PROPOSAL FOR A PAYMENT SERVICES REGULATION AND FOR A PAYMENT SERVICES DIRECTIVE 3
- COMMENTS OF INDEPENDENT RETAIL EUROPE -

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Avenue des Gaulois 3 / box 3
B – 1040 Brussels
T + 32 2 732 46 60
@ info@independentretaileurope.eu
www.independentretaileurope.eu
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EXECUTIVE SUMMARY

Independent Retail Europe welcomes the Commission Payment Package, and notably the proposal for a Payment Services Regulation (PSR) and Payment Services Directive 3, as a good opportunity to update the payment framework and make it fit for ongoing market challenges.

As the last link in the supply chain, directly facing consumers, independent retailers are highly dependent on a cost-efficient, transparent and flexible payment infrastructure. It is critical that the EU payment legislative framework addresses the challenges experimented by retailers, and ultimately experienced by consumers. This position paper provides details on the key issue faced by independent retailers with Commission proposal and proposes policy recommendations to address them.

Key recommendations for the Payment Services Regulation:

- ➔ **The hidden costs of expensive payment instruments should be made visible through a removal of the surcharging ban and in particular a removal of the possibility for Member States to impose stricter surcharging bans (Art. 28-4).**
- ➔ **Information requirements for low value and e-money transactions: restore in Art. 10 the specific rules contained in Art. 42-2 of the PSD2, which give Member States flexibility when applying the derogation for low-value national transactions.**
- ➔ **Limited Network Exemption (Art. 2 (2) (j) (i-iii)) rules should be preserved, while preventing their misuse. To this end, bring meal and social e-money vouchers into the scope of the PSR and IFR to ensure transparency and cost control.**
- ➔ **Make refunds to consumers immediately effective (Art. 62). Ensure the smooth functioning of payments in online shopping through the explicit recognition of a margin between the amount indicated in the pre-authorisation, and the final amount charged (Art. 61).**

Key recommendations for the Payment Services Directive 3:

- ➔ **Facilitate consumer access to cash, by supporting rules in Art. 37 (to boost wash withdrawal services in shops) and in Art. 38 (to facilitate the deployment of independent ATMs e.g. in shops and shopping centres).**

COMMENTS OF INDEPENDENT RETAIL EUROPE ON THE COMMISSION PROPOSAL FOR A PAYMENT SERVICES REGULATION AND FOR A PAYMENT SERVICES DIRECTIVE 3

I. PROPOSAL FOR A PAYMENT SERVICES REGULATION (PSR)

1) Article 28 must allow surcharging - hidden costs should be visible to consumers

The Commission proposes in the PSR to keep the existing rules on surcharging, which allow Member States to prohibit merchants to surcharge non-regulated payment instruments (Art. 28-4), arguing that *"the current rules on charges are appropriate and had a positive impact"* (Recital 55).

Independent retailers strongly disagree with recital 55, and as a result to the possibility for Member States to ban surcharging. The PSR should provide the commercial freedom for merchants to incentivise consumers to choose more cost-efficient payments. Indeed, the Interchange Fee Regulation (IFR) only capped interchange fees, leaving all other fees, including scheme fees, uncapped. As a result, merchants have experienced a strong increase in (uncapped) scheme fees, which cancelled out the benefit of the IFR. As the IFR prohibited surcharging for consumer cards, retailers were thus prevented from using price as a tool to steer consumer towards more efficient and less costly payment instruments.

Moreover, many payment cards are totally unregulated (e.g. commercial cards, including new widespread virtual cards). Surcharging bans (also for these instruments) make it impossible to steer consumers towards less costly payment instruments. **In practice, surcharging bans mean that merchants/retailers are forced to raise the price of goods for all consumers – even for those who do not use these more expensive payment cards/instruments. This is unfair.**

Only allowing 'discounting' (Art. 28-5) is not viable, as in practice consumers are steered much more efficiently by surcharging than by discounts. **Allowing consumers to make an informed choice and steering them towards cheaper payment methods will bring down the average costs of payments and, indirectly, consumer prices.**

The PSR should provide the framework to effectively incentivise consumers to use more cost-efficient payments, through effective transparency on the hidden costs of payment tools. We therefore call on the co-legislator to remove the surcharging ban (Art. 28) and remove the right of Member States to impose stricter surcharging bans (Art. 28-4). Surcharging is indeed currently the only efficient tool for steering consumers, and to prevent the debit/credit card duopoly from freely raising the fees for their for the consumer unavoidable payment instruments.

