



The Consumer Voice in Europe

TOWARDS AN INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS

European Commission consultation on the Green Paper

BEUC response

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Summary

BEUC welcomes the European Commission's consultation on the Green Paper entitled "*Towards an integrated European market for card, internet and mobile payments*". BEUC's position on the main issues raised in the Green Paper is as follows:

- *Multilateral Interchange Fee (MIF)*: It should be assessed whether the continued existence of MIF or more generally interchange fee per transaction is necessary for a well-functioning and efficient payments market, and alternative business models should be examined.
- *Cross-border acquiring*: Barriers for cross-border acquiring should be eliminated, which would increase competition in the Merchant Service Charges area, and ultimately benefit consumers.
- *Co-badging*: BEUC is not opposed to co-badging provided that it complies with a number of criteria aiming at enhancing competition and consumer choice.
- *Separating card schemes and card payment processing*: Full ownership unbundling could increase competitive pressure on Merchant Service Charges and ultimately on consumer prices.
- *Access to settlement systems*: All payment institutions and e-money institutions should be granted direct access to clearing and settlement systems so as to promote competition and enhance consumer choice and pricing.
- *Compliance with the SEPA Cards Framework*: SEPA-compliance rules should not be used to limit consumer choice of payment cards;
- *Information on the availability of funds*: Non-banks should be able to access this information, provided that they are properly regulated and supervised.
- *Consumer – merchant relationship transparency*: Transparency of fees is key but not sufficient to help consumers make better choices. Transparency should be combined with direct regulation of fee levels and possibly an alternative business model for card payments.
- *Rebates, surcharging and other steering practices* have not proven to be the right market tools to improve competition in the payments services sector. We therefore call for a ban on those practices at the EU level.
- *Merchant – payment service provider relationship*: BEUC supports the abolition of restrictive conditions in the card scheme and acquirer rules, provided that those changes do not negatively impact consumers.
- *Standardisation – card payments*: Standardisation is essential notably with regard to payment security. Security is a key issue not only for proximity card payments, but also for mobile payments and remote payments in general.
- *Protection of consumer data (consumer privacy)* is an increasingly important issue for consumers; the need to protect their data should be taken on board by the regulator at each stage including issuing, transaction as well as storage; and the providers of payment services should have the obligation to include privacy features in their product and service development, i.e. 'privacy by design'
- *Governance*: as SEPA is a project of general interest and not a banking project, the SEPA governance needs to be totally revised in order to ensure a balanced and efficient participation of all relevant stakeholders.

INTRODUCTION

Retail payment services are ubiquitous in consumers' everyday lives, since they allow consumers to receive their income and other payments, make money transfers and remittances as well as purchase goods and services using both physical and e-channels. One could even say that essential payment services are unavoidable for someone who wants to reap the full benefits of the market. In this sense, they can be considered a commodity because for most consumers there is little differentiation between the services of the various suppliers, these services are massively used, and are necessary for people to operate effectively within the social and economic organisation of a community.

One also needs to keep in mind that means of payment, including electronic ones, are not objectives in themselves, but rather means of achieving different objectives, which often cannot be fulfilled otherwise. This is all the more true when it comes to a consumer's need to access his own financial resources which he is obliged to deposit into an account held with a payment service provider.

Consumer expectations in the area of retail payment services can be summarised as follows:

- Guaranteed access to essential means of payment;
- Ability to choose from different payment service providers and means of payment;
- Generalized acceptance of different means of payment by merchants;
- Convenience;
- High level of security;
- Strong privacy rules;
- Fair and transparent prices;
- Refund right where relevant (need for consistency);
- Efficient market supervision.

Payment-related issues have been addressed at EU level in a quite fragmented and incoherent way, which has not always led to an optimal outcome for all parties concerned. On the one hand, there is binding legislation (the Payment Services Directive, Regulation 924/2009 on equality of charges, the E-Money Directive). On the other hand, the Single Euro Payments Area (SEPA), initiated as the European banking industry's self-regulatory project, has ultimately become subject to regulation¹. We very much welcome this fact, because a project of general interest cannot be left to the discretion of the financial industry.

¹ Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0022:0037:EN:PDF>

BEUC welcomes the European Commission's consultation on the Green Paper entitled "Towards an integrated European market for card, internet and mobile payments", which is an excellent opportunity for us to provide our views on various issues raised in the consultation paper.

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ANSWERS TO THE QUESTIONS OF THE GREEN PAPER

4. THE NEED TO FOSTER AND ACCELERATE MARKET INTEGRATION

4.1 Market fragmentation, market access and market entry across borders

4.1.1 Multilateral Inter-change Fees (MIFs)

- 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?*
- 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?*

BEUC answer

The issue of business model has been among the most debated payments-related topics over the past years. BEUC has contributed to the debate regarding cards and direct debit business models through responses to public consultations and exchanges of views with stakeholders².

From a consumer perspective, one of the main issues is the total opacity of costs associated with the use of payment cards: consumers do not know what they pay

² See for example BEUC response to the EC/EC consultation on "Applicability of Article 81 of the EC Treaty to multilateral-interbank payments in SEPA Direct Debit", Dec 2009.

for (see also questions 15 & 16). Indeed, in many Member States there are explicit fees like annual cardholder fees paid by the consumer to his bank: the average fee for credit cards is around € 20 in Belgium, € 40 in France, but they are free of charge in the UK. How to explain such a difference in prices between countries? What kinds of costs are covered by this annual fee? This information is totally ignored by consumers. There is also an issue related to the ATM cash withdrawal fee. In Germany, for example, consumers pay excessively high fees (around 5 Euros) per cash withdrawal from an ATM machine outside the consumer's own bank and card scheme. This fee is completely disconnected from costs incurred by banks³. This practice questions the principle of consumer's access to his own money.

Furthermore, there are hidden fees like interchange fees, which are directly paid by the merchant to his bank, but ultimately paid by all consumers including those using other payment services because they are included in the final prices of goods and services.

There are some justified objections against the fairness of multilateral interchanges fees (MIFs): thus, despite growing volumes, the amortisation of investment costs over a long period of time, decreased costs along the payment transaction chain, and limited credit risk of credit cards due to quicker posting of the transactions onto the cardholder's account, MIFs systematically went up for the last 10 years⁴. Hundreds of different MIFs have been created by international card schemes over the past decades⁵. In particular, the international schemes MasterCard and Visa use MIFs to compete with each other in order to gain market share (e.g. Maestro debit card was replaced by Visa in the UK some years ago⁶) to the benefit of banks as this competition generates more revenues for them, but to the detriment of retailers and the mass consumers as those fees are passed on to them. In addition, MIFs are mainly set up as a percentage fee, notwithstanding the fact that transaction processing costs are fixed, i.e. are not dependent on the transaction volume.

