



EUROPEAN COMMISSION  
Directorate General Internal Market and Services  
Directorate General Competition

**Feedback statement  
on European Commission Green Paper  
“Towards an integrated European market  
for card, internet and mobile payments”**

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## 1. INTRODUCTION

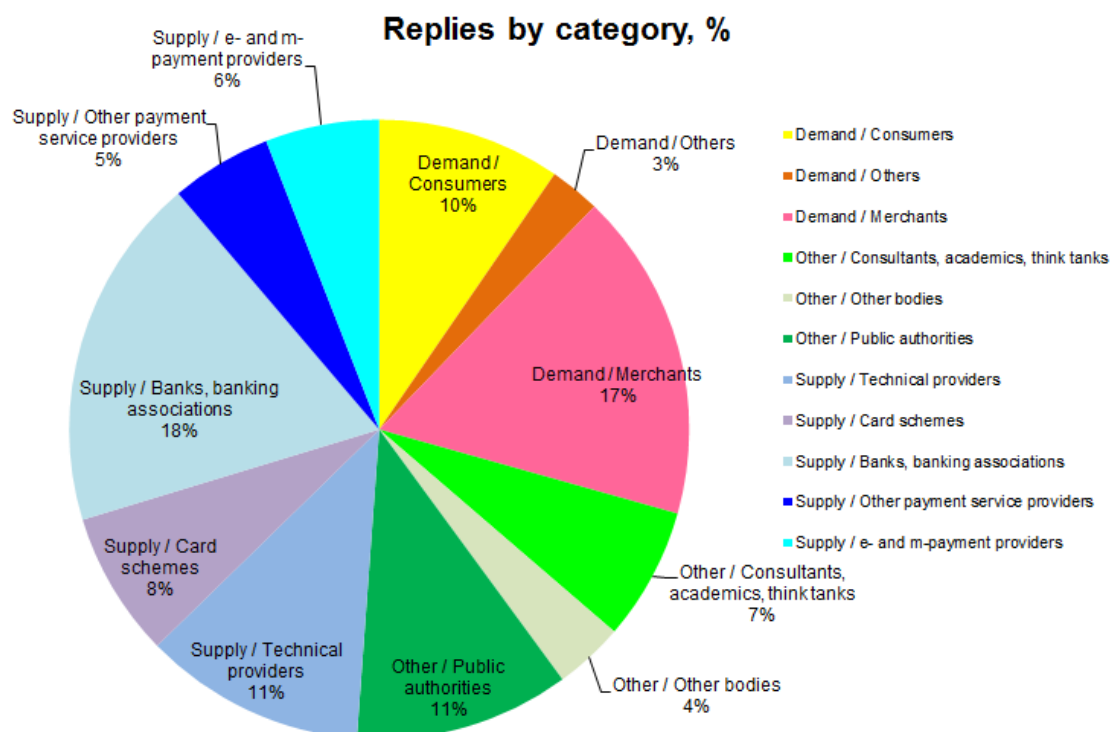
On 11 January 2012 the Commission published a *Green Paper “Towards an integrated European market for card, internet and mobile payments”* and invited all interested parties to participate in the public consultation, which ran until 11 April 2012. The purpose of this consultation was to collect the opinions of the market participants on a number of payment issues and to identify their requirements and expectations vs. the Single Market in payments.

This document summarises the contributions received in response to the public consultation. Its objective is to present an impartial overview of the opinions expressed and arguments presented by stakeholders in their individual contributions. The views summarised in this document do not necessarily represent the views of the Commission and do not prejudice, in any respect, the policy orientation which may be developed by the Commission in the future.

## 2. STATISTICS

Overall, 306 written responses have been received by the Commission<sup>1</sup>. However, a number of answers from some categories of respondents, namely banks and merchants, were almost identical to the responses of their interest representatives at the EU-level and placed just additional emphasis on some aspects of the common answer.

**Chart 1:** Number of contributions by stakeholder category (stakeholders or organisations representing them)



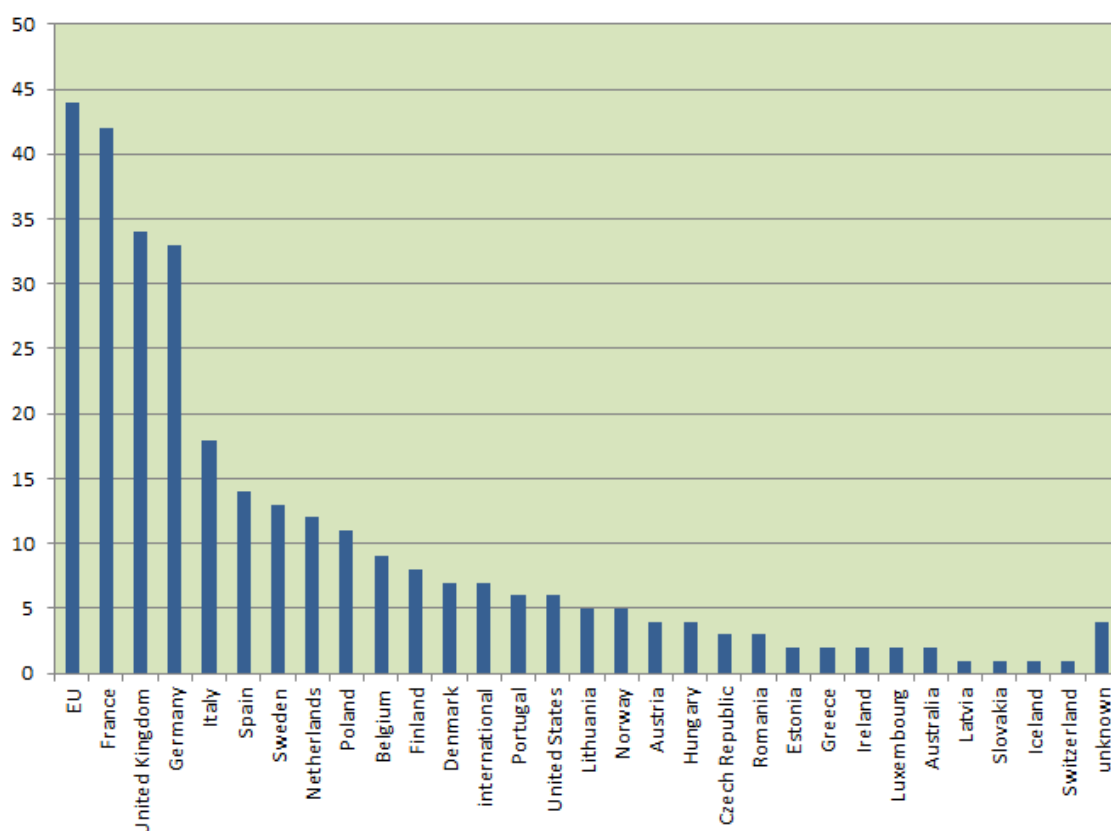
<sup>1</sup> See the list of responses, and the detailed answers via:  
[http://ec.europa.eu/internal\\_market/payments/cim/index\\_en.htm](http://ec.europa.eu/internal_market/payments/cim/index_en.htm).

Around 50 % of all replies came from the supply side of the market. The largest contributors in this group were banks and bank associations (18 % of all answers in the consultation), followed by technical payment providers (11 %) and card schemes and associations (some 8 % of the answers). There was also a significant representation of e- and m-payments providers and of other payment service providers (around 7 % of all answers for both categories).

Some 29 % of all answers were sent by the demand side. The responses in this group were dominated by merchants and merchant organisations (some 17 % of all answers in the consultation). A number of contributions were received from consumer organisations and individual consumers (around 9 % of the answers). Other stakeholders on the demand side contributed to a minimum extent (some 3 % of answers).

Finally, around 21 % of the responses in the consultation were delivered by other market actors. In this group replies were received mostly from public authorities (over 10 % of the total number of answers). There were also some replies from consultants, think tanks, academics and law practitioners (close to 7 % of the answers). Small number of contributions arrived from some national or professional organisations (around 4 % of answers).

**Chart 2:** Number of contributions by Member State/territorial origin



In total, contributions were received from 23 out of the 27 Member States, as well as from numerous EU representative groups or bodies. Several contributions arrived also from Norway, Iceland and Switzerland (EEA countries) and from the USA and Australia. Two thirds of the responses came from the euro area Member States or from the EU-level representative groups and bodies.

### 3. SUMMARY OF RESPONSES

The Green Paper contains 32 questions across a number of specific aspects. In order to summarise the replies in the most useful way and to present the general conclusions from the consultation, the analysis of answers has been structured along these aspects rather than based on each individual question.

#### 3.1. Market fragmentation, market access and market entry across borders

##### 3.1.1. Multilateral interchange fees

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| (1) Under the same card scheme, MIFs can differ from one country to another, and for cross-border payments. Can this create problems in an integrated market? Do you think that differing terms and conditions in the card markets in different Member States reflect objective structural differences in these markets? Do you think that the application of different fees for domestic and cross-border payments could be based on objective reasons? |
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Respondents were divided on whether MIFs' differences from one country to another and for cross-border payments under the same card scheme were problematic. Card schemes and banks respondents considered these differences reflect costs and market, historical or objective structural differences at domestic level – including card usage, volumes, level of usage and cost of cash processing. They were of the view that they do not hinder market integration as other factors are to blame, including different local regulatory obligations, limitations set by domestic schemes to cross border acquiring, the complexities of certification for acquirers. A single MIF would in their view result, in the long run, from achieving market integration but would not be a precondition for it.

On the other side, merchants, consumer organisations and some non-bank payment service providers considered that MIFs differences are not justified and that the same MIFs should apply for national and cross border transactions, and across Member States. These differences were seen as not reflective of structural differences or based on objective reasons. In their view, they are problematic as they raise barriers to market entry henceforth limiting competition and resulting in higher prices whilst preventing market integration. Retailers underlined the impossibility for competition in acquiring to play its role in respect of MIFs convergence, because of the obstacles to cross-border acquiring.

