NOTE ON THE APPLICATION OF REGULATION 924/2009\(^1\) TO ATM WITHDRAWALS

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1. **INTRODUCTION**

This note is about the application of Regulation (EC) 924/2009 of the European Parliament and the Council on Cross-Border Payments in the Community (hereinafter referred to as the "Regulation") to ATM withdrawals.

In particular, the note explores the different situations which may arise, depending on whether the cash withdrawal service is offered by the card issuer or the ATM provider, both in a domestic and cross-border context, and the consequences in terms of acceptable charging practices, taking into account the principle of equality of charges enshrined in the Regulation.

This principle provides that "charges levied by a payment service provider on a payment service user in respect of cross-border payments in euro shall be the same as the charges levied by that payment service provider for corresponding national payments of the same value in the national currency of the Member State in which the payment service provider of the payment service user is located."\(^2\)

The need for clarification of the application of the principle of equality of charges reflected in Article 3(1) to different charging practices for ATM withdrawals arises from the evolution of the market and the complaints received by the European Commission.

2. **APPLICATION OF FEES FOR ATM WITHDRAWALS AT DOMESTIC LEVEL**

Cash withdrawal services may either be provided by the card issuer (inside its own network or also extending to other networks\(^3\)), or by independent ATM providers, which do not act on behalf of card issuers:

- Card issuers\(^4\) provide cash withdrawal services to their customers which often extend to ATMs from other networks as this increases the reach and the value-added of the service provided. Those ATMs may either belong to payment service

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\(^2\) Article 3(1) of Regulation 924/09 as amended by Regulation 2019/519.

\(^3\) Commonly referred in the industry as “inside network” versus “outside network”.

\(^4\) All along this note, the term “card issuer” will be used as equivalent to “payer’s payment service provider”.

providers within the meaning of article 4(11) of Directive (EU)2015/23665 (hereafter PSD2) or to other ATM providers, which are not payment service providers within the meaning of the same article of PSD2, and act on behalf of card issuers. In both scenarios, ATM service providers act on behalf of card issuers.

- Independent ATM providers may also provide cash withdrawal services directly to end users, without acting on behalf of card issuers.

These two different cases will be further explained below, from two points of view: 1) possible charging practices; 2) corresponding obligations in terms of transparency, in line with PSD2.

2.1. Possible charging practices

2.1.1. The cash withdrawal service is provided by the card issuer and the ATM provider acts on its behalf

In theory, both indirect and direct charging are possible, even if common practice is indirect charging.

2.1.1.1. Indirect charging

In order to offer a service which extends to the ATMs of other networks, card issuers usually enter into a contractual relationship with ATM providers6 to agree on the technical and business rules governing the execution of the transaction, which also includes the charging aspects. In that case, the common practice is that the card issuer compensates the ATM provider for the services rendered to make the cash available to the cardholder, and the card issuer in turn charges a fee to the cardholder (which is commonly referred as “indirect charging”). In that situation, the charging of the cardholder directly by the ATM provider is usually contractually excluded, as (i) a double charging for the same service would contradict the very objective of the card issuer, which is to provide its customer the value-added of access to the ATMs of other networks and (ii) the cost of using the ATM from another network is already internalised by the card issuer and possibly passed on to the cardholder via the payment accounts’ fees or a single transaction fee.

2.1.1.2. Direct charging

Within the framework of the contractual relationship between the card issuer and the ATM provider acting on its behalf, both parties could also decide that each of them can levy a charge to the cardholder.

2.1.2. The cash withdrawal service is provided by an independent ATM provider

As an alternative to the cash withdrawal service being supplied by the card issuer, this may be offered by an ATM provider outside the network of the card issuer and with whom the card issuer does not have a contractual relationship (hereinafter “independent

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6 Usually individual payment service providers, a consortium of payment service providers or other ATM providers that do not hold a license to provide payment services
Consequently, charges may be levied by the ATM provider, as the provider of the service and therefore, leading to a “direct charging” situation. In that context, there is no reason for the card issuer to pass on an indirect fee to the cardholder, as by definition, the charge is levied directly by the independent ATM provider.

2.2. PSD2 requirements regarding the transparency of fees for cash withdrawals

As a general rule, and as foreseen in PSD2 and in its article 52(3), the payment service provider should inform its customer about all the charges “payable by the payment service user to the payment service provider […] and where applicable, the breakdown of the amounts of such charges”.