One element of the problem is that cards - mainly international credit cards - are not only a means of payments but also a package of additional services. Most consumers ignore the exact content of this package and its real cost and they never have the possibility to negotiate it in order to only pay the services they would like to use. Actually, consumers do not realise that the cost of these additional services, like travel insurances, air miles and other rewards, coupons, gifts offered in a catalogue, and the various benefits associated to the premium

³ The issue arises due to a conflict between local banks (Sparkassen/Cooperative Banks) having a market share of 80% of all ATM machines trying to fight off other banks that have a market share of 20%.

⁴ http://c0462491.cdn.cloudfiles.rackspacecloud.com/Facts_about_Hidden_Fees.pdf

⁵ See, for example, MasterCard intra-EEA Fallback POS Interchange Fees:

<http://www.mastercard.com/us/company/en/whatwedo/interchange/Intra-EEA.html>

⁶ <http://www.talkingretail.com/news/industry-news/brc-hits-out-at-hsbc-plans-to-switch-from-maestro-debit-cards-to-visa>

cards of the happy few, may be partly included in their annual cardholder fee for those who pay such a fee and mainly included in MIFs which are paid by all consumers, including those who use only basic cards and those who do not use cards. The current market situation suggests that this opacity is deliberately created.

We are also of the view that differences in MIF levels at national and cross-border level cannot be justified by different cost structures, but could be explained by anticompetitive practices at EU level⁷. Hence, these differences are not in compliance with the Commission's objective of building a single market for payment services. Addressing this issue would complement the provisions of Regulation 924/2009 on cross-border payments in the Community, aimed at eliminating the differences in charges for cross-border and national payments in euro⁸. That said, upward harmonisation should be avoided, i.e. harmonisation should not result in payment card systems becoming more expensive than they are today (e.g. Denmark's cheap national debit card Dankort).

Various regulators have been / are looking into the mechanisms of price setting in the area of card payments showing that the EU can no longer stay at the sideline:

- Cost based: Australia (2003), Chile (2005), Columbia (2005);
- Interchange fees set (mostly reduced): Argentina (1999), Australia (2006 debit), Austria (2006 via self-regulation), Denmark (1990), EU (2002 - 2010), Israel (2006), Mexico (2006), Panama (2004), Portugal (2006), South Korea, Spain (2005), Switzerland (2005);
- Set at zero: Canada (1995), Norway (1974);
- Interchange fees regulated: France (1990), Poland (2007), Turkey (2005);
- Merchant-acquirer negotiated : Columbia (2004), Denmark (1990);
- Under investigation: Brazil, Hungary, New Zealand, Norway, South Africa, United Kingdom, and EU⁹.

Taking account of all the above-mentioned, the current business model for card payments must be more thoroughly assessed, as was the case with direct debit¹⁰. The above list of actions by individual countries shows that the harmful effect of the current business model is already widely acknowledged. Besides that, it should be assessed whether the continued existence of MIF or more generally interchange fee per transaction is necessary for a well-functioning and efficient payments market. The Commission's sector inquiry into retail banking in 2007 showed that some national debit card schemes operate without interchange fees: PIN in the

⁷ For example, see EuroCommerce position regarding the harmful effect of differing MIF levels on cross-border acquiring, April 2010: <http://www.eurocommerce.be/content.aspx?PagelId=41803>

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:266:0011:0018:EN:PDF>

⁹ DHAENE, Leon, Living in a world without interchange, 2010-2015. Berlin, European Card Acquiring Forum, 24 February 2010, pp. 11

¹⁰ SEPA end-date Regulation provides for a new business model for SEPA direct debit, which is based on R-transaction fees.

Netherland, Dankort in Denmark, Pankkikortti in Finland and Bancomat in Luxembourg¹¹. Other possible business models should be examined. One of the options was discussed at last SEPA Council meeting of February 6, namely a differentiation between 'core and basic' card payment services and 'additional' services, where consumers and merchants would be free to choose additional services and pay in a transparent way for each service chosen. 'Core and basic' payment services (both card-present and card-not-present transactions) should be provided free of charge by the card issuing bank.

There is a clear case for EU action, since there is no other way of tackling the above-mentioned barriers across EU. Thus, EU legislation would be the most appropriate way of achieving legal clarity on the business model. The scope should cover both four-party and three-party schemes in order not to distort competition and create a level playing field. That being said, the impact of any policy option on consumers must be thoroughly assessed beforehand. For example, the impact on the cardholder fee and other fees directly paid by the consumer to his payment service provider should be anticipated.

4.1.2 Cross-border acquiring

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| 4) | <i>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?</i> |
| 5) | <i>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?</i> |

BEUC answer

Cross-border acquiring holds the potential of increasing competition in the Merchant Service Charges area¹², which in the end benefit consumers. For example, Swedish company iZettle.com recently launched its services in Denmark which enable all iPhone-holders to receive card payments through an iPhone/iPad application. However, when the payment order is sent to Sweden, it is redirected to Denmark and processed as a foreign transaction. Hence, it adds an extra layer of cost to the existing cost structure, rather than compete with this cost structure.

¹¹ "Report on the retail banking sector inquiry", Commission Staff Working Document, 2007, p. 112: http://ec.europa.eu/competition/sectors/financial_services/inquiries/sec_2007_106.pdf

¹² The Merchant Service Charge is a fee that merchants who accept cards pay to their acquiring bank.

To enjoy the benefits of competition it must be possible to by-pass the domestic infrastructure and directly access the bank accounts of the payers.

See also BEUC response to questions 1-3.

4.1.3 Co-badging

- 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?*

BEUC answer

BEUC does not oppose co-badging as it allows new entrants to access the market (e.g. PayFair which is a non-banking initiative, or any other provider) while giving a real possibility to keep cheap and efficient national debit cards. It would also enhance card acceptance and increase consumer choice. Currently, consumers face very different experiences with cross-border acceptance: while e.g. using German debit cards in Sweden works almost every time, acceptance of foreign debit cards may cause problems in some cases in the UK. In the heart of Europe, in Brussels, local public transport ticketing machines fail to serve other than Belgian cards outside major traffic points like the airport.

In our view, the question of co-badging should be examined together with question 12 on compliance with the SEPA Cards Framework. Indeed, we have serious concerns about the survival of several national debit cards that have proven their capacity to meet consumers' needs and the fact that some of them have already disappeared (see question 12). We see the real added-value of co-badging in view of maintaining those national card schemes within SEPA and preventing the use of so-called SEPA-compliance rules to limit consumer choice of payment cards (see our response to question 12).