Public and competition authorities acknowledged that a number of factors, including structural, cultural and historical ones, and scheme rules as well as past or current competition proceedings or regulatory interventions could influence the level of MIFs in national markets. Public authorities considered however that MIFs should be harmonised to achieve an integrated market.

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| (2) Is there a need to increase legal clarity on interchange fees? If so, how and through which instrument do you think this could be achieved?   |
| (3) If you think that action on interchange fees is necessary, which issues should be covered and in which form? For example, lowering MIF levels, providing fee transparency and facilitating market access? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards? |

The need to increase legal clarity on interchange fees seemed to be widely supported by respondents across all constituencies. In this respect, payment schemes, banks, public authorities and telecom operators deplored the lack of legal certainty, which banks regarded as resulting from diverging competition cases at national and European level. According to banks, this uncertainty risks reducing the level of long-term investment and may impede the emergence of new and innovative technologies and business models.

However, banks seemed opposed to a regulatory initiative on interchange fees as in their view it would create confusion, whilst the Visa and MasterCard proceedings are ongoing and they expect legal clarity to be provided soon. Banks were also of the view that regulating MIFs would lead to higher cardholder fees, and that retailers would not pass on benefits to consumers. Most non-bank payment service providers seemed to agree with banks on the absence of a need for regulatory intervention. In case of a regulatory initiative on MIFs, it was mentioned by some respondents from the supply side that smaller banks and payment providers should not be in the scope.

Regarding the specifics of a possible action on interchange fees, payment schemes were of the view that any such initiative should not make cards less attractive as compared to cash. According to them, reducing MIF levels would raise barriers to market entry, potentially limit cards penetration at retailers – an opinion banks shared – without necessarily leading to lower retail prices for consumers. If an action in interchange fees was deemed necessary, only anticompetitive practices should be covered in the view of payment schemes, and whilst some schemes acknowledged that the merchant indifference test (MIT) could be used for assessing appropriate levels of MIFs for debit cards, deferred debit and credit cards should be further discussed as cash would not be an appropriate comparator. Banks were of the view that banning MIFs would favour three-party schemes, resulting in higher MSCs which are generally passed on to consumers. They saw difficulties in a regulator setting the right level of interchange, which should at the same time promote card acceptance and allow costs to be covered.

Retailers took the view that MIFs are surplus to requirement for SEPA to become a reality as they result in inverse competition favouring the most expensive means of payment and raise barriers to market entry, whilst creating a risk of spill-over effect from cards to mobile and internet payments. In their view, the absence of issuers' income resulting from interchanges does not hinder cardholder usage, merchant acceptance or card issuing in large numbers. In their view, issuers and acquirers should be mandated by regulation, to allow for a basic payment functionality (with no per-transaction MIF applying). If different MIF rates continue to apply depending on the card type, the 'Honour All Cards Rule' (HACR) and 'Non-Discrimination Rule' (NDR) should be relaxed. Retailers should be able to choose between payments being guaranteed or not. In case of MIF regulation, a maximum fee should be set, but not on the basis of the 'Merchant Indifference Test' (MIT) as merchants and consumers would then see no benefit in choosing more advanced payment means than cash, and in their view this test leads to MIF levels well above the real cost of processing a card transaction. The MIF level should be based on effective costs and risks borne by payment providers for cross border and domestic payments. If ad valorem debit cards fees are introduced, a maximum amount should be set, for merchants with higher than average transaction values not to be adversely affected.

Most consumers supported the merchants' analysis of the negative impact of MIFs on competition and consumers welfare. They suggested a differentiation between 'core and basic' card payment services and 'additional' services, consumers and merchants would be free to choose and pay for in a transparent way. In line with this, they believed that the introduction of a domestic basic debit card with no MIF should be considered.

Competition authorities supported the need for action to lower MIFs, in particular for mature four-party schemes, and the merchant indifference test as the most appropriate methodology for setting MIFs. Other public authorities were divided, some favoured a ban or a decrease in MIFs to encourage competition, as cards volumes are constantly increasing and high fees discourage acceptance. Some viewed competition rules as sufficient, and considered MIFs as necessary to incentivise issuing, supporting banks' analysis.

There was a consensus amongst respondents in favour of some form of higher fee transparency on the market. Most payment schemes were in favour of being obliged to publish MIFs and any other data needed by merchants. Along similar lines, non-bank payment service providers saw a need for transparency measures regarding MIFs and processing costs and called for acquirers to be more transparent about their costs for processing payments toward retailers, for the structure of the merchant service charges (MSCs) to be simplified and for the merchant to be able to choose whether he wants a payment guarantee or not. Competition authorities also supported increased transparency in MIF rates towards merchants. On the other side banks viewed merchants' ability to negotiate with their banks as more important than transparency per se. Retailers somehow disagreed with this, calling in particular for being able to be informed about the MIF level for guaranteed and non-guaranteed payment, and being able to choose between the two.

There was a wide support amongst all stakeholders, with the notable exception of three-party schemes and a few banks, that in case of regulation the same rules apply equally to 'three-party' schemes and to 'four-party' schemes. It was underlined that four-party schemes could otherwise transform themselves into three-party schemes, resulting in regulatory circumvention and a lack of level playing field.

Views were more divided on whether a distinction should be made between commercial cards and consumer cards. Payment schemes and some banks argued that a premium charge for additional services linked to commercial cards is legitimate, and that these cards should not fall under the scope of a possible regulation. Other banks were however of the view that the same MIF methodology could apply to both card types.

Merchants, consumers and public authorities considered that no distinction should be made, as far as the MIF is concerned, and that both types should be covered. It was pointed out in particular that benefits to merchants are very similar, and that a differentiated treatment would make the handling of payment transactions more cumbersome and less clear to retailers.

### 3.1.2. Cross-border acquiring

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| <p>(4) Are there currently any obstacles to cross-border or central acquiring? If so, what are the reasons? Would substantial benefits arise from facilitating cross-border or central acquiring?</p> <p>(5) How could cross-border acquiring be facilitated? If you think that action is necessary, which form should it take and what aspects should it cover? For instance, is mandatory prior authorisation by the payment card scheme for cross-border acquiring justifiable? Should MIFs be calculated on the basis of the retailer's country (at point of sale)? Or, should a cross-border MIF be applicable to cross-border acquiring?</p> |
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A significant number of banks and payment schemes were of the view that obstacles to cross-border/central acquiring do not or no longer exist. However, a majority of schemes and most banks saw lack of harmonisation and of a level playing field caused by local bilateral rules, different standards and different national settlement and clearing protocols, processing requirements and technical terminal-related differences as obstacles. The vast majority of non-bank payment service providers also highlighted fundamental obstacles: domestic schemes and their limiting partnerships with new entrants, domestic licencing and payment applications bilateral interchange agreements hindering foreign acquirers. Merchants and consumers also highlighted many local obstacles.

Most banks did not see the operation of pan-European four-party schemes as hindering cross-border acquiring, contrarily to domestic schemes and three-party schemes. In contrast to banks and payment schemes, most merchants and treasurers flagged the international card scheme rules as obstacles to cross-border or central acquiring. The impact of scheme rules in general in preventing central and cross border acquiring was highlighted by some public authorities.

Once obstacles are removed, there is a large consensus amongst respondents on the main benefits of cross-border/central acquiring such as enhanced market entry (and thereby innovation, competition and enhanced efficiencies through economies of scale), merchants being allowed to choose their acquirer resulting in enhanced transparency and the reduction of merchant's overheads — associated with managing multiple networks and suppliers — and transaction costs through negotiating fees and centralising financial operations.

According to the Eurosystem, any business rules establishing barriers for cross-border acquiring are detrimental to an integrated European cards market and have to be abolished. In particular, any rules implying fee-related restrictions or reducing the benefits and thus the incentives for cross-border acquiring, need to be removed (e.g. applicable MIF levels — if any — should not be restricted to those of the country of the point of sale, a default cross-border MIF or the MIF of the acquirer's country of origin should apply instead).

Whilst some payment schemes favoured a harmonised regulatory framework, the majority of them and banks claim that these obstacles should not be removed through regulation, but that market-driven initiatives should be favoured, e.g. standardisation although technical requirements should not be too prescriptive to allow for innovation. The SEPA Cards Framework (SCF), whilst identifying the issues and possible solutions, cannot solve limited access to domestic schemes. With this in view, a number of banks



called for active enforcement of the SCF to ensure that schemes which claim to be SEPA compliant cannot restrict or block cross-border acquiring. Non-bank payment service providers also prefer standardisation, preferably based on ‘best practices’ on interfaces, technical standards e.g. for terminals and authorisation procedures to regulation. Merchants suggested a wide array of measures to facilitate cross-border/central acquiring, related in particular to uniform principles and standardisation (fees, processing and authorisation) and a preference for legislative action in the field of MIF levels. Standardisation and harmonisation, preferably through regulation was also supported by consumers.

Respondents were divided on the issue of mandatory prior authorisation for cross-border acquiring. While incumbent card schemes and banks argued that it ensures payment guarantee, quality of services and interoperability, others argued that there are already sufficient notification and registration mechanisms in place to reach these objectives and pointed to the practical impossibility of achieving pan European prior scheme authorisation. Some merchants suggested to set limits to it, and to institute safeguards.

Schemes and banks were divided on the MIFs to be applied, some being in favour of cross-border MIFs for the sake of convergence and harmonisation and others of a single pan-European MIF applying in the future. However, the majority favoured domestic MIFs applicable in the country at the POS, to prevent domestic acquirers from losing market shares to the ones establishing themselves in the countries with the lowest cost structures. A minority was in favour of the application of the MIF of the cards’ issuer country. In contrast, the majority of non-bank payment service providers and retailers were against country specific MIFs. Whilst some retailers argued in favour of an abolishment of MIFs altogether, the majority prefers to see a common MIF, agreed and applied across Europe. A cross-border MIF based on the acquirer’s location was supported by some retailers and some telecom operators.

