

# DIGITALEUROPE: Position paper Cross Border Payments Regulation and Dynamic Currency Conversion

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## INTRODUCTION

Digital Europe supports the objective of the proposed Regulation to decrease the cost of cross-border transactions in euro and increase transparency of currency conversation.

In particular, Digital Europe acknowledges that there are many complaints by consumers concerning Dynamic Currency Conversion (DCC), and excessive fees related to currency conversion when travelling abroad. In addition, the press and consumer interest groups have also frequently warned against the abuse of cardholders by DCC providers. In light of this, Digital Europe welcomes increased transparency and clear consumer choice.

It should be noted that the revised Payments Services Directive (PSD2) (Article 59) already imposes transparency requirements in relation to currency conversion. PSD2 provides for cases where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at an ATM, at the point of sale or by the payee. The transparency objective of the newly proposed Regulation may thus be achieved through proper enforcement by National Competent Authorities.

Indeed, we encourage authorities to find the most appropriate means to tackle this issue. If the European Commission and co-legislators decide new regulation should be adopted, Digital Europe would like to raise two main concerns in relation to transparency in order to achieve the desired objective. In particular, we believe:

- (1) the scope of the regulation should be limited to the DCC
- (2) the temporary fee cap should be removed.

Additionally, we have some technical comments on the proposal which are important to be clarified. Specifically, in relation to (3) the role of the European Banking Authority (EBA) and (4) the geographical scope.

### 1. Limit the scope to DCC conversion

Digital Europe is aware of excessive practices in relation to DCC. However, it is unclear if all currency conversions, including **on-network/issuer conversion**, are captured as well. Digital Europe would advocate against the inclusion of all currency conversion as no consumer problems or concerns have been identified beyond DCC.

In case it is decided that on-network/issuer conversion should also be in the scope of the regulation, we encourage to conduct a proper impact assessment. Additionally, we want to point a technical concern that will make it difficult to implement and may cause a **liability concern**: A transaction is only completed at the point of clearing, and then the exact applicable exchange rate is set. The clearing takes place sometime (X hours or X days e.g. in case of goods delivery) after the authentication/authorization at POS, and by then the exchange rate may have fluctuated. It is therefore impossible to show the exact applicable exchange rate at the time of authorization at the POS. If the issuer would show the rate at time of authorization and a significant currency fluctuation takes place before the clearing, it would be liable for the wrong information and potentially susceptible to legal challenge. Therefore, the proposed Regulation should recognise this factual issue, and only require the card issuer to display the estimated exchange rate that will be applied. Because the exchange rate would only be estimated, the total amount of all charges should also be an estimated amount.

### 1. Temporary fee cap:

Digital Europe understands the rationale behind the temporary cap to be introduced by the European Banking Authority. However, price capping is a very intrusive measure that goes against the spirit of the free market and should only be introduced when a malfunction of the market has been proven for instance due to serious competition concerns. This is not the case, and it has not been justified by the European Commission. It therefore seems a disproportionate tool to achieve transparency and may even have a negative effect.

### 2. Limit scope to EU:

Although it is understood that the scope is limited to the EU, the legal text is ambiguous. The current text is only applicable in situation where both the issuing bank (card holder bank) and acquiring bank (merchant bank) are located in the EU. If the card issuer is located in the EU, the merchant is located e.g. in Switzerland and works with an acquirer in Switzerland, the Regulation is not applicable since the merchant's PSP is located in Switzerland. However, should the Swiss merchant decide to work with e.g. a German acquirer, suddenly the Regulation would legally become applicable forcing the Swiss merchant to make technical changes to its terminals in order to display the currency conversion offer of the EU-based issuer. This would discourage Swiss merchants from working with EU-based acquirers (e.g. German acquirers in the above example). Surely that is not the EU's intention but it should be specified that the merchant/payee should also be located in the Union (along with the two PSPs).

### 3. Level I vs. Level II and the role of the European Banking Authority (EBA)

Additionally, Digital Europe believes that the newly proposed Regulation is not prescriptive enough at Level I and leaves too much room for policy decisions to the European Commission and EBA via

Delegated Acts (Level II) e.g. in relation to the temporary fee cap via a Regulatory Technical Standard. It is not the remit of the EBA/EC to make important policy decisions via Level II. This should merely be about implementing technical issues within the framework of Level I that has been agreed by the co-legislators.

Digital Europe looks forward to working with the European Commission and co-legislators to find workable solutions that create better consumer outcomes. We encourage the Parliament and Council to further consult with stakeholders and gather data in order to make informed decisions and not accelerate the process for political reasons.

## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total over 35,000 ICT Companies in Europe represented by 63 Corporate Members and 39 National Trade Associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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