In order to make co-badging suitable for consumers, the following requirements should be met:

- Restriction of competition at all levels (i.e. issuing, acquiring, acceptance, and processing) is properly addressed in order to avoid anticompetitive practices, the reduction of consumers' choice and the reduction of innovation;
- Co-badging is considered not as a transitory solution, but as one of the options to achieve SEPA-compliance of card schemes which are currently not SEPA-compliant;

- Payment brands to be used on a co-badged card are pre-selected by the consumer when signing the contract with his payment service provider. Consumers should have the right to choose the brand(s) they need based on clear and fair information provided by their payment services providers¹³. There are still many European consumers who never travel abroad and buy on the Internet: why should they have to pay for different brands on their card while they only need e.g. a basic national debit card?
- The consumer has always the possibility to choose the payment brand - among the pre-selected ones - he wishes to use for a concrete payment transaction both at point-of-sale and online. The most cost-efficient card brand could be chosen as the default option unless the consumer decides to use a different brand;
- Co-badging does not create unnecessary confusion for consumers. For example, combination of several card brands on the same card may render consumer decision-making at point-of-sale rather difficult;
- An impact assessment is carried out to evaluate various application cases, e.g. remote and point-of-sale payments, motorways, parking, etc;
- There is no negative impact on prices of cards for consumers who choose/accept to have several brands on their card. Because of more EU-wide competition in this area, we rather expect cheaper prices;
- Security is not compromised;
- Uncertainty in case of lost/stolen card with several brands on it is properly addressed as regards the payment service provider (PSP) answerable and responsible for blocking and replacing it fast;
- A pan-European card that enables the use of each type of national payment card at a reasonable and competitive price at any European card terminal is developed. There is no such a project in Europe for the time being, while, for example, China has developed its own national card scheme UnionPay in 2002 and all card transactions are settled using its payment network. BEUC is disappointed by the lack of political ambition to promote an EU payment card.

4.1.4 Separating card schemes and card payment processing

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| 8) | <i>Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?</i> |
| 9) | <i>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'?</i> |

¹³ In France, some BNP-Paribas' branches sent letters to their customers telling them that all "Cartes Bancaires" should be withdrawn from the market because of SEPA, which was completely false. (Carte Bancaire (CB) is the French national debit card).

BEUC answer

BEUC supports any initiative that will promote competition in the payments market. We believe that the issue of access restrictions for new entrants into the card market (and the market for other payment methods) is an issue that should be considered by the Commission in more detail. Full ownership unbundling does seem to hold potential for increasing competitive pressure on Merchant Service Charges and ultimately on consumer prices.

We therefore believe that the Commission should investigate the possibility of separation of card schemes and card payment processing to evaluate the effects the current practice has on the end-user of the service.

4.1.5 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?*

BEUC answer

As already mentioned BEUC supports any initiative that will promote competition in the payments market. From a consumer perspective, issues that could arise from non-direct access to clearing and settlement systems are the following:

- A potential impact on competition and restricted consumer choice as new entrants are discouraged by the cost/restrictions.
- A risk that the service offered by providers without direct access to the payment system is slower and/or more expensive than the service provided by payments institutions with direct access. For example, the Payment Services Directive allows firms to execute payments on the day of the receipt of the instruction or on a date specified in the future; provided that the time it takes to actually execute the payment is within the maximum timescale set out in the Payment Services Regulations, which is D+1. The day when the payment starts to be executed (or the day the payment order is deemed to have been received) can therefore be different from the day when the payment service user physically initiates a payment order, as long as this delay is agreed with the customer. This legal construct which allows a delay in executing the payment order is most likely to be used by firms without direct access to the payment system.

There is no reason why payment institutions should not have direct access to clearing and settlement systems. This could only stimulate competition and enhance consumer choice and pricing.

4.1.6 Compliance with the 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?*

BEUC answer

According to the European Payments Council's (EPC) SEPA Cards Framework, a SEPA-compliant payment card should technically allow cardholders to make payments and withdrawals throughout SEPA¹⁴. Further, the document states that "An SCF-compliant scheme must operate in such a way that there are no barriers to effective competition between issuers, acquirers, and providers". It also provides that consumer choice of card products would increase.

Even if we fully support some cards' technical requirements as set in the SCF - like the EMV obligation (Chip & PIN) for all cards as they improve security (see question 25), we also notice that the implementation of the SEPA Cards Framework is leading to reduced competition in the payment card market.

Indeed, national debit card schemes have potentially 4 options:

- Expand by investing in their own payment network and become SEPA-compliant;
- Jointly develop a European card scheme;
- Co-badge with one or several international card schemes and become SEPA-compliant;
- Cease to exist.

For the time being, the latter two tendencies are being observed on the market. Thus, several efficient, secure and cheap national debit card schemes already phased out or are in the process of doing so. For example, in Luxembourg, Bancomat debit cards were phased out at the end of 2011 and replaced by Visa V PAY to be in compliance with SEPA¹⁵. The same occurred in Finland, Ireland and in the Netherlands. In the UK, Switch debit card was replaced by Maestro¹⁶.

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<http://www.europeanpaymentscouncil.eu/documents/Cards%20SCF%20006%2009%20v%20%201.pdf>

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<http://www.abbl.lu/news-publications/news-archive/partner-news/new-debit-cards-2012>

¹⁶

<http://www.solocard.co.uk/about.html>

The current situation is not satisfactory from a consumer's point of view, since the benefits of SEPA Cards Framework for consumers are unclear. Indeed, around 95% of all card transactions occur at national level and there is no sufficient demand for SEPA cards migration. Furthermore, the expected dominance of Visa and MasterCard both at national and cross-border level raises evidence-based concerns about prospective price increases and reduced security. On the other hand, despite repeated calls from EU policymakers, we have not yet seen any noteworthy developments regarding the emergence of a new European card scheme¹⁷. An alternative option could be the expansion of existing national card schemes, which is deemed feasible by some researchers¹⁸. In addition to that, we see the real added-value of co-badging in view of spurring competition in the market and preventing the use of so-called SEPA-compliance rules to limit consumer choice of payment cards (see our response to questions 6 and 7).

4.1.7 Information on the availability of funds

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?*

BEUC answer

Commissioner Almunia stated in a recent speech that *"Internet and mobile payments systems need the banks to verify that there is enough money in the payer's account and banks seem to expect a compensation for this service that matches the revenues of their payment cards"*¹⁹. Our understanding is that the main objective of the banking industry here would not be to watch over the safety of the consumer's payment account (as publicly stated), but to keep newcomers out of the market, or otherwise dictate their own conditions and maintain their stable revenue source as long as possible.

A similar debate around customer interaction and ownership is taking place between mobile payment stakeholders. Banks consider that *"By definition, the ecosystem for mobile payments, whatever form it may take, will provide in its value chain a role for payment services providers that hold payment accounts (banks, payment institutions or e-money institutions)"*²⁰.

¹⁷ Three pending projects are PayFair, EAPS and Monnet.

