

EPSM e.V. c/o InterCard AG CuV, Mehlbeerenstraße 4, D-82024 Taufkirchen

EPSM e.V.
c/o InterCard Aktiengesellschaft
Compliance und Verbandsarbeit
Mehlbeerenstr. 4
D - 82024 Taufkirchen b. München

**European Commission
DG Internal Market, DG Competition
1049 Brussels
Belgium**

Tel.: +49 - 89 - 6 14 45 - 412
Fax: +49 - 89 - 6 14 45 - 3412
E-mail: nicolas.adolph@epsm.eu

**only by e-mail to:
markt-sepa@ec.europa.eu**

11th April 2012

Views on the Green Paper towards an integrated European market for card, internet and mobile payments

Dear Mr. Barnier, dear Mr. Almunia:

The European payment provider association EPSM appreciates the opportunity to respond to the Green Paper towards an integrated European market for card, internet and mobile payments. As an organisation of service providers focused to merchants, we would like to comment as follows:

In general:

The Green Paper addresses too many topics at the same time, also some topics overlap with topics of other payment services. For example, many internet payments are handled using the structure of card payments, many mobile payments are handled by the structure of credit transfers.

At the same time, the structures of e-money payments are not covered explicitly.

To avoid massive over-regulation, the structure of the payments services should be clarified, e.g. by a technical analysis of different input channels, authentication channels, authorization channels, clearing channels, settlement channels, reconciliation channels and reporting channels.

In detail, to your questions:

To your questions 1. – 3.:

We do not want to answer directly to the interchange questions, as these topics seem to be covered intensely by the retailers and competition authorities.

We only want to highlight that a merchant has to pay indirectly - next to interchange costs – also costs incurred by “scheme fees”, “settlement fees”, “charge back costs” and “security requirement costs” (e.g. PCI DSS). Typically, many of these costs are charged to the acquirer, but in a competitive market, the acquirer will set the price calculation to the merchant correspondingly, so that the merchant has to pay also these costs.

To your questions 1. – 3.:

The remaining main obstacles to cross-border and central acquiring seem to be local and regional MIFs and local or regional bilateral rules. As these topics cover MIFs in general, we do not want to answer and want to leave the topic to retailers and the competition authorities.

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?*

Co-badging (having at least two payment applications on one card) increases functionality and acceptance of a card to the benefit of the consumer. Anti-competitive restrictions by the schemes could be problematic and should be monitored by the respective authorities on a case-by-case basis.

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?*

The merchant should have the power to decide which application is to be used as a priority for a payment, since the merchant has typically to cover the cost difference of the transaction. It is important to include the “total costs” to the merchant, therefore not only MIFs but all costs charged by the acquirer and security costs at the merchants (e.g. PCI DSS at the merchant level). These costs can be very significant for the merchant.

In the individual case, the average cardholder may overrule the prioritization, but in case the card holder chooses a payment application with significant higher cost to the merchant, the merchant should have the right to surcharge this transaction cost based. The implementation of the merchant oriented prioritization can be done by the EMV configuration of the POS terminals.

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’?*

It is believed that schemes should not mandate the use of a particular payment processor. The situation where only a few large processors dominate the European card processing market should be avoided.

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?*

This does not seem to be a major issue at this point in time. Nevertheless, direct access of non-banks to clearing and settlement systems would be preferred.

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?*

It is believed that market forces will provide appropriate processing infrastructures, which can be reviewed and changed when there is a need to change them. **A regulatory framework cannot be amended with the same swiftness as the market develops.**

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?*

The SCF is a first good guidance document to facilitate the development of an integrated European cards market. But as neither this document, nor a European regulation seems to be capable of being applicable outside Europe, the SCF should not be made mandatory for European companies in order to keep the competitiveness of European payment products in the global markets.

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?*

E-commerce companies and others rely on their ability to accept card payments. To guarantee business continuity is one of the most urgent issues that need to be addressed. But as all market participants seem to have a major interest in providing excellent services and in many parts of the acquiring business there is a strong competition also in reliability, **it seems premature to think about objective rules to address this issue at the merchant facing, acquiring side.**

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 micro-payments and, if applicable, to alternative digital currencies?*

Surcharging in the whole SEPA region (domestic and cross-border) should be regulated in the same way, as the current practice seems to distort some markets (e.g. airline tickets).

Any concrete regulation should be discussed separately, also referring strongly to the input of merchants, competition authorities and consumer protections representatives at the European and the national level.

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?*

Most scheme rules are not transparent to the merchants. For example: the rules between issuer and acquirer do also affect pricing in relation to the merchant. Therefore, such rules should be reviewed including input of the competition authorities, and possibly all scheme rules of market dominant organization should be made public if the competition authorities consider this as appropriate.