Similarly, some public authorities argued in favour of the MIF based on the acquirer’s country to allow retailers to ‘forum shop’. Setting a common methodology for national MIF calculation would then result in a variety of domestic MIFs/MSCs, allowing for additional downward competitive pressure to bear on MIFs. There was however no consensus on this, most public authorities calling for licencing, local card schemes’ rules, technical standards, to be made compliant with SEPA.

### 3.1.3. *Co-badging*

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| (6) | What are the potential benefits and/or drawbacks of co-badging? Are there any potential restrictions to co-badging that are particularly problematic? If you can, please quantify the magnitude of the problem. Should restrictions on co-badging by schemes be addressed and, if so, in which form? |
| (7) | When a co-badged payment instrument is used, who should take the decision on prioritisation of the instrument to be used first? How could this be implemented in practice?   |

Most stakeholders across all categories saw potential benefits in co-badging, in terms of cardholder’s choice and market entry for instance through easier card acceptance of better known brands, or cost sharing. Also, consumers saw co-badging as an opportunity to maintain national debit schemes in a SEPA context. However, some merchants highlighted that co-badging would only be beneficial if it mandated the inclusion of a stand-alone basic payment application on all SEPA card products.

However, drawbacks were also mentioned by many respondents: potential consumer confusion; different security standards and complexities in coordinating between schemes — resulting in potentially high security and technical costs to issuers and processors, liability issues and possible free riding on investments. Payment schemes feared that payment solutions with the highest MIFs would be favoured, whilst retailers pointed to potential increased costs and to the danger of banks shifting costs to the acquirer side instead of increasing competition between issuers. Consumers also feared increased costs if co-badging of current national debit cards with an international scheme were to become compulsory.

In terms of restrictions to co-badging, many stakeholders pointed to scheme, technical and regulatory rules and security issues: restrictive co-badging rules defined by international schemes for instance the obligation to route cross-border transactions through them, schemes or issuers setting defaults as to which scheme must be used for domestic or cross border transactions, resulting in schemes not competing. Some schemes suggested that the co-badged schemes should have equal standing and the use of one scheme should not be impacted by the other scheme's rules. Other possible restrictions related to cardholder's data protection, point of sale technological restrictions on cards and terminals, different operational time, or safety requirements.

Despite these restrictions, most stakeholders were against mandatory co-badging, pointing to the freedom of the issuer to decide if and with whom to co-badge, as well as the freedom of merchant to decide as to the acceptance. The development of mobile and electronic payments as alternatives to cards co-badging and the fact that steering rules allow merchants to effectively influence consumers' choice were highlighted by some respondents to justify this. In addition, merchants feared co-badging be used to circumvent any action taken against honour-all-cards rule or non-discrimination rule. For public institutions, the necessary precondition for co-badging was that participating schemes agree on issues like management procedures, technical interoperability, liability or security, which in their opinion can hardly be imposed through regulation.

Only a few stakeholders were in favour of mandatory co-badging. Some merchants opined that it would allow them to choose multiple routing options for any given transaction. Some schemes called for imposing co-badging of — at least — more than one real SEPA compliant scheme and banning through regulation the prohibition of co-badging in private rules. Some non-bank payment service providers were in favour of removing technical hurdles, defining mandatory conditions for participation in local procedures, and an obligation to give access to market entrants when they comply with the conditions set. It was felt that if co-badging is mandatory, it should not apply to smaller institutions.

Regarding the prioritisation of the instrument to be used, most stakeholders were in favour of consumers making the final decision, selecting from the options provided by the merchant at the point of sale. Most payment schemes, non-bank payment service providers, merchants and some banks supported this, with the merchant determining the priority of display of the options to the consumer. Most banks supported the cardholders making the choice amongst the options offered by both issuers and merchants, highlighting the importance of merchants informing customers in advance about the application(s) they accept. Generally, it was agreed that when merchants decide on the prioritisation and cardholders overrule this by choosing an expensive means of payment for the merchant, the latter should be allowed to steer the former towards more effective means of payment by surcharging on a cost basis or rebating. Consumers agreed with merchants having the possibility to steer consumers but only through rebates and other

incentives. In addition, merchants insisted on them being able to block instruments they consider inefficient – hence rejecting HACR.

Views on pre-selection of applications were mixed. Some payment schemes required that the issuer or the couple issuer-cardholder could pre-select the priority brand. On the other hand, non-bank payment service providers complained about the current SCF which in their view foresees that issuers preselect the brand to be used on co-badged cards at the POS/POI, which prevents the most effective payment method from being chosen. Merchants rejected the influence of schemes on prioritisation at the point of sale and in particular co-badged cards defaulted to the most expensive option. Public authorities were of the view that the preference of the party which bears (most) costs of the payment choice should prevail. In case of technical brand pre-determination, the party adversely affected should have the possibility to agree with its counterpart on an alternative method. However, it would be useful if merchants could set a default option for indifferent cardholders.

#### *3.1.4. Separating card schemes and card payment processing*

- (8) Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?
- (9) Should any action be taken on this? Are you in favour of legal separation (i.e. operational separation, although ownership would remain with the same holding company) or ‘full ownership unbundling’?

The vast majority of payment schemes and banks considered that the bundling of scheme and processing entities is not problematic. For some payment schemes, this would be the case only if there was an obligation to use a specific processor or cross subsidisation of the running costs through the scheme and processing fees. Some banks acknowledged that as a matter of principle bundling of scheme and processing could become problematic where a ‘bundled’ scheme starts to abuse a dominant market position for instance via cross-subsidisation. Overall, for almost all payment schemes and banks no action should be taken as the SEPA Cards Framework is very clear and is sufficient to address any problem which might occur — provided it is implemented in the same way by all players and transparency of fees is ensured — and competition rules would apply anyway.

In contrast to banks and payment schemes, most non-bank payment service providers opined that bundling creates entry barriers, and therefore it should be ensured that it is possible to acquire a card without purchasing the processing services of the scheme and vice versa. Most of them seemed to support legal separation rather than full-ownership unbundling. Some players suggested a two steps approach with a legal separation to be completed within a certain time period, to be followed by full ownership unbundling. They pointed out to the benefits of full ownership unbundling in all the EU markets where it has been undertaken. Some also feared that schemes were currently extending their participation in the payments value chain through acquisition of and/or investment in processing activities or in acquiring innovative new players, for example in mobile payments.

Similarly to non-bank payment service providers, most merchants and consumers supported the separation of scheme and processing entities and thought that bundling was problematic. Whilst consumers seemed to be in favour of full ownership unbundling, merchants were more split in terms of actions to be taken. Some favoured legal

separation over full ownership unbundling and others preferred a more thorough implementation of the SCF, with more detailed rules spelling out, for instance, the exact requirements on card schemes.

Most public authorities supported the separation of scheme and processing, but were divided on the potential actions to be taken. Some favoured the recourse to competition enforcement, others believed a more thorough implementation of the obligations under the SCF should be considered. Finally, some public authorities expressed their support for legal separation.

### *3.1.5. Access to settlement systems*

- (10) Is non-direct access to clearing and settlement systems problematic for payment institutions and e-money institutions and if so what is the magnitude of the problem?
- (11) Should a common cards-processing framework laying down the rules for SEPA card processing (i.e. authorisation, clearing and settlement) be set up? Should it lay out terms and fees for access to card processing infrastructures under transparent and non-discriminatory criteria? Should it tackle the participation of Payment Institutions and E-money Institutions in designated settlement systems? Should the SFD and/or the PSD be amended accordingly?

There was no consensus amongst payment schemes and banks on whether non-direct access to clearing and settlement is problematic to non-bank payment service providers and e-money institutions. Some payment schemes and most banks claimed that these providers can operate with reduced costs and risks under non-direct access, and that many banks, especially smaller ones, use non-direct access.

Other payment schemes and banks, most non-bank payment service providers and Telecom operators disagreed and highlighted that non-direct access generates higher costs, complexity and more lengthy processes. Whilst a few non-bank payment service providers believed that indirect access allows multi-banking and shopping around for the best deal, most of them agreed that direct access would be beneficial and foster their reliability as the involvement of central banks contributes to reductions in credit or liquidity risks. Most retailers and consumers favoured direct access, pointing to the need for openness and non-discrimination.

Most payment schemes and banks agreed that in case direct access is granted, it should be based on a level playing field in terms of regulatory, solvency and prudential supervision requirements as well as risk management policies to ensure the integrity and security of payment systems. The need for the capital requirements framework to be enhanced to tackle systemic risk, a higher degree of involvement of regulators with new players and of monitoring by supervisors of their activities and licences, the need for SEPA card processing rules not to conflict with global rules were mentioned and for the implementation of the SCF at national level to be monitored were mentioned. It was also suggested that the Settlement Finality Directive (SFD) be amended to cover non-bank payment service providers and e-money institutions.

Whilst some public authorities pointed to potential exclusionary effects against non-bank participants, the majority focused on the need to ensure that direct access does not raise operational and liquidity risks. One authority suggested amending the SFD and the PSD, to allow for direct access, since an entity, which is licenced and supervised (similarly to

credit institutions) by a national authority, should benefit from similar conditions. In case a common framework is set, public authorities wanted it to focus on high level principles (settlement risks, consumer protection) and aim at security and effectiveness while maintaining low processing costs and transparency. It should also not constrain the development of local payment card schemes. Payment systems should always be able to set access criteria to protect financial and operational stability.

There was a wide consensus amongst payment schemes, banks, non-bank payment service providers and public authorities in favour of fees and commercial terms being set by market forces rather than by regulation. Some retailers however suggested granting access at reasonable costs as an alternative to direct access. On the other hand, consumers favoured access fees and commercial terms being laid down under transparent, open and non-discriminatory criteria, and for the PSD and the SFD to be amended accordingly.

### 3.1.6. *Compliance with SEPA Cards Framework*

(12) What is your opinion on the content and market impact (products, prices, terms and conditions) of the SCF? Is the SCF sufficient to drive market integration at EU level? Are there any areas that should be reviewed? Should non-compliant schemes disappear after full SCF implementation, or is there a case for their survival?