¹⁸ " SEPA Cards: success factors for sustainable card schemes in Europe", Research Center for Financial Services, Steinbeis-University Berlin, May 2011:
http://www.steinbeis-research.de/pdf/2011_SEPA_Cards_RFS_Steinbeis.pdf

¹⁹ Speech by Commissioner Almunia delivered at the European Payments Council Plenary meeting, 14 Dec 2011: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/889>

²⁰ The EPC White Paper on Mobile Payments, Feb 2012, p. 16:

In Denmark, for example, where the direct debit product is very expensive (0.67 Euros per transaction), banks have recently launched payments by mobile that directly debit the consumer's bank account. No other players can currently launch a similar product and compete down the price.

The funds on the account are property of the consumer, and the bank provides different services facilitating the use of the funds and the accounts. Those services could be authorisation of a transaction (i.e. providing a guarantee to the payee), clearing of transaction data, financial settlement of transactions, information about a transaction, fraud management of transactions, etc.

A bank can only refuse to make a payment if:²¹

- There are no sufficient funds available in the account;
- The consumer has broken the agreed terms and conditions, such as needing to provide two signatures for a joint-account payment;
- Making the payment would be unlawful.

In a world wherein electronic payment services will be standardised and where payment service providers will compete, banks as well as non-banks, the consumer should have the right to request his bank to accept transactions made by a payment system, which is not necessarily offered by the bank. It should therefore be possible, as long as the standard operating procedures, format, infrastructure, security, and message flows are used, for the consumer to request his bank to authorise and guarantee transactions made on retailers' cards, mobile payments processed by mobile operators, or any new payment service offered by a licensed payment institution.

There is yet another reason why access to information on the availability of funds is important. In France, for example, only 22% of card payments are checked regarding funds availability, including 36% of them taking into account the cards with systematic authorisation²². The fact that 64% of the payments are done without any funds availability check leads to heavy costs for consumers, especially those in financial difficulty. Overdrafts resulting from card payments, including various penalties, cost 2.7 billion Euros to French consumers, among which 1.8 billion Euros result from intervention fees (fixed cost of around 8.5 Euros) that consumers must pay each time they use their card in an overdraft situation. It is therefore problematic and dangerous for consumers when they use their card for a

http://www.europeanpaymentscouncil.eu/knowledge_bank_download.cfm?file=EPC492-09%20White%20Paper%20Mobile%20Payments%20version%203.0.pdf

²¹ UK Financial Services Authority, "Bank accounts: know your rights", London, Leaflet, May 2011 p. 19.

http://www.fsa.gov.uk/static/pubs/consumer_info/know_your_rights_guide.pdf

²² See « Fraude à la carte bancaire sur l'internet : l'UFC-Que Choisir donne les codes pour une sécurité renforcée », Feb 2012:

http://image.quechoisir.org/var/ezflow_site/storage/original/application/83f4417e31338af6bb5499bf735ebb0d.pdf

payment without funds available²³. Non-banks should therefore be in a position to know whether the client is in an overdraft situation when making the payment. As such, banks should give other payment service providers access to the information on the availability of funds. This information should however be limited to a simple indication stating whether or not the funds are available. Non-banks should then have a duty to inform the consumer in case the funds are not available, when making a payment.

A bank can charge the payment provider involved for offering such a service, but should not be allowed to refuse to do so. The bank charges for offering such services requested to non-banks or delivered for products not offered by the bank should in any case not be higher than what the bank charges to support similar products offered by them.

4.1.8 Dependence on payment card transactions

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| 14) <i>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?</i> |
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BEUC answer

Question 14 is mainly addressed to business stakeholders.

4.2 Transparent and cost-effective pricing of payment services for consumers, retailers and other businesses

4.2.1 Consumer – merchant relationship: transparency

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| 15) <i>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?</i> |
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²³ Unauthorised overdrafts exist in several Member States. In case of an unauthorised overdraft, the consumer incurs high overdraft penalty charges.

BEUC answer

Information transparency is necessary to tackle cross-subsidisation and enhance competition in the payment services market. However, contrary to what is mentioned in the Green Paper, the issue is not so much that consumers are seldom aware of the full cost of using specific payment instruments, but rather the fact that it is made very difficult to them to identify these costs and they are encouraged to use the most expensive means of payment as much as possible.

As already mentioned, full information on costs – direct and indirect - should be provided first by payment services providers to consumers; there should be no hidden charges: the consumer should always know what he pays for and how much he pays. In addition, consumers should always have the right not to be offered a card package, but only services they would like to use.

Such primary information could be completed by additional measures, e.g. information on the transaction bill/invoice, general information campaigns by merchants, consumer information at point-of-sale prior to the payment transaction.

Yet, transparency alone would not be sufficient to change consumers' payment habits to the benefit of cheaper payment options. This measure should be combined with direct regulation of fee levels and possibly an alternative business model for card payments (see our answer to questions 1-3).

4.2.2 Consumer – merchant relationship: rebates, surcharging and other steering practices

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| <p>16)</p> | <p><i>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:</i></p> <ul style="list-style-type: none"><i>– certain methods (rebates, surcharging, etc.) be encouraged, and if so how?</i><i>– surcharging be generally authorised, provided that it is limited to the real cost of the payment instrument borne by the merchant?</i><i>– merchants be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge?</i><i>– specific rules apply to micro-payments and, if applicable, to alternative digital currencies?</i> |
|------------|--|

BEUC answer

At EU level, surcharges and rebates were introduced by the Payment Services Directive to allow merchants to steer consumers towards using more efficient and cheap means of payments, allow them to renegotiate lower fees and thus put downward pressure on MIF²⁴. Nevertheless, the tool was inadequately designed, failed to achieve its objectives and has been to the detriment of consumers without any benefits for them. First, excessive surcharge has become an important revenue source for some businesses, e.g. the UK Office of Fair Trading estimates UK consumers spent £300 million on payment surcharges during 2009 in the airline sector only²⁵. As a result, actions against excessive surcharges have been taken in several Member States²⁶. The issue of excessive surcharges will be addressed by implementing the Consumer Rights Directive²⁷, while the cross-border dimension still remains unresolved.²⁸ Second, there is no proof that prices of goods and services have dropped as a result of the implementation of the surcharge²⁹. Consequently, we believe that surcharge is not an optimal policy tool to improve competition in the payments services sector. Direct regulation having an impact on interchange levels and possibly an alternative business model for card payments is preferable.

The specificity of the Danish market is however worth mentioning. In fact, the national debit card Dankort is a very popular means of payment available to all consumers free of charge. Its acceptance is also wide both in physical and online stores, which is not the case in many other Member States as regards debit cards. So, conditions of the Danish market are favourable to steering consumers towards using this cost-efficient card brand, which is done by allowing the surcharge on international credit card payments. All these conditions and measures have led to a massive use of this basic debit card for the benefit of consumers and merchants. However, all these cumulative conditions do not exist in any other Member State. Hence, this specific case cannot be generalised and surcharge cannot be viewed as a European solution. In addition, shortcomings of the Danish surcharge rules are that they discriminate against foreigners who are not in possession of Dankort and are therefore obliged to pay a surcharge. Danish consumers' payment choice may

²⁴ The Payment Services Directive Article 52(3) provided an option to Member States to allow, forbid or limit surcharging.

