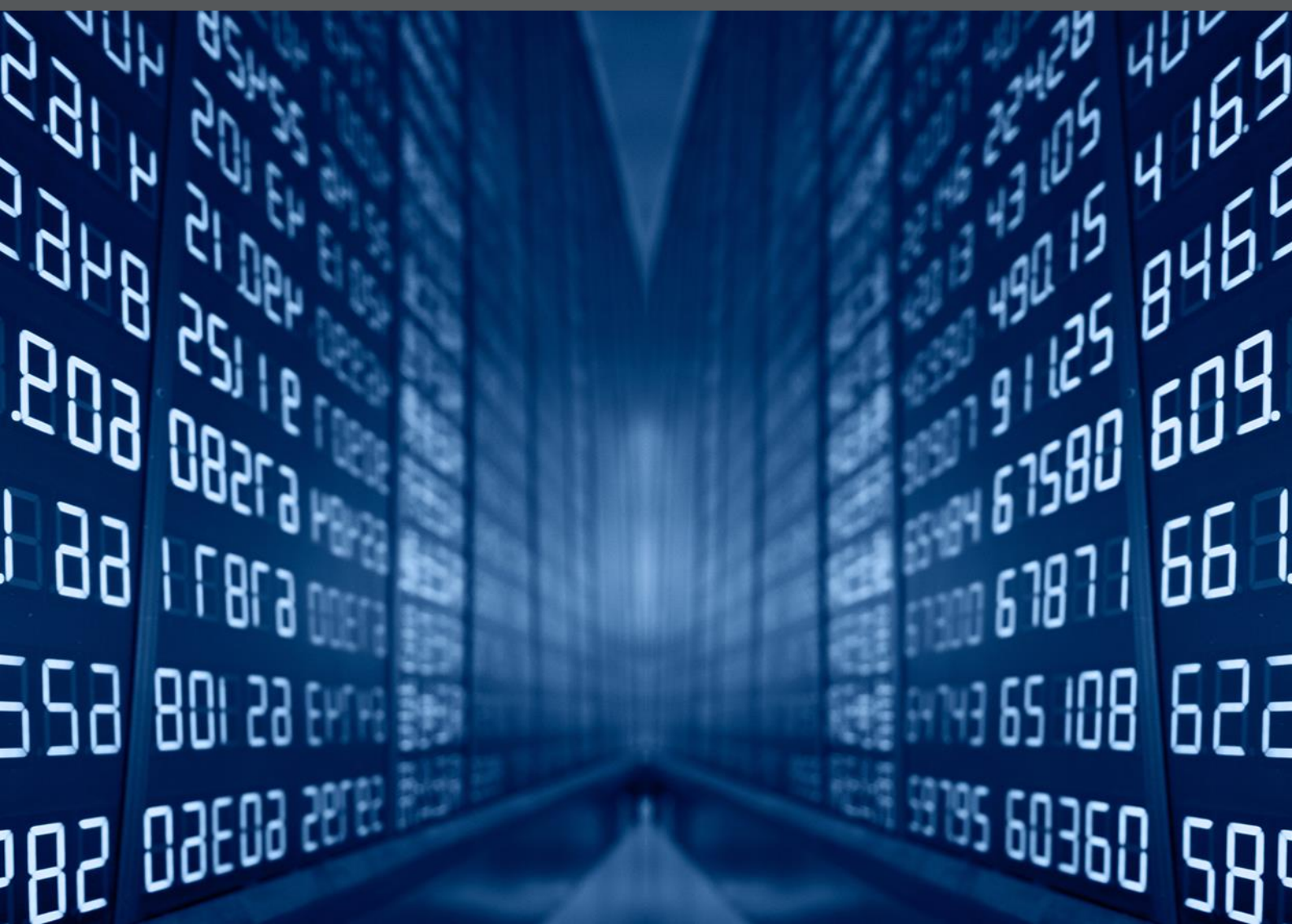


CROSS BORDER PAYMENTS

Cards on tour



Does your business enable customers to send money abroad? Does your business issue cards which can be used to make purchases and withdraw cash overseas? The new Regulation (EU) 2019/518 on Cross Border Payments (**CBPR2**) (amending the existing 2009 regulation (**CBPR1**)) could impact the charges that can be applied to such transactions and the information you need to provide to customers.

This is in addition to the changes to BCOBS 2 (concerning the communication and promotion of currency transfer services) that come into effect on [1 August 2019](#).

What is changing?

Equivalence of charges

CBPR1 requires payment service providers (**PSPs**) to charge the same fee for a cross border payment in Euros within the Eurozone as applies to a Euro payment within a member state, up to the value of EUR 50,000. From [15 December 2019](#), CBPR2 will extend the scope of these fee cap provisions to EU Member States outside of the Eurozone for euro-denominated payments, by requiring a PSP to charge the same fee for a cross border payment in Euros as it does for a national payment in local (non-Euro) currency.

For credit transfers, this means that a cross border payment in Euros (a SEPA payment) must incur the same transaction fee as an 'equivalent' payment in Sterling which is made between accounts held with PSPs located in the UK.

For card payments, this means that a UK based card issuer must charge the same fee for using a card to make a payment overseas as it charges for card payments made within the UK.

This equivalence requirement applies to transaction charges and not to charges applied to currency conversion services. However, we would encourage firms to think carefully about the fees they charge and whether they relate to the cost of providing the currency conversion service or also include an element relating to the cost of processing the resulting transaction. PSPs need to decide how to identify "equivalent" payments and what factors to take into account when assessing whether a payment type is equivalent. There is currently no guidance from the FCA. In our view, PSPs need to identify similar characteristics such as payment limits, execution times and accessibility. A consistent approach across the industry will be needed here.