Views were mixed on the impact of the SCF. Payment schemes, banks and a majority of public authorities generally supported the view that it has a positive impact on the integration of the European cards market. Merchant and treasurers generally considered that its implementation is an important step forward but is not sufficient to drive market integration and they would like its scope to be extended to cover online proximity or remote non card instruments. On the other hand, consumers felt its benefits are unclear, and most non-bank payment service providers lamented its limited impact, as the lack of common technical standards has resulted in low competition and expensive cross-border acquiring.

Payment schemes and banks shared the view that the next steps should be to support the transposition of the SCF general specifications and to ensure an effective implementation by all market players, through mandatory adherence and an appropriate control process. Priority areas for further work would include technical standardisation, interoperability and reachability, security and fraud prevention, above all for mobile payments and emerging products like e-wallets. Some card schemes however highlighted the need to clarify that SEPA compliant payment schemes should entail the accessibility and availability of the scheme in a minimum of Member States, to avoid that existing monopolies in each Member State persist, whilst others mentioned as problematic the disappearance of some national schemes. There were also doubts with regard to the alleged compliance of some schemes with the SCF principles.

In spite of this, the majority of card schemes and banks did not find it necessary to review the SCF at this stage. Overall, banks and card schemes viewed the EPC as lacking the ability to enforce the SCF, and called on the Commission to support the SCF and set timelines for its implementation. Banks suggested that a European body be set up to monitor compliance with the SCF and impose effective sanctions.

On the other hand, a review of the SCF was favoured by non-bank payment service providers, merchants and other users and for all relevant stakeholders to be allowed to contribute equally – in their view this had not been the case in the past. Some users called

for the SCF to be taken out of the hands of the EPC, and for a revised consultation and governance structure to be set up. Merchants and other users supported a clearer definition of what is a SCF compliant scheme, and made proposals to complete the SCF in terms of certification, implementation schedule monitoring, and penalties.

Whilst a majority of public authorities supported the SCF, others highlighted the fact that many of the main elements of SCF are not applied. In addition, some domestic card schemes have described themselves as SEPA-compliant, but are not accepted in other Member States. Some public authorities were of the view that the SCF maintains the status quo in the market and practically hinders market entry. Others suggested replacing the SCF by a fully-fledged common SEPA card scheme applicable to all payment cards used in the EU.

The majority of payment schemes, banks and non-bank payment service providers considered that no decision on the non SCF compliant market players should be taken for the time being, and that the disappearance of such schemes should not be regulated but left to the market. Some suggested either that they are not recognised or that a temporary 'niche product' approach be followed. Some non-bank payment service providers highlighted the need for sufficiently long transition periods to allow SEPA compliance to be achieved.

Merchants were also divided, some being of the view that non-compliant schemes should disappear, whilst others considered they should not be abandoned, a view shared by consumers. Consumers regretted the absence of emergence of a new European card scheme, suggesting that co-badging or the expansion of existing national card schemes be explored. Merchants suggested a mandatory basic payment service being incorporated in the SCF, or ELV as offering a real competitive alternative. On the other hand, public authorities considered that non-compliant schemes should disappear after full implementation of the SCF.

#### *3.1.7. Information on the availability of funds*

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| (13) Is there a need to give non-banks access to information on the availability of funds in bank accounts, with the agreement of the customer, and if so what limits would need to be placed on such information? Should action by public authorities be considered, and if so, what aspects should it cover and what form should it take? |
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Views seemed to be polarised on the issue of access to information on the availability of fund in bank accounts.

Most payment card schemes and banks seemed to be widely opposed to granting such access. A number of reasons were mentioned including risks of fraud, possible misuse or misappropriation of information, potential infringement of data protection and misuse of these data for purposes other than payment services. More general potential negative impacts were also listed for instance on the reputation of the bank holding the account in case of problems, or on consumers due to their alleged inability to assess the possible dangers in terms of e.g. liability, or on consumers' confidence in e-payments. Banks pointed to legal issues, as providing access to the account information would be currently prohibited, even to other banks. Banks insisted on the fact that such access would create costs and therefore banks should be compensated financially, because of their investments in security. In their view, a number of additional new



infrastructures/applications would have to be developed by banks, for instance to control account holder's consent and the eligibility of third parties.

The issue of adequate supervision of non-banks and the need for a common regulatory framework, for instance in the framework of the Payment Services Directive (PSD), was raised by banks but also by some payment card schemes and e-payment providers. Whilst the former saw this as complicated, cumbersome and of limited usefulness as existing e-payment schemes are in their view already successful, the latter considered that opening such access would enhance competition and the development of alternative payment solutions.

Whilst not opposed per se to granting access, some payment card schemes and e-payment providers highlighted the need for safeguards, such as restricting the information given to the specific transaction and ensuring it is not transmitted to third parties. Adequate contractual agreements between all parties concerned (including for information of customers, liability issue and fair remuneration of the service for banks and non-banks) were also mentioned. Most non-bank payment service providers supported the need for access, and for security and confidentiality issues to be addressed, including by regulation. In their view, information, in real time, should be mainly limited to a check of the availability of funds. Telecom operators also agreed on the need for access to enhance competition. It was highlighted that failing access, payment service providers e.g. an e-wallet solution would have to go through the card network which would entail high fees and security risks for POS and remote transactions.

Retailers and consumers supported the idea of granting access, as the former would appreciate a form of confirmation of the availability of funds of their customers and the latter sees it as enhancing competition from non-banks. Retailers were in favour of a European-wide legal framework setting strict security rules to avoid fraud and protect personal data, and defining the certification criteria, the obligation for banks to make the information available and customers' information. Consumers highlighted that bank accounts and the funds deposited on these belong to the bank holder and not the bank, and the bank should only be able to refuse access when the account holder has given his/her consent and to reject a transaction in clearly limited cases, e.g. in the absence of sufficient funds. Consumers were also in favour of standardisation and certification being encouraged to guarantee that the same level of security as for home banking is ensured.

Competition Authorities supported access, and considered that the risks could be addressed through bilateral agreements, such as contracts, between market participants. Full information, including on liability, should be provided to customers at the time of the transaction. In addition banks and non-banks could adopt standards to tackle confidentiality and security issues. In contrast, most other public authorities supported the position expressed by banks, highlighting security and liability issues and the lack of supervision by banking authorities, whilst insisting on consumers being fully informed. They also shared the views of banks on costs for investing in security and additional costs for access to be set up. They considered that authorising such access would be complicated to legislate and implement regarding e.g. the type of data to be accessed.

### 3.1.8. *Dependence on payment card transactions*

- (14) Given the increasing use of payment cards, do you think that there are companies whose activities depend on their ability to accept payments by card? Please give concrete examples of companies and/or sectors. If so, is there a need to set objective rules addressing the behaviour of payment service providers and payment card schemes vis-à-vis dependent users?

Respondents' views were divided on the existence of a 'dependence' of (some) companies on card acceptance, and on the resulting need for objective rules.

Banks and most card schemes acknowledged the importance of card acceptance in particular for web merchants but highlighted the absence of a dependence, due to the existing freedom of choice for merchants and cardholders, the development of alternative e-payment methods and the fact that merchants generally accept several payment methods, including cash. The level of competition in the acquiring market, the existence of flexible interfaces and the ability to switch payment provider were also mentioned to justify the absence of a need for objective rules. But even if there were dependence, some payment schemes highlighted the legitimacy to take measures to suspend service provision if third parties engage in potentially illegal activities or activities which may impact their good reputation. However, others highlighted the need for reasons for refusal to be legitimate and proportionate.

Some card schemes and banks were of the view that the transparency measures already in place, including surcharging, would in any case allow merchants to prevent any dependency from occurring. Merchants repeated the need to change business rules of card schemes and introduce transparency measures to allow them to effectively deal with dependency. At the same time, other merchants insisted that dependency actually prevents surcharging to be applied.

Retailers, consumer organisations but also some PSPs agreed that generally brick and mortar and e-commerce retailers are dependent on the acceptance of payment cards — even if some specific sectors (travel, entertainment and gaming) and some Member States with a high proportion of card usage were singled out as particularly vulnerable by some of these stakeholders.

Both regulatory obligations (e.g. online gambling regulations) and the relative use of payment cards compared to other means of payment in national markets were mentioned as reinforcing factors by most stakeholders. The need for objective rules addressing the behaviour of PSPs and payment card schemes was supported by almost all merchants, consumers and some PSPs. Absence of effective competition between payment methods was also underscored as a possible justification for regulatory intervention. Some PSPs and users highlighted the need for sanctions and effective remedies (e.g. a referral process to independent bodies with enforcing powers) in case of non-implementation or abuse (e.g. unfairly blacklisting retailers instead of making the necessary investments to prevent fraud). The importance of flanking measures, including unblending, the possibility for merchants to surcharge, and for the HAC rule to be relaxed, was underlined by some PSPs, merchants and consumers. Consumers also mentioned the ability to pay with a range of options as being very important for them. Similarly, some merchants floated the idea of considering a basic debit payment instrument as a universal service, available to all. Most public authorities highlighted their limited experience with regard to this issue, and only a few supported measures to deal with dependency.



### **3.2. Transparent and cost-effective pricing of payment services for consumers, retailers and other businesses**

#### *3.2.1. Consumer — merchant relationship: transparency*

- (15) Should merchants inform consumers about the fees they pay for the use of various payment instruments? Should payment service providers be obliged to inform consumers of the Merchant Service Charge (MSC) charged/the MIF income received from customer transactions? Is this information relevant for consumers and does it influence their payment choices?

A large majority of respondents, among all stakeholder categories, expressed the opinion that information on the fees that merchant pay to their payment service providers (MSC) and on the income received by PSPs from the merchant (MSC, MIF) is not relevant for consumers and does not influence their payment choices. A number of reasons were put forward. First of all, there was a perception that unless surcharging or rebating is used, consumers base their choice for a given transaction first and foremost on their own visible costs and convenience. They also take into account additional benefits they receive when a specific payment instrument is used (e.g. a credit line, revocation possibility, loyalty points etc.). In the view of the respondents, the costs to the merchant are not a factor in a payment decision, as consumers would assume that these costs are anyway included in the price of the product. This opinion was however not shared by some payment schemes, which were in favour of consumers being informed about the amount of fees.