²⁵ <http://www.offt.gov.uk/news-and-updates/press/2011/76-11>

²⁶ Which? super-complaint and the UK government decision to regulate excessive card surcharges, Dec 2011: http://www.hm-treasury.gov.uk/press_148_11.htm

A Paris Tribunal condemned 23 clauses in Easyjet's terms and conditions, Feb 2012: <http://www.quechoisir.org/transport/transport-aerien/editorial-compagnies-aeriennes-trop-d-abus-dans-l-air>

VZBV vs. Ryanair in Germany: <http://www.upgradetravelbetter.com/2010/05/20/german-courts-take-a-stand-against-airline-credit-card-fees/>

²⁷ Directive 2011/83/EU on consumer rights, Art 19: "Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means".

²⁸ Consumers in Member States where surcharge is prohibited are paying a surcharge to companies established in Member States where surcharge is authorised.

²⁹ That would mean consumers are being charged thrice.

also be limited in relation to foreign online merchants who do not accept Dankort payments.

Rebates are currently used by e.g. some utility companies to steer consumers towards paying by direct debit. However, many consumers see them as the equivalent of surcharges, i.e. surcharge for using other payment methods than direct debit. Consumer payment choice is restricted as in the case of surcharging, even though direct debit mostly benefits creditors and is not necessarily the preferred payment option for many consumers. For example, in the UK, there have previously been significant issues with energy suppliers using direct debits to collect payments that were larger than the actual usage of the consumer based on predicted future energy usage. When the actual usage by the consumer was lower than predicted, energy companies took a long time to reimburse consumers. The UK energy regulator Ofgem has now published guidance to address this issue. However refunds still don't happen automatically. The onus is still on the consumer to challenge the usage estimates and demand an immediate refund. The guidance also does not define what a fair and reasonable direct debit is. This is one of the reasons why many consumers are reluctant to pay for utilities by direct debit. We call on the Commission to further investigate into current practices and assess to what extent they promote efficiency and benefit consumers.

At the occasion of reviewing the Payment services directive, surcharge and rebates should be definitively banned in Europe.

4.2.3 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 micro-payments?*

BEUC answer

BEUC's assessment of the three rules in question described in the Green Paper is as follows:

- *No-Discrimination Rule (NDR)*: We are in favour of enabling merchants to steer consumers towards the use of cheaper payment instruments, but without using surcharge;
- *Honour All Cards Rule (HACR)*: Theoretically the freedom for the merchant to accept only the cheapest cards of a specific brand contributes to competition and efficiency. But in reality it may not work well for consumers. For example, if HACR is abolished, consumer payment options

may be further reduced, as merchants would refuse to accept certain cards. One could consider partial abolition of HACR rule, e.g. freedom for the merchant to refuse excessively costly cards, like gold and black cards. Any policy options need to be properly designed and a thorough impact assessment must be conducted to evaluate possible adverse effects on consumers;

- *Blending practices, applied by card acquirers:* We favour abolishing blended fees, i.e. differences in the fees of brands should be reflected in the rates offered by the acquirer to the merchant. It goes without saying that any cost reductions on payment transactions should be passed on to consumers via reduced final prices of goods and services.

4.3 Standardisation

- | | |
|-----|---|
| 18) | <i>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?</i> |
| 19) | <i>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?</i> |
| 20) | <i>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?</i> |
| 21) | <i>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?</i> |
| 22) | <i>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?</i> |

BEUC answer

Standardisation is necessary to ensure that each payment service has a minimum of common features facilitating its use and its acceptance everywhere. Standardisation is also particularly important for the security of payments. A harmonised system would bring efficiency compared to the current patchwork

existing in the 27 Member States (please also see our response to security related questions – point 4.5).

In France for instance, several banks have adopted the 3D Secure in order to improve e-payments' security. However, it has not been done according to harmonised standards. Different systems are therefore coexisting: single-use code sent by SMS; single-use code obtained on a voice mail; combination of single-use codes delivered on a paper card; code delivered through a card reader provided to the client... This "competition" on the security systems impedes any public communication on a broad scale to the final users, and a quick adoption by consumers. According to a study from our French member, this complex situation leads to a huge number of consumers giving up their purchases on the internet because they are not familiar with the security system (sometimes even fearing a phishing page). This situation ended up in counterproductive measures, traders willing to keep their turnover and deciding to purely withdraw the security systems. Currently in France, only 13% of distance sellers adopted the 3D Secure. Comparatively, online card fraud increased by 33% in the last 5 years.

The French example is not a unique one in the Single Market and proves that standardisation of security at EU level could bring added value to both traders and consumers. Security is a crucial issue in terms of e-commerce development and as such clearly justifies a common standard between the actors. Moreover, a standardised system is easier to improve and defend compared to different systems, especially since it allows increasing the resources dedicated to the monitoring, research and development of additional securities in response to fraud development.

Please see our response to questions 29-31 on governance issues.

4.4 **Interoperability between service providers**

4.4.1 Interoperability in the domain of m-payments

4.4.2 Interoperability in the domain of e-payments

4.4.3 Interoperability and competition

- 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?*

BEUC answer

From an end-user point of view, portability of applications and interoperability are areas where standardisation is crucial to ensure that traditional payment services providers who have a clear incentive to link usage of new payment methods to existing methods like bank accounts are not in a position to develop monopolies.

In the UK, the Payments Council, the body responsible for ensuring that payment services work, has started to work on a central database that links mobile phone numbers to account details. However, this service will only be accessible by banks and building societies and not other service providers.

Electronic payment services should be available to un-banked consumers and therefore the development of such services should not be driven and monopolised by traditional providers of banking services. We see a role for standard setting bodies, regulators and legislators to ensure as much interoperability as possible between service providers so that consumers without a bank account can make e- and m-payments to all other consumers and vice-versa.

4.5 PAYMENTS SECURITY

BEUC remarks

Consumer confidence in the security of payments is essential. A bad experience in this area can lead consumers to abandon certain means of payment or make them reluctant to buy online for example. As stated by industry representatives, “Customers want value, which for payments translates into convenience and security”³⁰. The security issue is being increasingly debated with the development of SEPA which should increase cross-border payments (see Regulation on migration end-dates for SEPA credit transfers and direct debits), e-commerce (where the consumer and the retailer have no physical contact and the consumer has much less control over his payment transactions) and the emergence of new payment methods (both banking and non-banking).

