

Decision

**approving the opinion on the proposal for a Regulation of the European Parliament
and of the Council on interchange fees for card-based payment transactions**

COM (2013) 550

Pursuant to the provisions of Articles 67 and 148 of the Romanian Constitution, republished, of Law No 373/2013 on cooperation between Parliament and the Government in the area of European affairs, and of Article 40 of Decision No 11/2011 of the Chamber of Deputies on the working and decision-making procedure for parliamentary supervision of draft legislative acts of the European Union, based on the provisions of the Treaty of Lisbon on the role of national Parliaments,

The Chamber of Deputies hereby adopts this decision:

Sole Article - Having regard to draft opinion 4 c-19 / 83 adopted by the Committee for European Affairs at its meeting of 19 February 2014,

1. The Chamber of Deputies notes that the proposal is among the initiatives aimed at applying the Digital Agenda, which is in turn part of the Europe 2020 Strategy, and it will be added to a broader package of legislative measures on payment services intended to supplement and update the existing legal framework; considers that the proposal is consistent with the Digital Agenda and, in particular, with the objective of bringing about a single digital market.
2. The Chamber of Deputies endorses the point of view of the European Parliament according to which, in the context of the current crisis, the digital market is an important opportunity for economic growth, job creation and boosting consumption, but would also point out that the European Union needs to continue its efforts to complete the single digital market.
3. The Chamber of Deputies endorses the point of view of the European Parliament according to which it is essential, on the one hand, to remove existing obstacles and, on the other hand, to stimulate consumer confidence; in this connection, a neutral and secure European single market for card, internet and mobile payments, facilitating free competition and innovation, is essential for the achievement of a genuine single digital market and could have a major contribution to increasing consumer confidence.
4. The Chamber of Deputies notes the continuation of practices which exclude European citizens from access to certain sectors of the single market, and the fact that the opposition between an undertaking's freedom to decide where it wishes to operate and the right of consumers to not be discriminated due to refusal to supply services only on grounds of nationality or place of residence is still a fact of life.
5. The Chamber of Deputies notes that, in the digital sector (which is extremely dynamic), each technological progress appears to usher in a new form of discrimination or facilitate traditional forms of discrimination, instead of improving the quality of social life by applying the principles and respecting the values of the Union.

6. The Chamber of Deputies recalls that Article 18 TFEU prohibits discrimination on grounds of nationality and that the prohibition of discriminatory practices aims to ensure market integrity, and that the residence criterion could be seen as indirect discrimination on grounds of nationality.

7. The Chamber of Deputies notes the assessment made by the European institutions, according to which revenues from multilateral interchange fees (MIFs) are frequently too high in comparison to the costs they have to cover, and any measures aimed at ensuring that MIFs do not distort competition by creating barriers to entry and innovation should be laid down by means of regulations.

8. The Chamber of Deputies notes the judgment of the Court of Justice of the European Union of 24 May 2012 in the 'MasterCard case', which concluded that a multilateral interchange fee (MIF) can be regarded as being anti-competitive.

9. The Chamber of Deputies notes that, in Romania, merchant fees vary between 0.5% and 1.9% of the value of a transaction conducted using a debit or credit card, that they cover both the cost of issuing cards and that of accepting card payments, and that the fees increase with any related services/benefits provided by issuers when using a card.

10. The Chamber of Deputies is in favour of the provisions in the Regulation which aim to reduce multilateral interchange fees and make the fees charged on card-based payment operations transparent.

11. The Chamber of Deputies welcomes the measures enabling merchants to accept only payments based on cards with lower costs, and believes that this would benefit consumers by reducing the costs incurred by merchants who accept card-based payments and, by extension, the prices of goods and services provided by those merchants.

12. The Chamber of Deputies points out that in Romania the number of persons using banking services is still low, especially in rural areas, and that the low average salary compared to developed European countries ensures neither a critical mass of card users nor the necessary revenue to enable issuing entities to cover their issuing, processing and settlement costs.

13. The Chamber of Deputies points out, in this connection, that in Romania cash is preponderant, representing around 95% of all retail payments for consumer goods and services, and this situation does not allow, in the medium term, for a significant reduction in the final price of those goods and services, even if the interchange fees on payments based on consumer cards were to fall following the implementation of the proposed Regulation.

14. The Chamber of Deputies considers that, for the reasons outlined above, the introduction by payment service providers operating in Romania of the maximum multilateral interchange fees on card-based payment operations, as laid down by the Regulation, within the implementation deadlines specified therein, cannot ensure that the objectives of this legislative act are met.