Furthermore, many respondents from the supply side and public authorities opined that any comparison of the cost-effectiveness of the payment means must include the cost of cash and cheques. Most representatives of the payment sector also felt that it did not appear justified to single out the cost of payments from the general costs of the merchants without disclosing other cost items.

Both merchants and PSPs shared to a large extent a concern that the level of MSC is subject to the individual negotiations and considered to be a commercial secret. The level of MSC should be therefore kept confidential, unless merchants are willing to make it public on a voluntary basis. Moreover, many of the respondents in these groups also indicated that from a practical perspective a cost of a single transaction is often difficult to establish or verify with any accuracy at the moment of the payment, as fees are usually calculated in relation to payment volumes and not per transaction. They highlighted the fact that if all possible payment means were to be taken into account, this will result in a level of complexity of information that would confuse consumers and provide mostly redundant information at increased costs for them.

These reactions were complemented by the opinions of consumers and payment service users associations, which felt that the only transparency expected by consumers in relations with merchants is the information on the final price and on accepted means of payment. This information should include any surcharges and other fees related to the processing of the payment transaction as well as to the product (e.g. delivery, handling or issuance costs) and should be given right at the beginning of any transaction, in accordance with the rule ‘the price you see is the price you pay’. In this context, the practices of some online merchants, in particular in the travel sector, were considered as particularly consumer unfriendly and intentionally designed to lead consumer to the suboptimal choices by providing incomplete price information.

On a more general level, consumers expected full transparency on all cost elements (including direct and indirect costs) in their relationship with payment service providers. In case of card payments, for example, they were interested to know what part of charges paid by the consumer related to a simple payment function and what part covered all extra services (like insurance, additional services, gifts, discounts etc.).

3.2.2. *Consumer — merchant relationship: Rebates, surcharging and other steering practices*

- (16) Is there a need to further harmonise rebates, surcharges and other steering practices across the European Union for card, internet and m-payments? If so, in what direction should such harmonisation go? Should, for instance:
- certain methods (rebates, surcharging, etc.) be encouraged, and if so how?
  - surcharging be generally authorised, provided that it is limited to the real cost of the payment instrument borne by the merchant?
  - merchants be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge?
  - specific rules apply to micropayments and, if applicable, to alternative digital currencies?

In the area of rebating, surcharging and other steering practices, the responses were to some extent dependent on the stakeholder category and the practices existing in the Member States of the contributors. However, clear majority views and conclusions could be drawn on some of the discussed issues, in particular surcharging and rebating.

As regards the idea of surcharging in general, these consumers, merchants, as well as some public authorities and PSPs (payment processors) that commented on the subject were often of the view that the discussion on surcharging and other steering practices is secondary to the discussion on interchange fees in general. In addition, some retailers advocated a basic payment service (with restricted or no fees to merchants) as a way to promote competition and innovation in the field of payment services, to the benefit of consumers and merchants.

Moreover, many of the respondents who commented on the issue, mostly among banks and consumers, believed that the case for surcharging was questionable. In particular, some of them were of the view that it allowed merchants not only to avoid paying their own costs of the transaction, but also to make additional profit in virtually all situations, as the costs of payments were already included in the price of their products. They felt that the protection of merchant interests in some Member States became more important than the protection of the consumers. Many public authorities expressed also a concern that surcharging would lead to the increased use of cash payments.

On the other side, some payment service providers, competition authorities and many merchants supported steering mechanisms (including surcharging and rebating) in order to drive consumers to more efficient payment means. Steering to other payment instruments than cards was also seen as relevant by most merchants, some card schemes and banks in the context of the discussion on the difficulty for merchants to refuse cards. It was believed that this would help merchants to prevent dependency on cards.

The implications of current surcharging practices were extensively discussed by all stakeholders. In general, a clear majority of the contributors expressed the view that surcharging should be banned or else fully harmonised across EU and limited to the cost. Such solution was supported to a large extent by PSPs, consumers and some public

authorities. It was also preferred by a majority of contributors if Member State criterion was taken into account. Stakeholders with large exposure for cross-border transactions were more likely to support full harmonisation. Furthermore, PSPs and many public authorities indicated that if surcharging is maintained in the future, it should be applied to a full spectrum of payment means in a neutral manner. Specifically, surcharging should become possible on cash and cheques. Alternatively, a possibility to refuse cash payments should exist.

Merchants had mixed views about surcharging. Some retailers supported a lifting of the restrictions on surcharging as otherwise they would be forced to absorb the costs of the most expensive payment instruments. A majority of them, in particular those representing businesses doing most of their sales online, insisted also on the possibility to use surcharge for more categories of payment instruments. However, many retailers recognised that surcharging was damaging to their relation with the consumer and should ideally be avoided.

Many stakeholders, when discussing surcharging, made references to the Consumer Rights Directive (2011/83/EU) and its Article 19, which obliges Member States to prohibit traders from surcharging above their costs. This provision will be implemented as of 13 June 2014. However, almost all respondents referring to this aspect were anticipating a limited impact of this provision on surcharging practices. They considered it difficult in many circumstances to establish costs categories clearly related to a single payment transaction. More importantly, respondents on this aspect felt that there was no practical way to enforce this provision or to control how these costs are calculated by merchants.

Rebating was considered by the respondents as less contentious issue than surcharging and was discussed less often. It was supported by a majority of stakeholders. For example, some retailers expressed their support to rebating. However, the replies also clearly indicated that due to i.e. strong competition, low profit margins and difficulties in explaining rebates to consumers only few merchants were ready to use them in practice. This was confirmed by consumers: rebating appeared to be rarely used by merchants. Some consumer organisations identified instances of abusive rebating, when consumers are steered to use direct debit to pay utility bills. They highlighted malpractices relating to limited choice of means of payments, overestimated consumption forecasts in connection with obligatory prepayments, subsequent difficulties and very long delays in reimbursements which all led to consumer dissatisfaction with this tool. Rebating was on the other hand supported by most public authorities. The supply side of the market was usually quite neutral on the issue.

No clear majority opinions were found on the issue of offering one, widely accepted payment instrument free of charge. There was some support to the idea from different categories of payment service users. A few public authorities were of the opinion that debit cards could serve for this purpose. Other contributors were of the opinion that such solution seemed impossible to implement on the EU-wide level due to lack of common payment instruments. They were of the view that a national implementation on country by country basis would most likely create or increase existing competitive advantages for some and hindrances for other players while possibly resulting in unequal treatment of consumers coming from other Member States.

There was also no clear message as concerns micropayments. Most of the contributors which addressed this issue considered it as being of relatively little relevance. Some respondents indicated that micropayments should not be, for the time being, subject to

special rules as an intervention which comes too early or is too heavy handed will break this developing business. Others, mostly specific online businesses had different opinion and asked for special rules to be applied.

### 3.2.3. *Merchant — payment service provider relationship*

- (17) Could changes in the card scheme and acquirer rules improve the transparency and facilitate cost-effective pricing of payment services? Would such measures be effective on their own or would they require additional flanking measures? Would such changes require additional checks and balances or new measures in the merchant — consumer relations, so that consumer rights are not affected? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards? Are there specific requirements and implications for micropayments?

There was no consensus amongst stakeholders as regards the need for changes to be contemplated as regards the rules of card schemes related to ‘No Discrimination Rule’ (NDR) (prohibiting retailers to direct customers towards the use of the payment instrument they prefer through steering, surcharging and rebating), ‘Honour All Cards’ (HACR) (obliging merchants to accept cards within the same brand), and blending practices (an average fee for card payments is charged to merchants, who is not informed about the MSCs applied for the different categories of cards).

Most payment card schemes and banks were of the view that there is no need for changes either because the rules at stake do no impact transparency or because the ones which might have an impact have already been dealt with. Some were of the view that the NDR has already covered under the PSD and its implementing provisions at national level. Others highlighted that the steering practices which are not covered under the PSD were also not present in the schemes rules.

On the other hand, some payment schemes, merchants, consumers, most public authorities and all competition authorities were in favour of action to be taken. Generally, it was felt that NDR, HACR or blending force merchants to accept payment instruments that generate higher costs and that would not be able to compete with more cost-effective ones under normal circumstances. Only a handful of retailers believed that action on MIFs should be given top priority and that this would solve many of the transparency issues. Some payment schemes, all merchants, most public authorities and all competition authorities were in favour of the NDR being prohibited or strictly limited, and this could for instance be regulated in the context of the PSD review. As regards a ban of NDR, consumers agreed that merchants should be able to steer consumers towards the use of cheaper payment instruments, but they were almost all hostile to surcharging, mentioning possible abusive surcharging by some merchant categories.

Regarding the HACR, it was felt by most payment card schemes and banks that its abolition would damage the card brands and card user experience, inter alia, because of its negative impact on universal card acceptance, a view shared by a few public authorities. It was stated that Visa and MasterCard already apply separate HACRs for their debit and credit card brands. Views were mixed on the need for the HACR to continue to apply to commercial and consumer cards, and for the differences, including in terms of business contexts, between these to be considered. There was no consensus either on the potentially detrimental impact on micropayments if the HACR was removed.

On the other hand, some payment schemes, most non-bank payment service providers and merchants, most public authorities and all competition authorities called for the HACR being prohibited or strictly limited, and could for instance be regulated in the context of the PSD review. In the context of different MIF rates being applied to different card types, the role of the HACR in facilitating the shift to commercial and premium cards with higher interchange fees was highlighted. A potential positive impact of the HACR, if any, would depend on acquirers offering and pricing cards on fair terms, which is unlikely to be the case for instance if schemes offer cards imposing relatively high costs on merchants, without the ability of the merchant to decline those cards. A suggestion was made for the HACR to only apply to cards with the same MSCs.