For BEUC, it is essential to ensure that all retail means of payment match consumer expectations in terms of security (security by design). Hence, we welcome the fact that consumer requests as regards security of SEPA direct debit were taken into account by EU policymakers when adopting the proposal for Regulation establishing end-dates for migration to SEPA credit transfers and direct debits by the European Parliament and the Council, who have improved the original version of this text. The options offered to the consumer by the Regulation will help reconcile existing national habits with the changes being introduced by

³⁰ “SEPA or payments innovations: A policy and business dilemma”, ESBG, p.14, Dec 2011: http://www.esbg.eu/uploadedFiles/Position_papers/Sepa_or_payments_innovation_a_policy_and_business_dilemma.pdf

SEPA direct debit³¹. We have learned from this experience that the safety of payments cannot be left to self-discipline of the banking sector, but that it has to be ensured by the legislator.

Moreover, the issue of security can not be treated well if complete and comparable data on fraud are not made public. Collection of fraud data covering all means of payment should be established at European level. This will help all payment services users to choose the most secure payments and put pressure on all payment services providers to improve the general level of security. The SEPA Council committed itself to take actions in this area³². BEUC welcomes the work being done by the SecuRe Pay Forum³³, which is expected to adopt its recommendations regarding the security of e-payments and the fact that the European Central Bank is expected to publish first results on card fraud in the SEPA region in the course of 2012³⁴.

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?

BEUC answer

Card-present transactions and proximity m-payments must be examined separately due to their different nature.

As regards **card-present transactions** (or face-to-face card payments), the available data suggest that introduction of EMV (Chip&PIN) has helped drive down fraud in such payments. According to the French Observatory for Payment Cards Security, face-to-face card fraud has been falling substantially over the past years and today equals 0.012%³⁵. In the UK, since the introduction of EMV fraud rate fell by 70%³⁶. Yet, lack of reliable statistical information in all EU countries disallows an EU-wide assessment.

That being said, migration to Chip&PIN in Europe has not been finalised yet. In addition, lack of migration on a global level may lessen the effects of EU

³¹ <http://register.consilium.europa.eu/pdf/en/12/st05/st05422.en12.pdf>

³² See Statement of the SEPA Council of 24 May 2011: http://ec.europa.eu/internal_market/payments/docs/sepa/council/statement-2011_05_24_en.pdf

³³ SecuRe Pay is a voluntary cooperation between national and EU authorities aiming at facilitating common knowledge and understanding in particular between overseers and supervisors of payment service providers of the issues at stake in the field of the security of retail payments.

³⁴ Information provided by the SEPA Council.

³⁵ See « Fraude à la carte bancaire sur l'internet : l'UFC-Que Choisir donne les codes pour une sécurité renforcée », Feb 2012 : http://image.quechoisir.org/var/ezflow_site/storage/original/application/83f4417e31338af6bb5499bf735ebb0d.pdf

³⁶ <http://portalsandrails.frbatlanta.org/2011/05/united-front-needed-to-prevent-emv-card-fraud-from-picking-low-hanging-fruit-1.html>

migration. For example, card payments in US are still mostly magnetic stripe and signature-based. In addition, point-of-sale terminals and ATMs are not all EMV compliant. The European Payments Council (EPC) Resolution titled "*Preventing Card Fraud in a mature EMV Environment*" of 31 January 2011 states that: "*The EPC recommends that SEPA card schemes grant issuers the option to adopt a chip-only approach be it by issuing chip only cards or by allowing them to refuse magnetic stripe transactions if they so wish, providing that there is clear communication with the cardholder*"³⁷.

However, it appears that some market players are abusing the standards to the detriment of consumers. For example, according to an investigation carried out by the Belgian consumer organisation Test-Achats in 2011, the pretext of magnetic stripe fraud is being used by the Belgian banks to steer consumers towards using more expensive cards when travelling outside Europe. In fact, as of 17 January 2011 most Belgian banks have decided to block the use of only Maestro cards outside Europe. It was announced that consumers may ask their bank to unblock the card when travelling abroad.

Test-Achats findings and conclusions as regards this practice were as follows:³⁸

- "For years, banks make the consumer believe that Belgian consumers had to have a card with the Maestro (debit card) function because it was a safe method of payment, and today we discover that there is a safety issue. Rather than solving it, banks undermine the quality of service by blocking some of the functionalities without the price decrease;
- Only debit cards are targeted, whilst a lot of fraud concern credit cards and internet payments;
- Febelfin (the Belgian Financial Sector Federation) claims that in Europe, transactions are made on the basis of the microchip and not based on the magnetic stripe which is not the case: the Netherlands are only now migrating to the chip. In Germany and France the operations are primarily conducted through the magnetic stripe;
- Citibank (which like Deutsche Bank will not execute the proposed blocking measure) confirms that most frauds are taking place in Europe;
- Atos Worldline, the European leader in electronic payments, has blocked at the end of 2009 nearly 100,000 cards whose data has been copied in Spain!
- Consumers are not properly informed about this decision and the possibility to unblock the card;
- When travelling outside Europe, most consumers are obliged to use their credit cards for payments and ATM withdrawals, i.e. to pay higher fees;
- Some banks refuse to unblock the card when the cardholder requires so."

³⁷ http://www.europeanpaymentscouncil.eu/knowledge_bank_download.cfm?file=EPC424-10%20Approved%20Resolution%20on%20Mature%20EMV%20Fraud%20Prevention.pdf

³⁸ Budget & Droits, Edition 219, Nov 2011

Therefore, the issue should be treated with caution. While security measures are clearly needed to protect consumers from fraudulent payments, consumers should not suffer from arbitrary decisions on behalf of payment services' providers. Security measures should not be misused to mislead consumers, reduce their payment options and charge higher fees.

Mobile payments are used to purchase physical and virtual goods and services using different funding methods: SMS-based, contactless proximity payments (using Near Field Communication (NFC) technology), remote payments (mobile web) and direct mobile billing. All these payment methods involving a mobile phone are considered to fall under the definition of m-payments, even though sometimes confusion occurs: e.g. the use of a mobile phone to pay (contactless proximity payment) vs. ordering goods and services via mobile phone whereas the underlying payment method is different (e.g. mobile banking).

The development of m-payments is a very recent phenomenon in Europe. They are more widespread in many other parts of the world, including the developing countries (e.g. SMS-based remittance), where payments and money transfers by mobile phone offer a viable alternative to low market penetration of banking services. SMS-based and contactless proximity payments are used in different EU Member States for different purposes, e.g. Payter in the Netherlands³⁹ (parking tickets), Oyster in UK⁴⁰ (public transport ticketing).

In order to avoid disintermediation as much as possible and to keep their market share in payments, the financial industry builds alliances with mobile network operators and tries to affirm its role as an unavoidable actor in the mobile payments ecosystem. Their arguments are based, inter alia, on security aspects of m-payments⁴¹.