Key recommendation

- ➔ **Remove the surcharging ban in Art. 28-4**
- ➔ **Remove the right of Member States to impose stricter surcharging bans (Art. 28-4).**

2) Keep national flexibility to define spending limits for low-value national payments (Art. 10)

The Commission proposes (Art. 10) to delete the option for Member States (in Art. 42-2 of the existing PSD2) to adjust the spending limit amounts for national payment transactions, which benefit from the derogation from information requirements for low-value payment instruments and electronic money.

This is a negative development, as it will unduly burden/hinder the development of low-value and low-risk innovative e-money instruments which are exclusively used domestically. We therefore call on the co-legislator to maintain the flexibility offered by the existing PSD 2, and which has not created any issue so far.

Key recommendation

- ➔ **Restore in Art. 10 PSR the specific rules contained in Art. 42-2 of the PSD2, which give Member States flexibility when applying Art. 10 derogation on low-value national transactions.**

3) The Limited Network Exemption (LNE) provisions need to work better for retailers – the case of meal and social vouchers

The Limited Network Exemption (LNE) provisions (Art. 2 (2) (j) (i-iii) and Recital 12) have a very positive effect on the development of innovative payment options, with lighter and more proportionate regulatory burdens. This is to be supported. However, LNE rules are increasingly misused by e-money issuers to issue 'generic' consumer payment instruments as meal and social vouchers, where high fees (including interchange fees) are applied. These vouchers should be brought into the scope of PSR and IFR.

Key recommendations

- ➔ **Preserve the overall LNE rules**
- ➔ **Bring meal and social e-money vouchers into the scope of the PSR and IFR.**

4) Refunds and payment transactions where the transaction amount is not known in advance

In case of transactions where the amount cannot be know in advance, Art. 61 of the PSR proposal foresees in the possibility for the payee to initiate the transaction to ensure that the payer's Payment Service Provider can block a certain amount for that transaction. Art. 61-2 stipulates that *"the amount of the funds blocked by the payer's payment service provider shall be in proportion with the amount of the payment transaction which can reasonably be expected by the payer*".

We acknowledge that the reserved amounts should be proportionate to the expected final amount. However, Art. 61 should explicitly recognise the possibility to have a proportionate difference between the pre-authorised 'reserved' amount and the final transaction.

Indeed, in the retail sector, notably in online grocery shopping, it is very common that the final amount of the transaction is not known at the time of the online order, because many products ordered have a price per kilo, meaning that the final price of the products will depend on the exact weight of the products delivered (i.e. meat, vegetables, fruits). It should be therefore possible to have a small tolerance margin between the pre-authorised amount and the final amount charged.

For similar reasons, refunds may be used (notably in online grocery) if the amount initially charged is higher than the final price of the transaction. In this case, it is essential that the funds be refunded immediately on the consumer's card/account (Art. 62).

Key recommendations

- ➔ **Art. 61-1 shall explicitly allow to have a tolerance margin between the pre-authorised 'reserved' amount and the final amount**
- ➔ **Art. 62 shall ensure that refunds are immediately released on to the consumer card/account.**

II. PROPOSAL FOR A PAYMENT SERVICES DIRECTIVE 3 (PSD3) – FACILITATE ACCESS TO CASH IN RETAIL SHOPS

Cash remains a key payment mean for most consumers. Consumers expect to have the choice to pay in cash or through other means in most retail shops, especially for low-value everyday transactions.

However, sharp decline in the number of bank branches in Member States, and as a result in the number of ATMs, especially in rural zones, has led to real difficulties for consumers to access cash.

The PSD3 proposal is therefore a great opportunity to define rules that will boost consumer access to cash, especially in zones where this has become difficult. The Commission made two specific proposals in the PSD3, which would have a beneficial impact on consumers access to cash, and allow them to continue to choose their most convenient means of payment in shop.

First of all, article 37 of the PSD3 proposal would allow retail stores without a payment institution license to offer cash withdrawal services up to 50 euros outside of any cashback mechanism. In addition, Art. 38 exempts distributors of cash via ATM deployers that do not service payment accounts (the so-called 'independent ATM deployers' – like those based in stores) from the licensing requirements of payment institutions, and makes them only subject to a registration requirement. We fully support both of these proposals, and invite the co-legislators to support them.

Key recommendation

- **Support Art. 37 of PSD3, which allows retail shops to offer cash withdrawal services without cashback**
- **Support Art. 38 of the PSD3 proposal, which incentivises deployment of independent ATMs, and therefore boost access to cash.**

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Established in 1963, ***Independent Retail Europe*** *(formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.

Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 462.000 independent retailers, who manage more than 737.000 sales outlets, with a combined retail turnover of more than 1,385 billion euros and generating a combined wholesale turnover of 604 billion euros. This represents a total employment of more than 6.390.000 persons.

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