Consumers were however cautious as regards a ban of HACR, pointing to the efficiencies of allowing the merchants to accept only the cheapest means of payment but fearing a possible loss in consumer choice. They called for policy options to be carefully considered as to the possible adverse effects on consumers. In the views of merchants and consumers in particular, no distinction should be made in respect of commercial cards and micropayments.

On blending, payment card schemes and banks remarked that this is no longer an issue as unblending was now implemented, in particular after the MasterCard Undertakings and Visa Commitments. It was however suggested by some banks that similar rules on unblending be introduced for all schemes. Retailers and some public authorities believed there is room for improvement. It was suggested that schemes be required to ensure that sufficient information regarding the MIF rate (and associated costs) of every card transaction is made available to the merchant and that acquirers assist their merchants in identifying cards with particularly high MIFs. Greater transparency about the card scheme fees, simplification of the different levels and types of MIFs were also proposed. Merchants rejected any distinction between consumer and commercial cards. Consumers supported a ban on blending.

With the exception of three-party schemes, the vast majority of stakeholders were in favour of three and four-party schemes being treated equally to achieve a level playing field, although some payment schemes and some banks called for a differentiated treatment or no intervention.

### **3.3. Standardisation**

#### *3.3.1. Standardisation — cards*

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| (18) Do you agree that the use of common standards for card payments would be beneficial? What are the main gaps, if any? Are there other specific aspects of card payments, other than the three mentioned above (A2I, T2A, certification), which would benefit from more standardisation? |
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Practically all respondents considered technical standards as crucial for card payments. Increased competition and lower operational cost were the key benefits quoted in this respect. Almost all stakeholders agreed that standards should be open, should preferably be developed by the industry and should fit into the global context, due to the nature of card payments. Many market actors feared that an isolated European standard solution would create more disruption than benefits. Beyond these general observations, views on card standardisation were in many cases diverging broadly along the line between payment users and providers.

Many respondents, in particular those from the supply side, highlighted the work of the EPC on card payment standardisation, in particular the SEPA Cards Framework and its Volume of requirements, as well as the currently ongoing market initiatives that cover most of the card payment transaction chain. Consistently mentioned initiatives were:

- Berlin Group standard for the acquirer-to-issuer domain
- OSCar project with EPAS protocols for the terminal-to-acquirer domain
- SEPA-FAST for the card-to-terminal domain and
- CAS/OSeC for a common certification process

On this basis, the majority of responding banks and card schemes stated that the current progress made by these initiatives was fully sufficient and that there was no need for any further intervention to drive standards. A number of these stakeholders also pointed out that standardisation processes take time, based on the underlying investment cycles for cards, terminals and ATM machines which according to the respondents vary between 5-10 or even 10-15 years.

However, a significant number of respondents from both sides of the market and the Eurosystem stated that, while there were certain achievements regarding the development of standards by the industry, the implementation of these standards across the market represented a major challenge. Many of these respondents called for acceleration or enforcement mechanisms, in particular the setting of migration end-dates, if necessary by regulators.

The area which primarily gave rise to concern to many market actors was the lack of a common certification procedure for terminals. Retailers consistently pointed out that as a consequence they were not able to streamline their terminal portfolio. This view was supported by a number of payment processors. The underlying reasons for the specific problems around certification were seen in the co-existence of two different certification approaches (PCI and Common Criteria). Additional obstacles quoted were certain national requirements in some Member States and scheme specific rules (the so-called type approval) which permit national schemes or approval bodies to reject terminals even if they have been certified previously. Therefore, regulatory support in this area was called for by a number of stakeholders.

Other areas seen as problematic, mostly by retailers, were the lack of common card acceptance protocols and ongoing national fragmentation in the acquirer-to-issuer and terminal-to-acquirer domains due to the existence of national ISO 8583 specifications. A number of respondents proposed migration to common ISO 20022 standards in these areas. Finally, some respondents called for standards in the terminal-to-cash register domain and a number of consumer representatives called for accessibility standards for vulnerable consumers, for example blind people.



### 3.3.2. Governance in the field of card standardisation

- (19) Are the current governance arrangements sufficient to coordinate, drive and ensure the adoption and implementation of common standards for card payments within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?

Regarding the governance structure in the field of card payment standardisation, most respondents from banks or card schemes said that the Card Stakeholder Group set up by the EPC was fully up to its task. Outside these stakeholder categories, the assessment was somewhat less positive, especially from the payment user side. While a number of these stakeholders acknowledged that the CSG was a step in the right direction several issues were highlighted. First of all, insufficient representation of certain stakeholder categories, such as retailers, consumers, non-bank payment or e-money institutions and other new players in the field of e-/m-payments. Other issues mentioned were an ineffective dispute resolution and the lack of top-down guidance to the group. Proposals to improve the operations of the group included an advisory role for impartial experts and the setting of migration deadlines, if necessary supported by regulators.

### 3.3.3. Standardisation — e- and m-payments

- (21) On e- and m-payments, do you see specific areas in which more standardisation would be crucial to support fundamental principles, such as open innovation, portability of applications and interoperability? If so, which?

In general terms, most respondents re-iterated the great importance of standards in this field — if they were meeting the key criteria also mentioned for card standards: open, developed by the industry and suited for the global context. A large majority of stakeholders pointed out that the e- and m-payment markets were still in their emerging phase and therefore much less mature than the market for card payments. In that respect, many respondents, predominantly on the supply side, said that market forces would over time converge to the most compelling solutions and that based on these dynamics, standards would emerge automatically. In the views of these stakeholders, a regulatory push for standardisation at this stage would risk to stifle innovation. Market actors also referred to the work by the EPC in both fields, in the case of m-payments in cooperation with GSMA. Many of the same stakeholders stated that e-/m-payments were merely new payment channels and could therefore be based on existing standardised payment instruments, such as SCT, SDD and card payments. In their views, standardisation efforts should focus on the user interface to enable a consistent user experience for e- and m-payments.

In contrast, many respondents from other stakeholder categories, in particular retailers and terminal manufacturers said that it would be important to establish common standards as soon as possible. First, standardisation would be much more difficult to achieve once fragmented structures had hardened over time. Second, only a considerable degree of standardisation and interoperability would convince a critical mass of retailers to invest into new innovative payment channels, a point which was frequently made for point-of-sales (POS) m-payments specifically.

Regarding e-payments specifically, many acknowledged that, based on the common platform of the internet and its established protocols, technical standardisation was less of a problem. One area where the need for standards was consistently mentioned was security requirements, in particular for online-banking-based payments. In that respect, many stakeholders were looking forward to the work of the SecuRePay Forum, set up by the ECB/Eurosystem (see 3.7).

The views on m-payments were more diverse. A large number of respondents pointed out that the complexity of this new market was not comparable to the 'historic' payment market dominated by banks. Mobile Network Operators (MNOs) in particular, but also handset manufacturers and operating system/software providers had a vested interest in this market. A number of stakeholders emphasised the need for a balanced standardisation process that would neither favour banks (based on their existing infrastructure, in particular payment accounts) nor MNOs (based on their access to the Secure Element of a mobile phone) while allowing market access by new players under open and fair criteria. Proximity payments in particular required standardised protocols and a common certification procedure for POS terminals.

Regarding governance, many stakeholders acknowledged that a robust structure was currently not in place but referred to industry initiatives such as the collaboration between EPC and GSMA on m-payments. Most of these respondents did not consider the lack of an established governance structure a gap, based on the emerging nature of the markets. However, a number of stakeholders from both sides of the market pointed out that the EPC's working groups on e- and m-payments were not sufficiently inclusive and that non-bank, non-MNO e- and m-payment providers were not or not sufficiently represented.

#### *3.3.4. Role of European Standardisation Bodies*

- (20) Should European standardisation bodies, such as the European Committee for Standardisation (Comité européen de normalisation, CEN) or the European Telecommunications Standards Institute (ETSI), play a more active role in standardising card payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables? Are there other new or existing bodies that could facilitate standardisation for card payments?
- (22) Should European standardisation bodies, such as CEN or ETSI, play a more active role in standardising e- or m-payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables?

The majority of respondents, especially those from the supply side of the market were sceptical regarding the involvement of CEN and ETSI in payment standardisation processes. The most frequently mentioned arguments included the need for a global as opposed to European standardisation process, the need for industry developed and market driven standards, the additional complexity of involving another body beyond the existing industry bodies and the lack of expertise on financial services.

CEN's own contribution to the consultation showed that some of these concerns may however be based on common misconceptions regarding the *modus operandi* of CEN. In particular, CEN referred to the so-called Vienna Agreement between CEN and ISO which ensures technical cooperation, mutual representation and in many cases the adoption of a standard, as both an ISO Standard and a European Standard. The reply also clarified that CEN worked in a facilitating role on the basis stakeholder involvement



from all sides of the market. In that respect, CEN highlighted the role it could play during the implementation of already developed standards.

The latter view was reflected by many stakeholders from the demand side and a number of those supply-side respondents who seemed to be more familiar with the CEN/ETSI working model. These stakeholders saw a possible added value in the inclusive platforms and procedures that CEN provides in order to facilitate consensus building and the adoption of standards for card payments or a common certification process. With regards to m-payments specifically, a number of respondents saw a strong role for ETSI, based on their previous role and participation in the standardisation of mobile technologies.

### **3.4. Interoperability**

- (23) Is there currently any segment in the payment chain (payer, payee, payee's PSP, processor, scheme, payer's PSP) where interoperability gaps are particularly prominent? How should they be addressed? What level of interoperability would be needed to avoid fragmentation of the market? Can minimum requirements for interoperability, in particular of e-payments, be identified?
- (24) How could the current stalemate on interoperability for m-payments and the slow progress on e-payments be resolved? Are the current governance arrangements sufficient to coordinate, drive and ensure interoperability within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?

A large majority of stakeholders, especially from the supply side, saw no evidence for significant interoperability gaps on card payments. Many of these respondents also criticised the Green Paper for an excessively negative assessment of the current interoperability on e- and m-payments. According to their views, on the one hand, the growth rates of e-commerce were a proof that online payments worked well. On the other hand, m-payments were just emerging and inter-operability issues would only be tackled once the market moves to a more mature phase. Many respondents from the supply side emphasised that e- and m-payments could be based on the existing infrastructure provided by SCT, SDD and payment cards. However, there were a number of respondents, especially new and alternative providers of payment services and a number of retailers, who complained that access to the existing infrastructure was often foreclosed by the incumbents.