To be successful in the long run, any means of payment must bring a real added value to users and satisfy their needs and expectations, including as regards security. This fact is also acknowledged by policymakers⁴² and the supply side⁴³.

³⁹ <http://www.nfctimes.com/project/netherlands-payter-puts-expansion-hold-following-large-trial>

⁴⁰ <http://blog.o2.co.uk/home/2011/02/introducing-the-mobile-wallet-.html>

⁴¹ http://www.europeanpaymentscouncil.eu/article.cfm?articles_uuid=26C4B0B7-C2B5-C19E-91E1D675835EBF22

⁴²

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/653&format=HTML&aged=0&language=EN&guiLanguage=en>

⁴³ For example, a recent study by the the European Savings Banks Group (ESBG) states that "...consumers' natural *"status quo"* bias forces new products providers to either lower the degree of change demanded, and/or to evidence a manifold increase in perceived benefits".

"SEPA or payments innovations: A policy and business dilemma", ESBG, p.7, Dec 2011: http://www.esbg.eu/uploadedFiles/Position_papers/Sepa_or_payments_innovation_a_policy_and_business_dilemma.pdf

According to some experts, m-payments are still safer than some other payment methods. Not because m-payments provide for a higher level of security, but because they make up a tiny fraction of all available payment methods and do not yet attract the attention of fraudsters⁴⁴.

While m-payments may be perceived as an easy and convenient way to pay, they have various security-related aspects. First, the mobile phone has its own value and is often a desirable object to thieves. For example, according to recent information, in 2010 the total number of violent attacks against people in the region of Île-de-France, Paris, increased by 40%, from which 75% of cases were linked to smart phone robbery⁴⁵.

Second, while the industry puts a special emphasis on "*the existing ISO/IEC 14443 standard for communicating payment information from the phone to the merchant's POS terminal*"⁴⁶, it seems that security standards developed by handset manufacturers, technology providers and mobile network operators are vulnerable, which creates the risk of data interception when making payments, because there is no firewall protecting data being transmitted⁴⁷. A study shows that the ISO standards can be circumvented by the so called 'relay attacks', where the smart card data can be intercepted from a distance of up to 50 meters⁴⁸. Other fraud techniques relevant to proximity m-payments include attacking the reader, attacking the tag, eavesdropping, data destruction, man in the middle attack, data insertion⁴⁹. In addition, development of anti-virus solutions for mobile phones is still in its embryonic phase, without any harmonisation in this area⁵⁰. This is a huge disadvantage of remote m-payments compared to e-payments initiated using a computer equipped with standard security software.

Third, the transaction value is a relevant factor with respect to consumer's risk perception and attraction for fraudsters. Thus, high-value m-payments may potentially present higher risk. Our understanding is that the current development and future perspectives for proximity m-payments are mainly linked to low-value payments, e.g. vending machines, transport, lottery, parking tickets, lunch vouchers. The transaction value matters even more in case of contactless

44

http://www.oregonlive.com/finance/index.ssf/2011/07/going_mobile_with_your_money_how_safe_is_it.html

45 <http://verdoninfo.wordpress.com/2011/01/07/l%E2%80%99agression-et-le-vol-de-telephone-portable-en-augmentation/>

46 "Security of Proximity Mobile Payments", A Smart Card Alliance Contactless and Mobile Payments Council White Paper, May 2009, p. 27:

http://www.smartcardalliance.org/resources/pdf/Security_of_Proximity_Mobile_Payments.pdf

<http://www.makemoneyreviews.co.uk/articles/mobile-payment-applications.html>

47 "Mobile payments 2010", Innopay, p. 38:

https://www.ebaportal.eu/Download/Research%20and%20Analysis/2010/Mobile_payments_2010_Innopay.pdf

48 Id.

49 <http://pymnts.com/journal-bak/201/managing-the-risks-and-security-threats-of-mobile-payments/>

proximity payments, where the payer's authentication is not required to confirm the transaction.

Fourth, consumer protection depends on the payment method used to make the transaction with a mobile phone, i.e. credit or debit card, e-money, gift card, credit transfer, direct debit, phone bill, etc. This is a horizontal issue and is not specific to m-payments.

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?*

BEUC answer

We consider that payment methods, where consumers' sensitive personal data is transmitted to third parties, are not the most appropriate ones, especially when it comes to remote payment transactions. For example, when paying with a credit card, the consumer has to enter the card number, expiry date and the security code on the back of the card. Thus, there is a potentially high risk of data fraud and abuse using technics such as skimming, phishing, carding, account takeover.

Two-factor authentication methods (3D Secure) put in place by international card schemes pursue the objective of fighting remote payment fraud. While it is difficult to assess the extent to which the implementation of this measure has enabled the reduction of fraud risk, the consumer experience varies across service providers and merchants. For example, the authentication code may be received by SMS or voice mail, generated by card reader, etc⁵¹. Online payment interface also varies, e.g. a new window may pop up to proceed with payment confirmation. Ultimately, new opportunities for fraudsters open up and consumer trust is being undermined (see also our answer to questions 18-21).

Furthermore, many sellers store consumer personal data for their business purposes. The Payment Card Industry's Data Security Standard (PCI DSS) sets security requirements for merchants who store consumer data. The PCI Security Standards Council established by the major card brands recommends merchants e.g. not to store any payment card data in payment card terminals or other unprotected endpoint devices, such as PCs, laptops or smart phones; not to permit any unauthorized people to access stored cardholder data⁵². However, several cases where data of millions of consumers were compromised show that data servers are not secure enough⁵³. Furthermore, according to some witnesses,

⁵¹ See UFC-Que Choisir study on card fraud, Feb 2012:
http://image.quechoisir.org/var/ezflow_site/storage/original/application/83f4417e31338af6bb5499bf735ebb0d.pdf

⁵² https://www.pcisecuritystandards.org/pdfs/pci_fs_data_storage.pdf

⁵³ <http://www.securityfocus.com/news/11493>
http://www.theregister.co.uk/2009/08/17/heartland_payment_suspect/

companies may have card storage occurring without their knowledge, e.g. on employee desktops or in mailboxes⁵⁴.

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?*

BEUC answer

Payment security definitely needs to be harmonised through a regulatory framework which should regulate all the actors involved in the provision of payment services and all intermediaries including merchants (e.g. storage of credentials).

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?*

BEUC answer

In a world of rapid ICT developments, consumers should remain in control of their personal data and privacy. A high level of protection of personal data and privacy is not only required by the entry into force of the Lisbon Treaty, but it also constitutes a sine qua non condition for the achievement of the objectives of the EU Digital Agenda, which needs to be built upon consumers' trust in the online environment. The data protection issue is broader than e-payments and encompasses all the digital economy. BEUC therefore very much welcomes the proposal for a Regulation on data protection issued by the Commission on 25 January 2012.