In the context of cash withdrawals, this information should include, whenever relevant, the charges levied inside or outside network, as those can differ. To reflect the two cases described above, the following should apply:

1. When the cash withdrawal service is provided by the card issuer, the card issuer should inform the cardholder about 1) the type of cash withdrawals provided (inside and outside network) and 2) the corresponding charges, which should be the same for both domestic and cross-border euro withdrawals. For outside network transactions, two situations may apply:

   a. The cash issuer provides the cash withdrawal service through an ATM provider who does not conduct other payment services as referred to in Annex I PSD2, and who is therefore excluded as such from the scope of PSD2 by virtue of Article 3(o) PSD2. In that case, the ATM provider is nevertheless required by the same article of PSD2 to provide the payment service user making the cash withdrawal with the information on withdrawal charges referred to in Articles 45, 48 49 and 59 of PSD2.

   b. The cash issuer provides the cash withdrawal service through an ATM service provider which has obtained a license to provide payment services. Accordingly, if this provider charges for cash withdrawals, it is also required by the same article of PSD2 to provide the payment service user making the cash withdrawal with the information on withdrawal charges referred to in Articles 45, 48 49 and 59 of PSD2.

2. When the cash withdrawal service is provided by an independent ATM provider which is not acting on behalf of an issuer, that ATM provider should provide the cardholder with the relevant mandated information under PSD2, relating to single transactions, as in this case, there is no framework contract. In this case, there is no reason for the card issuer to charge for the same transaction, and if any charge

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7 Indeed, recital 18 recognizes that despite the fact that ATM providers acting on behalf of the card issuer are excluded from the scope of the Directive, their growth creates risks, and it mentions in particular that such an exclusion “in cross-border situations, [this] could lead to double charging for the same withdrawal by the account servicing payment service provider and by the ATM deployer. Consequently, in order to maintain the provision of ATM services while ensuring clarity with regard to withdrawal charges, it is appropriate to maintain the exclusion but to require ATM operators to comply with specific transparency provisions of this Directive.”
were to apply, this would give rise to a right for the user to claim a compensation from the issuer.

3. APPLICATION OF FEES FOR ATM WITHDRAWALS IN A CROSS-BORDER CONTEXT AND ACCEPTABLE PRACTICES UNDER REGULATION NO 924/2009 AND REGULATION 2019/518

When cardholders use their card(s) to make withdrawals in euro from ATMs outside the borders of the Member State where the issuing bank is located and the account is held, and if any fees are applied by the card issuer to the cardholder for such a transaction domestically, Article 3(1) of the Regulation provides that the principle of equality of charges should apply.

This principle ensures that charges for cross border payments in euro are the same as for corresponding payments within a member State in its national currency including the euro.

For cash withdrawals, as explained in Section 2 above, two situations may arise: (i) the card issuer offers the service to the cardholder and levies charges accordingly, in which case the charges have to be fully transparent according to the obligations laid out in PSD2, including when the cash withdrawal is performed outside network and the ATM provider is acting on behalf of the card issuer; and (ii) the card issuer does not offer the service, which instead is provided by the independent ATM provider.

3.1. Acceptable/prohibited practices with regard to charging fees in a cross-border context where the service is offered by the card issuer

In this situation, the cardholder shall pay the same fee as the one applied to a corresponding domestic withdrawal by his card issuer (inside or outside network), and which should be specified in his framework contract, including where direct charging by the ATM provider acting on behalf of the card issuer is agreed between the two of them. Any fees levied by the ATM provider directly to the cardholder that would be different than domestically, as specified in the framework contract between the card issuer and the cardholder would contravene the Regulation. This also applies if in a domestic context the cardholder is only charged by its card issuer (through indirect charging), whereas in a cross-border context the ATM provider acting on behalf of the card issuer applies a direct charge. In these situations, the payment service user would have a right to revert to the card issuer for a refund of any additional charge incurred when withdrawing cash abroad.

3.2. Acceptable/prohibited practices with regard to charging fees in a cross-border context if the service is offered by an independent ATM provider

In this situation, as the card issuer is not providing the service (which the cardholder can ascertain from his/her framework contract) and the independent ATM provider is not acting on behalf of the card issuer, the independent ATM provider may charge for the cash withdrawal service, but the card issuer may not, as it cannot charge for a service that is not included in its framework contract. In addition, the fee should be the same as the one applied by this ATM provider domestically for a corresponding withdrawal. In the case where the independent ATM provider does not offer such service domestically, there is no corresponding domestic payment, and therefore, the principle of equality of charges laid down in the Regulation does not apply.
4. **CONCLUSIONS**

- Card issuers are free to provide ATM withdrawals inside and outside their ATM network and to charge for those services, but these charges should be clearly disclosed in the manner prescribed under PSD2;
- Both direct and indirect charging are acceptable practices;
- Indirect and direct charging are mutually exclusive;
- To be consistent with Regulation 924/09, charges levied in a cross-border context shall depend on 1) which entity is providing the service - the card issuer or the independent ATM provider with which the issuer has no contractual relationship; and 2) the existence of a corresponding domestic payment in either cases.