In the field of e-payments, a number of respondents across all stakeholder categories highlighted online-banking-based e-payments as the key area where interoperability should be improved, in particular regarding payment initiation and the payment confirmation message. Several banks emphasised the difficult balance between achieving interoperability and complying with competition law, specifically referring to the investigation opened by the Commission on the e-payment standardisation work by the EPC.

As regards m-payments, many respondents pointed out that the market was still in its shaping state and that hence the main challenge was not so much technical interoperability but rather finding a sustainable business model between PSPs, MNOs and other players who were not present in the historical payment environment. Two points were consistently raised by consumer representatives and other payment users. First, the opportunity to decouple m-payments from payment accounts and thereby

creating a possible access to innovative payment means by under-banked consumers. The second issue related to the requirement of portability for payment applications in case consumers switch their handset or MNO.

### 3.5. Payments security

(25) Do you think that physical transactions, including those with EMV-compliant cards and proximity m-payments, are sufficiently secure? If not, what are the security gaps and how could they be addressed?

A very large majority of respondents, among all stakeholder categories, clearly agreed that EMV has improved security, especially for card transactions. Payment security is however a constantly evolving area and today's security levels might not be sufficient in the future. A consideration made by many respondents is the lack of global migration to Chip & PIN, leaving a security gap. Although most banks support an elimination of the magnetic stripe, some believe this will endanger global interoperability. Also between other stakeholder categories, the opinions are divided.

In general contactless proximity payments where the payer's authentication is not required to confirm the transaction are a point of concern. Most stakeholders referred in this context to the vulnerability of proximity m-payments (and NFC technology). Banks in specific pointed out that the mobile device and its operating system are the weakest part. They also emphasised that all providers should be appropriately regulated and effectively supervised.

Banks and established card schemes shared the opinion that the challenge is to find a balance between payment security and user-friendliness. They stated that developments to address security gaps should come from the industry, and not through regulatory actions.

Retailer associations expressed their support of the use of end-to-end encryption of sensitive data. There would then be no need for retailers to hold sensitive data.

(26) Are additional security requirements (e.g. two-factor authentication or the use of secure payment protocols) required for remote payments (with cards, e-payments or m-payments)? If so, what specific approaches/technologies are most effective?

In response to the question concerning the need for additional security requirements for remote payments, the majority of the respondents expressed the view that additional security requirements are required. Several technologies were suggested, but also other considerations need to be taken into account according to the respondents. A consensus seems to exist on the content of possible regulation, emphasising that if standards and practices are appropriate, they should be open and technology neutral.

More specifically, banks were of the opinion that it is important to find a balance between security and user friendliness (e.g. lower security level needed for low-value transactions). As security in payments is in constant evolution, a dynamic scenario that allows a quick response to any new threat should be maintained. However, it is clearly stated that fraud mitigation is the responsibility of the issuer and the selection of authentication instruments should therefore lie with them. Contributions from card schemes and PSPs indicated that the majority of stakeholders in this category felt that security measures are already in place and/or are being developed and no regulation is needed as this would stifle innovation. Technologies/approaches, referred to by banks,

PIs, payment processors, and card schemes are 3D Secure authentication, two-factor authentication mechanisms using dynamic/one-time passwords, biometrics, AVS (Address Verification System) and extension of EMV to remote payments through a Dynamic Passcode Authentication.

Both retailers and consumers see a clear need for additional security measures for remote payments. Technologies suggested by the demand side of the market are Dynamic Transaction Authentication Numbers (TAN) and strong authentication via digital certificate (e-signature). A consumer organisation did indicate that additional security requirements that have been introduced for remote payments, usually had a negative impact on people with sight loss (e.g. 3D secure). Although the need for secure payment systems is recognised by this stakeholder, a continuous and open dialogue is requested in order to take into account accessibility when developing new security systems.

Public authorities agree on the importance of payment security and refer to the work done by the SecuRe Pay. This stakeholder category considered two-factor authentication to currently be good practice, and also emphasised that a balance between security and user-friendliness is essential.

Some e-payment providers opined that transparency, consumer information and legal certainty could be enhanced through certification based on harmonised standards, while others suggested that a digital wallet using cloud technology, would provide a more comprehensive security context than the NFC technology which stores sensitive data on the Secure Element.

(27) Should payment security be underpinned by a regulatory framework, potentially in connection with other digital authentication initiatives? Which categories of market actors should be subject to such a framework?

Following the question on the need for a regulatory framework to underpin payment security, there is a consensus between the majority of stakeholder categories on the supply side (banks, banking associations, card schemes, PIs, and payment bodies) that PSPs are currently sufficiently regulated by the PSD and that there is no need for further regulation in this area. If any regulatory framework would be deemed necessary, it should be principle based and apply to all market participants. The respondents felt however that regulation would stifle innovation and risks being outdated rapidly. A coordinated approach between EC, CBs and private sector to combat fraud was suggested, stating that this would be more efficient than a regulatory framework, because fraud is such a fast moving topic. E-payment providers and payment processors however, said that there is a need for a regulatory framework, although this should be principle based. One established card scheme suggested exploring whether a regulation mandating Europe-wide uptake of EMV by a given date would be of benefit.

In contrast, contributions from PSUs highlighted the need to harmonise payment security across the EU at a minimum harmonisation level through a regulatory framework. This should regulate all the actors involved in the provision of payment services and would help increase consumer trust.

Respondents from public authorities mostly favoured a principle based regulation to underpin payment security. Several contributions refer to the work of the SecuRe Pay Forum as a basis to discuss possible future regulation. Issues in the area of payment security that were highlighted, are the use and protection of sensitive customer data, and the need for legal clarity on the overlay payment services.

### 3.6. Data protection

(28) What are the most appropriate mechanisms to ensure the protection of personal data and compliance with the legal and technical requirements laid down by EU law?

The majority of stakeholder from the supply side (banks, card schemes, card associations, payment processors and PIs) agreed that the Data Protection Directive (and its ongoing revision) and national data protection authorities are considered to be appropriate measures to ensure data protection. Solutions to protect data integrity referred to in this stakeholder category are 3DSecure encryption, EMV infrastructure, DDA/CDA chip cards, as well as standards such as PCI DSS. The stakeholders felt that development and continuous evolution of these solutions must be left to market players. Emphasis is put on the importance of adherence by all payment service providers (including merchants and third-party service providers) to similar levels of security demands in order to foster fair and unbiased competition between payment solutions. In line with this, it is felt that the greatest need is for additional consistency in the area of supervision to ensure that requirements are enforced in a harmonised way. A suggestion made by a vendor in light of this question, was to let the EPC/CSG perform a technical and legal analysis of the European regulation about data protection. Card manufacturers put the emphasis on a high level of card security features, recommending the use of smart card devices or similar highly secure elements to be carried by each citizen, together with the elimination of magnetic-stripe-only cards.

Contributions from PSUs mostly focus on the storage of personal data. Merchants agree that information stored should be minimised and point out that end-to-end encryption of sensitive card data would be a great progress. Consumers recommended the development of a harmonised and legally binding framework for payments security, covering all the actors involved in a payment transaction. Additionally, the disclosure of personal information by consumers should comply with existing legislation on the protection of personal data. Also it was recommended that development of payment solutions where consumer's personal data is not made accessible to third parties, e.g. online banking based e-payment solutions (OBEP), should be promoted and 'privacy by design' (i.e. providers should consider consumer privacy at each stage of product and service development) should be imposed. Furthermore, this stakeholder category added that consumers should be given the right of not being profiled and that a mandatory data breach notification obligation should be introduced.

Recommendations from public authorities included mandating end users of payment instruments to take all reasonable steps to keep their personalised security features safe, limiting the use of sensitive customer data to the absolute minimum and consider bringing providers of overlay payment services into regulation as part of the PSD review.

### 3.7. Governance

- (29) How do you assess the current SEPA governance arrangements at EU level? Can you identify any weaknesses, and if so, do you have any suggestions for improving SEPA governance? What overall balance would you consider appropriate between a regulatory and a self-regulatory approach? Do you agree that European regulators and supervisors should play a more active role in driving the SEPA project forward?

This topic shows a large variety of opinions, even within stakeholder groups. The majority of respondents agreed that too much regulation would stifle innovation and that fair representation of stakeholders is essential. Where some respondents supported full self-regulation, others felt that a minimum level of regulation would help as guidelines for the industry to self-regulate technical standards and specifications. Respondents were also divided concerning the role of European regulators and supervisors. Some felt that they could not drive the SEPA project, others, such as payment processors, felt that they needed to play a more active role.

When assessing the current SEPA governance model at EU level, many banks and payment bodies confirmed their support of the EPC proposal put forward at the SEPA Council meeting of 6 February 2012. Self-regulation is still considered the best approach however there is a call for clear leadership, according to the majority of respondents from the supply side. In the banks' view, the SEPA project should be owned by the SEPA Council, which would establish major strategic guidelines and development priorities. It would also function as an arbitrator in case of disagreements. Technical Committees or work groups, consisting of all relevant stakeholders would work on specific topics. Banks are of the opinion that the views of DG Competition, DG Markt and the Eurosystem should be aligned to ensure good SEPA governance. This view is shared by the established card schemes. Feedback from an alternative card scheme trying to enter the market, formulated the need for deadlines for commonly agreed standards failing which the Commission could impose standards. This stakeholder emphasised the need for European regulators and supervisors to play a more active role in driving SEPA forward, as well as the need for short deadlines. In contrast, other stakeholders from the supply side, such as the card standardisation initiatives, expressed a need for an appropriate involvement of most actors of the industry, but also said that there is no need for a role for public authorities in SEPA governance. It was suggested that a minimum level of regulation with clear guidelines and rules could help actors to take new positions and develop new services in the new enlarged market.