BEUC recommendations as regards personal data protection and privacy are as follows:

- Develop a harmonised and legally binding framework for payments security;
- Cover all the actors involved in a payment transaction. This would also prevent the use of security requirements by incumbent market players as a barrier to market entry;
- The disclosure of personal information by consumers should comply with existing legislation on the protection of personal data, including the

<http://money.cnn.com/2012/04/02/technology/credit-card-hack-what-do-i-do/index.htm>

<http://www.dailymail.co.uk/sciencetech/article-1381945/Playstation-Network-Sony-claims-hacked-credit-card-details-encrypted.html>

<http://www.dw.de/dw/article/0,,4903324,00.html>

⁵⁴ <http://www.itworld.com/storage/69677/pci-dss-and-storage-credit-card-data>

principles of informed consent, transparency, data minimisation and purpose limitation;

- Promote the 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) like Ideal in the Netherlands (more than 50% of payments online);
- Impose 'privacy by design', i.e. providers should consider consumer privacy at each stage of product and service development;
- Give consumers the right of not being profiled. For example, business models of companies like Google, Facebook, Apple are based on consumer profiling, which is done without consumers' explicit and informed consent;
- Introduce a mandatory data breach notification obligation; consumers should be notified whenever there has been a breach putting their personal data at risk.

5. STRATEGY IMPLEMENTATION/GOVERNANCE

5.1 Governance of SEPA

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?*

5.2 Governance in the field of cards, m-payments and e-payments

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?*

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?*

BEUC answer

SEPA has been promoted as an extension of the Euro: after replacing national currencies by Euro coins and notes in several EU countries, the next step was supposed to be the creation of a Single Euro Payments Area (SEPA) in which all electronic payments are considered domestic, and where a difference between national and intra-European cross-border payments does not exist anymore.

This project of general public interest has been run as a self-regulatory project, set up and managed by the European banking industry through the European Payments Council. As we have pointed out over many years now, this governance of SEPA has unduly favoured banks' priorities and interests. The Customer Stakeholder Forum (CSF) for credit transfer and direct debit set up by the EPC is a consultative body only and the EPC Plenary holds the final decision-making power. Consumers and other end-users have spent time explaining their needs and requests, but could do nothing when the answer was 'no'. There is no arbitration, no independent decision-maker, as the EU SEPA Council declined to take this role.

Finally, the consumer specific requests for improving security of SEPA Direct Debit were included in the proposal of Regulation adopted by the Commission and voted by the European Parliament and the Council at the beginning of 2012. As a consumer organisation, we have never understood the reason why this important project was not mainly driven by the European Commission and the European Central Bank. The financial crisis has ultimately opened policy makers' eyes by showing the limitations and potential dangers of self-regulation in the financial sector.

Based on this experience, the following should be considered:

- SEPA governance should be fully revised to ensure that the expectations and requests of all stakeholders are taken into account. Given the general public interest of the SEPA project, only the European authorities should be its driver;
- The European legislator has a crucial role to play insofar as the rules that apply to SEPA products are not all purely technical; some of them have a direct impact, for example, on consumer rights and some issues can only be solved by legally binding provisions.

A good governance system could be organised as follows:

- The European Commission and the European Central Bank are responsible for achieving SEPA.
- The SEPA Council, whose membership could be revised, would be in charge of the SEPA work programme (definition and implementation) and would have to solve possible difficulties at level below.
- At European technical level:
 - An expert group in charge of defining concrete needs, requests and main features of SEPA products. This group would be composed of representatives of European Stakeholders Associations (EPC, BEUC,

EuroCommerce, EACT, UAPME...) and would have to report to the SEPA Council.

- A standardisation body (technical issues - centrally funded) that will translate into concrete standards main features proposed by the expert group. This standardization body could be set up on an ad hoc basis or work along lines of CEN/ETSI. The main issue for consumer organisations is lack of experts to participate in standardisation work.
- At national level, need to enhance National SEPA Committees in order to ensure a full involvement of all stakeholders.

6. GENERAL REMARKS

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?*

BEUC answer

The following important payment-related aspects must also be considered:

- **Business model.** As already mentioned, there should have been a discussion of non-MIF business models, i.e. whether the continued existence of MIF or more generally interchange fee per transaction is necessary for a well-functioning and efficient payments market and what are the alternatives (see our answer to questions 1-3).
- **Consumer refund rights.** As regards consumer rights in case of fraudulent payments, the payer's liability for unauthorised payment transactions is stipulated in the Payment Services Directive (PSD) Articles 61 and 62: the payer's responsibility is limited to EUR 150 in case of the use of a lost or stolen payment instrument, unless he acts fraudulently or negligently⁵⁵. Refund right for direct debit is specifically addressed, but provides lower level of protection compared to some national laws⁵⁶. Consumer's refund right in case of undelivered goods/services, or when goods are not delivered as promised, is much weaker. For example, in the UK credit card chargeback right is provided for by the Consumer Credit Act 1974 when the good/service purchased costs over £100⁵⁷. However, the consumer may find himself in a different situation when paying by e.g.

⁵⁵ http://ec.europa.eu/internal_market/payments/framework/index_en.htm

⁵⁶ See the EC declaration annexed to the Regulation establishing technical requirements for SEPA credit transfers and direct debits.

⁵⁷ <http://www.which.co.uk/consumer-rights/sale-of-goods/your-rights-when-paying-by-credit-card/consumer-credit-act-1974/>

credit transfer or an online banking e-payment solution (OBEP). Besides that, consumer's right to cancel the contract within a minimum of 14 working days, as provided under the Consumer Rights Directive, may not be sufficient, i.e. too short and not comparable to e.g. refund right offered to direct debit users⁵⁸. Consumer's right to refund should be made consistent: consumers should have strong protection (both preventive and curative) regardless of the payment method used, with account taken of the existing strong consumer protection rules in some Member States⁵⁹.

- **Consumer redress** (horizontal issue). A European Group Action mechanism would appear to be not only useful, but indeed also an indispensable tool for European consumers. It would enable them to collectively bring a case before the court to obtain compensation for loss or damage caused by the same company, e.g. non-respect of consumers' privacy. It would also have a deterrent effect on behaviour of financial institutions or other providers. In addition to that, in cases of disputes with traders/service providers consumers should be able to easily access and use Alternative Dispute Resolution bodies. Those bodies have to be independent and adhere to quality standards ensuring fair, reliable, quick and inexpensive way of securing redress. The ADR schemes have to be compulsory for traders where practicable.

END

⁵⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/675&type=HTML>

⁵⁹ This view is also defended by US consumer stakeholders:
<http://www.consumersunion.org/pdf/Mobile-Pay-or-Mobile-Mess.pdf>