The “No-Discrimination-Rule” and the “Honour-All-Cards-Rule” should be prohibited, if the merchant faces different total costs between to comparable transactions.

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?*

Standards should not be mandatorily prescribed by the regulator. Standards need to meet market requirements, which will be achieved by the respective bodies (Berlin Group, EPAS, Eridane, CAS, EPC and many others).

An innovative European payment landscape can only be reached via an open market driven process. Any centralised regulatory act from Brussels in this domain may be translated as paternalism, which limits the innovative competition of the market forces. **To encourage companies, organisations and associations to develop pioneering techniques and standards, the regulator should abstain from restrictive actions.**

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?*

The governance should be reviewed. From the service providers' point of view, there should be more involvement of the relevant market players, especially merchants and their service providers. In addition, more transparency in the decision making processes should be ensured. Involvement of service providers by consultation would be appreciated.

20) *Should European standardisation bodies, such as the European Committee for Standardisation (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?*

It is believed that increasing the number of standardisation bodies in addition to the ones that are already active in the areas of card payments, would not necessarily lead to better results. Card payments are a complex product and can be best developed by experts in the respective domains.

It seems more important to look at the right governance. Even the ISO 20022 governance seems not to be balanced to the different stakeholder of a payment transaction.

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?*

It seems inappropriate to prescribe interoperability, standards or principles to a market that is still under strong development. As mentioned above, standardisation and legislative acts seem more likely to prevent innovation at this point in time.

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?*

See our comment to question number 20.

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?*

See our comment to question number 21.

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?*

In today's e- and m-payments market many different solutions are under development. Progress should not be hindered by the legislator's intervention. Market forces will lead to sustainable solutions, when the demand from the consumers is met.

- 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?*
- 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?*
- 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?*

It appears that Europe has achieved a good security level for POS payment transactions by making use of the EMV card technology. The SCF has provided good guidance in achieving this. For payment cards, the present availability of EMV technology seems to be sufficient at the moment in Europe. The fact that one of the global card schemes requires putting the magnetic stripes on the cards and the other does not (for a European product), shows that market considerations may lead to different judgments.

Card payment products are complex. Considering the needs of the market (issuing and acquiring), detailed security decisions are best allocated to organisations that have also a strong responsibility for the costs of security requirements and the losses from security breaches.

For fraud prevention and enforcement, the existing bodies, such as Europol and the national executive authorities should be encouraged to work closer together, in order to monitor Europe wide developments.

In general, as companies neither want to lose customers nor cover the costs for losses, the market mechanisms seem to be better capable of providing a sufficient security level, than a regulation.

- 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?*

Without going into details, the Commission should ensure that other legislative acts, such as the reform of the EU's 1995 data protection rules, announced on 25 January 2012 will be compatible with the current multi-party business and role models in the payments business, where the exchange of information is essential to the benefit of the consumer.

The current draft of the planned EU data protection regulation seems no to fit to the current typical multi-party payments business and also to the different fraud prevention operations!

- 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?*

The hardware suppliers, software suppliers, the processors, the service providers and the users (corporate, small business, consumers) should be involved more intensively in the governance of the

SEPA project. **A high level meeting with a limited number of participants and with a limited meeting frequency (SEPA Council) is not sufficient to steer the SEPA project!**

The Commission may consider a role of “enablers” with deep technical knowledge to facilitate the dialogue between the market participants. The role of the ECB as a catalyst is well perceived, but stakeholders and competition authorities should be more involved in this catalyst process. Regulatory acts should be avoided.

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?

Standardisation and interoperability should be driven by all stakeholders, and decision makers should have a satisfactory technical expertise at all levels of the payment chain, not only in the interbank domain.

It is also critical that standards prove that they are fit for the purpose in the market before considering any mandatory introduction by a regulatory act.

Standardisation and interoperability should be left to the market participants to drive market integration. European payment schemes in countries with non-euro currencies should not be forced to align themselves with existing payment schemes in euro, while developments towards a harmonised European card payment landscape are not more mature.

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?*

The public authorities should act as an enabler to further support the integration towards a harmonised European payments landscape, but should abstain from restrictive measures to the disadvantage of an innovative market-driven development.

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?

As mentioned above, it is critical that the positive developments with regard to standardisation and innovation do not get negatively influenced by state-directed legal acts.

The public authorities are welcomed to play an important role to facilitate, to enable and to influence the market developments, but should abstain from intervening with restrictive regulation.

Legal regulation will generally harm the opportunity for innovative European payment developments. In contrast, open and competitive markets will give the best incentives to provide new, user-friendly solutions for consumers and retailers.

Yours sincerely,
For the EPSM

Nicolas Adolph
Chairman