However, consumers felt that the current SEPA governance model has unduly favoured banks' priorities and interests, and stakeholder involvement should be more balanced. The lack of arbitration and of an independent decision-maker was criticised. This stakeholder group felt that the SEPA project should have been mainly driven by the EC and the ECB. To improve SEPA governance, they proposed to fully revise it, emphasising that only the European authorities should be its driver. The proposed governance model places responsibility for achieving SEPA with the EC and ECB. The SEPA Council, whose membership could be revised, would be in charge of the SEPA work programme (definition and implementation) and arbitration. At European technical level there would be 1) an expert group to define needs, requests and main features of SEPA products, composed of representatives of European Stakeholders Associations (EPC, BEUC, EuroCommerce, EACT, UAPME, etc.) and reporting to the SEPA Council; and 2) a standardisation body (technical issues — centrally funded) that will translate into concrete standards main features proposed by the expert group. The



standardisation body could be set up on an ad hoc basis or work along the lines of CEN/ETSI. To ensure full involvement of all stakeholders the need to enhance National SEPA Committees at national level was pointed out.

Retailers agreed that there is no real ownership of the project and that banks have had too much weight in the work. This stakeholder group stated that there is a need for more clarity and better coordination in the current SEPA governance model. The proposed structure would most likely be permanent and could have a quasi-regulatory status. It has 3 levels, with on level 3 organisations focussing on specific domains (suppliers & end-users with technical expertise, but also stakeholders such as e-merchants, payment providers, consumers, etc.). On level 2, there would be a principal organism (could be SEPA Council) to establish policy, determine schedules and act as arbitrator for conflicts. It would implement the decision making process of the technical workgroups and may require a legal status. On level 1, this stakeholder group suggest supervision, possibly by the EBA, in coordination with the ECB and Commission.

The majority of public authorities, although generally in favour of self-regulation, do see a catalyst role for the SEPA Council, taking on a strategic role, providing guidance/statements, where possible on a consensual basis. They were of the opinion that strengthening of the link among SEPA governance structures and a better involvement of end users in national SEPA fora, to address retail payment concerns and challenges, is needed. Furthermore, several contributions by public authorities, state that non-euro Member States should be participate more in SEPA governance.

Some e-payment providers highlighted the overrepresentation of banks in the current SEPA governance and advocated the inclusion of merchants, consumer organisations and non-banks, and the need to consider public regulation to open up markets by imposing harmonised standards. Others however did not see the need for any additional regulatory action.

(30) How should current governance aspects of standardisation and interoperability be addressed? Is there a need to increase involvement of stakeholders other than banks and if so, how (e.g. public consultation, memorandum of understanding by stakeholders, giving the SEPA Council a role to issue guidance on certain technical standards, etc.)? Should it be left to market participants to drive market integration EU-wide and, in particular, decide whether and under which conditions payment schemes in non-euro currencies should align themselves with existing payment schemes in euro? If not, how could this be addressed?

When considering current governance aspects of standardisation and interoperability, many respondents from the supply side felt that standardisation should be driven by the industry. Respondents acknowledged the need for all stakeholders to be involved, although many respondents from banks, banking associations, payment processors, and payment bodies felt that this is already the case, especially when looking at the work of the CSG. In contrast, some contributions from supply side stakeholders (card schemes, non-bank payment service providers and card manufacturers) also emphasise the importance of fair stakeholder representation, but stated that they should be more involved. The majority of stakeholders from the supply side also said they see no reason not to use SEPA standards in non-euro Member States, and that it is up to market participants to decide whether and under which conditions payment schemes in non-euro currencies should align themselves with existing payment schemes in euro. Payment institutions also recommended that the standards setting process be chaired and overseen

by public bodies and that the SEPA standard setting process and governance reform should ideally be publicly funded.

On the demand side, consumers and merchants agree that there is a need for involving all stakeholders. However, some clarity is asked when discussing payments. Merchants feel that cards are a payment type whereas e- and m-payments concern technologies used to communicate payments.

Contributions from public authorities show opinions along the lines of the majority of stakeholders, stating that a good stakeholder involvement is needed, market participants should drive the project and that they have no objection to alignment of non-euro currency payment schemes with the SEPA standards.

Some e-payment providers were of the view that there are no grounds to call for any additional regulatory action on governance or interoperability. In their view, the standard-setting approach should be based on a wider, global approach and all types of PSPs be involved in any decision-making and standard-setting bodies, to sustain an open, flexible and integrative business environment. Additionally, it was felt by these respondents that governance arrangements were necessary for four-party schemes but no external governance is required for three-party schemes. It needs to be noted that some e-payment providers did see the need to consider regulation to open up the markets.

A few additional opinions expressed by respondents were that stronger standardisation is recommended but that the involvement of more and more stakeholders may slow the standardisation. Also it was suggested that ETSI, CEN and Mobey Forum should be involved under precise Commission mandate, fixing dates for completion of their deliverables. In conjunction with this, a specially appointed team of experts should be charged with assessing and submitting comments. The importance of employee and customer representation in the processes was also pointed out.

(31) Should there be a role for public authorities, and if so what? For instance, could a memorandum of understanding between the European public authorities and the EPC identifying a time schedule/work plan with specific deliverables ('milestones') and specific target dates be considered?

On the supply side, banks and banking associations felt that there is no need for a Memorandum of Understanding between the European public authorities and the EPC. The respondents in this stakeholder category felt that the framework in which standardisation initiatives can be led should be defined so that they would not risk being challenged on grounds of restriction of competition. It is also considered to be beneficial that the Commission provide financial support to standardisation initiatives. In the view of these stakeholders, the role for the public authorities should be to ensure a level playing field and effective competition between all payment service providers within the banking area and outside by making sure that the same rules apply to all providers. In the opinion of these respondents, public authorities would definitely have a role to play in ensuring the success of SEPA. They should be willing to work with their payments industry and users towards the common goal of a well-managed and efficient migration process. In addition, it was suggested that national public authorities can help with the process of developing consumers' awareness by communicating more about SEPA.

Cards Associations and most card schemes (all but one) agreed that a MoU adds nothing if it commits only the banking industry. This stakeholder group was of the opinion that any involvement by public authorities needs to avoid the risks of over-regulation which

could stifle change, innovation and market entry. The industry, including all relevant stakeholders, is considered to be best placed to assess the market and set for itself any relevant deliverables or milestones. One of the alternative card schemes trying to enter the market was of the opinion that the European public authorities should certainly act as an enabler and support more actively the integration towards a harmonised European payments landscape. This stakeholder felt that a MoU should be considered as the experience (see SCT and SDD) has shown that self-regulation has its limits. Smaller payment service providers commented that with respect to timeframes, moves to new standards will often lead to additional cost so the migration to new standards should be carefully considered to minimise these costs, particularly for smaller payment participants. Public authorities could make a positive contribution providing a stable and well-defined environment for standardisation.

PSUs see a role for European public authorities. This role lies in the not purely technical rules that apply to SEPA products. Some have a direct impact on consumer rights and some issues can only be solved by legally binding provisions. In addition, this stakeholder category pointed out that the review of the SEPA governance structure must resolve the contradictory position of the EPC (closed sector organisation representing banks and PSPs and the rule-making body for SEPA) by creating new independent technical bodies.

The opinions of public authorities are diverse, ranging from the opinion that no action is needed regarding timeframes and milestones, to the opinion that public authorities should be involved, but the financial industry should be the driver. It was also recommended that the SEPA Council should coordinate its programme with the EPC's programme and provide strategic direction to the EPC.

Some e-payment providers were of the opinion that public authorities should strictly adhere to regulatory and technological neutrality so as to facilitate innovation and market growth. Any memorandum of understanding was considered to be incomplete and inadequate, as the EPC is not representative of the payments industry as such.

Contributions from other stakeholders mainly put the emphasis on stakeholder involvement and integration being driven by the industry as they invest the most. Some added that a MoU would be valuable, others said that they saw no need for a role for public authorities.

### **3.8. Other issues**

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| (32) This paper addresses specific aspects related to the functioning of the payments market for card, e- and m-payments. Do you think any important issues have been omitted or under-represented? |
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The consultation resulted in a very long list of remarks, suggestions, concerns and demands from the respondents. Many of them had individual character or did not refer to the subject of the consultation. Some of the received remarks were obviously contradictory. Other comments were clearly specific to a particular stakeholder group. A number of issues was nonetheless raised by contributors from different stakeholder groups or repeated frequently by stakeholders from one group.

One of the common demands, in particular from PSPs and public authorities, but also to some extent from merchants, was the call to include in any analyses, comparisons and policy considerations not only electronic payment instruments but also cash and cheques.



This was very often followed by a remark that EU payments should be analysed in a wider context of global payment trends and changes and that the ‘fortress Europe’ attitude should be avoided.

Many contributions from all stakeholder groups underlined that the EU regulation should keep regulatory and technological neutrality. It should also focus on safeguarding integrity and security of payments. Maintaining accessibility of payment services (in terms of pricing and adaptation to different user needs, e.g. for people with disabilities or dependent on social security) was considered another important factor, mainly for consumer groups and public authorities.

Some of the respondents between PSPs, public authorities and PSUs believed that more consideration should be given in general to online payments and online businesses in general. In this context, safe and affordable cross-border online payment system was needed and should become a priority.

A number of contributors from both payment service provider and payment service user groups felt that there should be a political clarity at the EU level that payments are a for profit business (as underlined by payment service providers) or an essential service operated for the benefit of EU citizens and businesses at large (as demanded by payment service users).

Many respondents between consumers and to some extent PSPs considered that more priority at the EU level should be given to protection of the consumer interests and the adaptation of payment technology to real consumer needs. Harmonisation of refund rights independently of the payment instrument used and discretion given to banks on rules concerning security of payment instruments were mentioned by consumers as candidates for changes. Other expectations went often beyond payments sphere (e.g. possibility of collective consumer redress or independent, cross-border alternative dispute resolution bodies, with obligatory participation for merchants involved in such trade).