and 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 and new pan-Union players are prevented from entering the market. There is a need to remove obstacles to the efficient functioning of the card market, including in the area of card-based payments and internet and mobile payments based on cards.

(9) To enable the internal market to function effectively, the use of electronic payments should be promoted and facilitated to the benefit of merchants 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 merchants with potentially secure payments. Card-based payment transactions instead of payments in cash could therefore be beneficial for merchants and consumers, provided that the fees for the use of the payment card schemes are set at an economically efficient level, whilst contributing to fair competition, innovation and market entry of new operators.

(10) Interchange fees are usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain payment card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card-based payment transaction. Merchants in turn incorporate those card costs, like all their other costs, in the general prices of goods and services. Competition between payment card schemes to convince payment service providers to issue their cards 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. In addition to a consistent application of the competition rules to interchange fees, regulating such fees would improve the functioning of the internal market and contribute to reducing transaction costs for consumers.

***Changes to legislation:** Regulation (EU) 2015/751 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(11) The 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 merchants and consumers and prevents innovation. As pan-Union players would, as a minimum, have to offer issuing banks 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 also restricted. In addition, merchants cannot overcome the fee differences by making use of card acceptance services offered by banks in other Member States. Specific rules applied by the payment card schemes require the application of the interchange fee of the 'point of sale' (country of the merchant) for each payment transaction, on the basis of their territorial licensing policies. This requirement prevents acquirers from successfully offering their services on a cross-border basis. It can also prevent merchants 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 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 of the Treaty on the Functioning of the European Union, 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 for consumers and merchants to use cross-border services.

(14) The application of this Regulation should be 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-based payments and internet and mobile payments based on cards, to the benefit of consumers and merchants, this Regulation should apply to cross-border and domestic issuing and acquiring of card-based payment transactions. If merchants can choose an acquirer outside their own Member State ('cross-border acquiring'), which will be facilitated by the imposition of the same maximum level of both domestic and cross-border interchange fees for acquired transactions 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 schemes.

(16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card-based payment transactions in the Union are already carried out respecting the maximum interchange fees. In order to provide for fair competition in the market for acquiring services,

Changes to legislation: *Regulation (EU) 2015/751 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the provisions relating to cross-border and to domestic transactions should apply simultaneously and within a reasonable period after the entry into force of this Regulation, taking account of the difficulty and complexity of the migration of payment card schemes, which this Regulation necessitates.

(17) There are two main types of credit cards available on the market. With deferred debit cards, the total amount of transactions is debited from the cardholder account at a pre-agreed specific date, usually once a month, without interest to be paid. With other credit cards, the cardholder can use a credit facility in order to reimburse part of the amounts due at a later date than specified, together with interest or other costs.

(18) All debit and credit card-based payment transactions should be subject to a maximum interchange fee rate.

(19) The impact assessment shows that a prohibition of interchange fees for debit card transactions would be beneficial for card acceptance, card usage, the 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 resulting from a higher cap in those national schemes that have very low or zero interchange fees for debit transactions 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.

(20) The caps in this Regulation 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 the merchant 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 and the interchange fee). It thereby stimulates the use of efficient payment instruments through the 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 merchants and consumers and provide legal certainty.

(21) Nevertheless, as shown in the impact assessment, in certain Member States interchange fees have developed so as to allow consumers to benefit from efficient debit card markets in terms of card acceptance and card usage with lower interchange fees than the merchant indifference level. Member States should therefore be able to establish lower interchange fees for domestic debit card transactions.

(22) In addition, to ensure that debit card fees are set at an economically efficient level, taking into account the structure of domestic debit card markets, the possibility to express interchange fee caps as a flat rate should be maintained. A flat rate may also promote the use of card-based payments of small value amounts (‘micropayments’). It should also be

***Changes to legislation:** Regulation (EU) 2015/751 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

possible to apply such a flat rate in combination with a percentage rate, provided that the sum of such interchange fees does not exceed the specified percentage of the total annual transaction value at domestic level within each payment card scheme. Furthermore it should be possible to define a lower per transaction percentage interchange fee cap, and to impose a fixed maximum fee amount as a limit to the fee amount resulting from the applicable per transaction percentage rate.

(23) Furthermore, taking into account that this Regulation undertakes harmonisation for the first time of interchange fees in a context where existing debit card schemes and interchange fees are very different, it is necessary to provide for flexibility for domestic payment cards markets. Therefore, during a reasonable transition period, in relation to domestic debit card transactions, Member States should be able to apply to all domestic debit card transactions within each payment card scheme a weighted average interchange fee of no more than the 0,2 % of the annual average transaction value of all domestic debit card transactions within each payment card scheme. In relation to the interchange fee cap calculated on the annual average transaction value within one payment card scheme, it is sufficient that a payment service provider participates in a payment card scheme (or some other type of agreements among payment service providers) in which, for all domestic debit card transactions, a weighted average interchange fee of no more than the 0,2 % is applied. Here, too, a flat fee or a percentage fee or a combination of the two can be applied provided that the weighted average maximum cap is respected.

(24) In order to define the relevant interchange fee caps for domestic debit card transactions, it is appropriate to allow national competent authorities entitled to ensure compliance with this Regulation to collect information regarding the volume and value of all debit card transactions within a payment card scheme or of the debit card transactions pertaining to one or more payment service providers. As a consequence, payment card schemes and payment service providers should be obliged to provide relevant data to national competent authorities as specified by those authorities and in accordance with the time limits set by them. Reporting obligations should extend to payment service providers such as issuers or acquirers and not only to payment card schemes, in order to ensure that any relevant information is made available to the competent authorities which should, in any case, be able to require that such information is collected through the payment card scheme. Moreover, it is important that Member States ensure an adequate level of disclosure of the relevant information concerning the applicable interchange fee caps. In light of the fact that payment card schemes are generally not payment service providers subject to prudential supervision, competent authorities may require that the information sent by these entities is certified by an independent auditor.

(25) Some payment instruments at domestic level enable the payer to initiate card-based payment transactions that are not distinguishable as debit or credit card transactions by the payment card scheme. The choices made by the cardholder are unknown to the payment card scheme and to the acquirer; as a consequence, the payment card scheme does not have the possibility of applying the different caps imposed by this Regulation for debit and credit card transactions, which are distinguishable on the basis of the timing agreed for the debiting of the payment transactions. Taking into