Disclosure of Information.

CBPR2 introduces a number of new requirements concerning the information that must be provided to customers who use currency conversion services. These requirements impact card issuers and providers of credit transfer services which involve a currency conversion. PSPs will be required to disclose to their customers the full cost of their currency conversion services, and where applicable, those of alternative currency conversion services, before a payment transaction, as explained in more detail below.

(1) Card payments

a. pre-transaction disclosure of currency conversion charges applied by Issuer:

A payer's PSP will be subject to two pre-contract disclosure requirements:

- (1) prior to the payer initiating the transaction, a payer's PSP must disclose the total currency conversion charges as a percentage mark-up over the latest available euro foreign exchange reference rates issued by the ECB (the **Conversion Cost**); and
- (2) PSPs must make these mark-ups publicly available, in a way that is comprehensible, easily accessible and on a broadly available and easily accessible electronic platform.

b. post-transaction disclosure of currency conversion charges applied by Issuer:

Where a payer's PSP receives a request for a cash withdrawal or point of sale transaction in a currency different to the denomination of the funds in the underlying account and therefore needs to conduct a currency conversion, without undue delay the payer's PSP must send the payer an electronic message informing them of the currency conversion charges incurred. The method of issuing this electronic message should be agreed with the payer. Payers may also be given the option to opt-out of the messages. If the payer is not a consumer, it is possible for the PSP to contractually agree with the payer that this requirement does not apply at all.

The above information should also be sent by the payer's PSP "once every month in which the [card issuer] receives from the [cardholder] a payment order denominated in the same currency".

(2) Dynamic currency conversion services

Dynamic currency conversion (**DCC**) is a service provided by merchants and their acquirers or ATM providers which offers a cardholder the option of paying for a purchase or withdrawing cash in the currency of their account while overseas (**DCC Providers**). DCC Providers will also be subject to enhanced disclosure requirements which will require significant changes to their POS processes and technology.

a. pre-transaction disclosure of currency conversion charges by DCC Providers

Prior to the initiation of the payment transaction, at the ATM or point of sale, DCC Providers must disclose the Conversion Cost. In addition, prior to the initiation of the payment transaction (but without the stipulation that this is at the ATM or point of sale) DCC Providers will also have to provide the payer with additional information to help the payer understand the costs of the currency conversion. This information is:

- a statement that the payer could pay in the currency used by the payee and have the currency converted by its PSP (instead of by the DCC Provider);
- the amount to be paid to the payee in the currency used by the payee; and
- the amount to be paid by the payer in the currency of the payer's account.

b. post-transaction disclosure of currency conversion charges by DCC Providers

DCC Providers must provide the Conversion Cost, the amount to be paid to the payee in the currency used by the payee and the amount to be paid by the payer in the currency of the payer's account to the payer on a durable medium following the initiation of the transaction.

Credit transfers

Where credit transfers are initiated online (for example, on a PSP's website or via an App), the payer's PSP must disclose the estimated charges for the currency conversion prior to the initiation of the transaction, in a clear, neutral and comprehensible manner. This does not have to take the form of the Conversion Cost described above.

For credit transfers that are initiated manually and online the PSP must disclose the following information prior to the initiation of the transaction, in a clear, neutral and comprehensible manner:

- the estimated amount of the credit transfer in the currency of the payer's account;
- any transaction fee;
- any currency conversion charges; and
- the estimated amount to be transferred to the payee in the currency used by the payee.

Who does it impact?

The changes affect all PSPs who issue cards and/or enable credit transfers as well as DCC Providers. CBPR2 will require systems and documentation changes to implement and in our view, poses a considerable technical challenge to PSPs and DCC Providers.

When is it changing?

Note that various requirements on firms apply at later dates to allow time for technical changes in systems and processes:

15 December 2019	Equal charges requirements – thought the amendment provisions do not apply to currency conversion charges.
19 April 2020	Disclosure of currency conversion charges for card-based transactions (pre-transaction disclosures). Disclosure of currency conversion charges for credit transfers.
19 April 2021	Disclosure of currency conversion charges for card-based transactions (post-transaction disclosures).

What about Brexit?

If the Withdrawal Treaty is agreed, then following the date of the UK's exit from the EU, there will be a transition period. This is currently stated to be until the end of 2020 but, as the exit date shifts, this could change. During a transition period, the UK will continue to comply with EU legislation and continue to implement/apply EU legislation as it comes into force, including CBPR2. Given the uncertainty of the current political situation, it is not clear whether there will be a 'deal' agreed. If the Withdrawal Treaty is not agreed, i.e. there is 'no-deal', then the UK will leave the EU without a transition period.

HM Treasury has taken a number of steps to prepare the statute book for a no-deal Brexit. The approach has been to 'on-shore' EU legislation and amend it to reflect the changed relationship between the UK and EU; removing any preferential treatment for EU firms, exposures and transactions.

The approach taken to payment legislation however, has been exceptional. In preparation for a no-deal Brexit, the UK (represented through UK Finance) applied for membership of the Single Euro Payments Area (**SEPA**) to maintain the participation of UK PSPs in SEPA schemes. On 7 March 2019, the European Payments Council Board approved the application. To maintain membership of SEPA, the UK will have to comply with various criteria for participation and so has retained certain relevant EU payments law. It is the UK Government's position that CBPR2 is not part of the package of legislation that is required as part of the criteria for participation in SEPA.

If this exit takes place before CBPR2 comes into force then CBPR2 will not apply in the UK unless the Government changes its position. This would require new legislation as CBPR2 is not in scope of the powers under the European Union (Withdrawal) Act 2018 or the proposed Financial Services (Implementation of Legislation) Bill.

If you would like to have a chat about any of the above and how to prepare for these changes, please contact:

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