15. The Chamber of Deputies would reiterate the views expressed when the proposal was examined in the context of the early warning mechanism. Thus, the Chamber of Deputies:

- acknowledges that the achievement of a fully functioning internal market in the area of payment cards has been hindered by the widespread application of certain restrictive business rules and practices;
- underlines the important role that e-payments and mobile payments play in the fight against the grey economy and, in particular, against tax evasion;
- is in favour of restricting the 'honour all cards rule', considering that discrimination based on the issuing bank or the provenance of the card holder and between cards carrying the same interchange fees will be prohibited;
- acknowledges that these restrictions cause, *inter alia*, a lack of awareness among consumers and retailers as to the costs involved and how the charges for various operations are set, which keeps market outcomes under their optimum levels;
- welcomes the efforts aimed at ensuring greater transparency and better consumer awareness as to the surcharges and additional fees carried by various payment instruments, because merchants often include transaction costs in the prices of their goods and services;
- stresses the importance of awareness campaigns at European level, in order to inform consumers of options available on the market and the conditions and requirements for secure electronic payments;
- welcomes the measures aimed at ending discrimination of European consumers whose payments for cross-border electronic transactions are not accepted on grounds of their provenance;
- is in favour of prohibiting any rules which would prevent or discourage merchants from guiding their customers towards more effective payment instruments, or from disclosing to their customers the fees they pay to payment services acquirers;
- considers that consumer confidence is an essential factor and that there should be a high level of security as a guarantee against fraud risks and for the protection of sensitive personal consumer data;
- considers that the ultimate responsibility for the security of the different means of payment should not be borne by customers, and that customers should be informed of security precautions, and financial institutions should be responsible for any costs due to fraud, unless they have been caused by the customer;
- acknowledges that it is not possible to confidently exclude a negative impact on existing payment service providers and banks, but believes that a larger volume of card-based operations and the savings arising from handling less cash could give banks at least partial compensation for possible losses caused by capping interchange fees;
- it recommends that the European Commission examine the possibility of adding to the proposed Regulation provisions which would exempt low-income European citizens from fees on card-based operations;
- it recommends application of the transparency principle also set forth in the proposed Regulation, including by means of comprehensive information provided to consumers, by displaying the costs of an operation both in the case of cash withdrawals and in that of

card-based payments to merchants, both before making the payment, on the screen of the ATM or the POS, and after payment, on the receipt.

16. The Chamber of Deputies notes that the Committee on Information and Communications Technology decided to support the adoption of this legislative proposal, with the remarks and recommendations presented below, in agreement with the views expressed by the Ministry of Public Finance:

- capping interchange fees may cause distortions in the market for card-based payments, including by discouraging investments, limiting competition, lowering transaction security and safety as a result of efforts to reduce some of the costs, and forcing banks to look for alternative solutions to maintain the level of revenue from such services;

- fees could be capped to the level of the lowest fees charged by providers of payment services and/or payment systems for processing card-based transactions in the three best performing Member States, so that there is a minimum and a maximum limit;

- another solution is to cap fees to a fixed amount, regardless of the value of the transaction, and not to a percentage, and possibly the introduction of ceilings differentiated by bands of values, which would increase transparency and facilitate comparability of fees;

- it is desirable to progressively reduce fees over a period of maximum 2-3 years, in order to implement projects aimed at optimising and adapting operations in line with the new legal framework and to avoid shocks in this market;

- the introduction of ceilings should be applied at the same time, both for cross-border transactions and for national operations, with a view to reducing potential costs due to the use of multiple infrastructures for handling cross-border and national transactions separately;

- the type of card used in payment operations should be specified, in order to prevent any possibility of bypassing the provisions of the proposed Regulation by setting up parallel systems based on other types of card;

- the text of Article 5 'Prohibition of circumvention', providing that any net compensation received by an issuing bank from a payment card scheme in relation to payment transactions or related activities shall be treated as part of the interchange fee, only covers the classic circuit, in which the acquiring bank pays an interchange fee to the issuing bank, and not also situations where the flow of fees changes.

17. The Chamber of Deputies notes and endorses the opinion presented by the Committee on Industry and Services, according to which uniform rules which are directly applicable to card-based payments and interchange fees throughout the EU will contribute to increasing the number of citizens using such payment instruments and will create conditions for the development of new payment schemes for card-based transactions.

18. The Chamber of Deputies notes the decision of the Committee for Budget, Finance and Banking to support the adoption of this proposal for a Regulation on the grounds that the provisions contained therein are beneficial to consumers.

19. From the point of view of data protection and defending consumer rights, the Chamber of Deputies considers that it is necessary to introduce additional measures aimed at reducing the risks created by giving third parties access to data on the availability of funds in bank accounts, possibly by restricting third parties to accessing binary information regarding the availability of funds, by specifying the parties that can access the data, and by laying down the conditions in which data can be stored. Formal contractual arrangements between the parties involved, in respect of the aforementioned issues, would go a long way towards meeting the requirement to inform the consumer.

20. The Chamber of Deputies considers that the framework regulating third-party access should include a clear distinction between access to information on the availability of funds for a given transaction and access to information regarding a customer's account in general.

21. The Chamber of Deputies believes that consumer refund rights should be strengthened, both in the case of unauthorised payments and in the case of undelivered, or not delivered as promised, goods or services, and that effective collective redress and alternative dispute resolution systems are indispensable tools for the protection of consumers, also in the field of electronic payments.

This Decision was adopted by the Chamber of Deputies at the session of 25 February 2014, in compliance with Article 76(2) of the Romanian Constitution, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES

Valeriu Ştefan Zgonea

Bucharest, 25/2/2014

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