

EuroCommerce reply on Green paper on payments

POSITION PAPER

Date: 11 April 2012

Reply to the European Commission:

GREEN PAPER: Towards an integrated European market for card, internet and mobile payments (COM(2011) 941)

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Executive summary

Issues in the cards market

EuroCommerce urges European legislators to take strong action against current anticompetitive rules in the payments market. If they fail to establish the necessary conditions for real competition between the three SEPA instruments (SEPA Direct Debit, SEPA Credit Transfer and payment cards), the current problems will only worsen and will be replicated in new, emerging ways of making payments.

The MIF is undoubtedly the main economic barrier to competition in the card payments market. EuroCommerce calls on the regulators to tackle this issue head-on. It would be a great mistake to only regulate the problematic issues surrounding the MIF (such as the Honour All Cards Rule) in the hope that this would be sufficient. A direct solution is required if SEPA is to succeed.

EuroCommerce believes that the only way to solve the competition issues caused by the MIF is to establish a rule that every card should include a basic payment application.

Innovation

Regulatory measures must be taken to ensure that Europe fully benefits from innovation in the payments market:

- barriers to entry for new players must be removed.
- the problems of current business models (i.e. the MIF system) must not be permitted to persist in new technologies.
- new business models e.g. SCT-based must be encouraged.
- all rule-making bodies must give equal weight to new payment models in the formulation of standards.

Governance

A long-term representative governance structure for SEPA must be constructed. It should have the following attributes:

- It will consist of three levels: 1. technical; 2. policy and 3. supervisory. Levels 1 and 2 will be made up of representative experts of all the interested stakeholders. These could be based on/continuations of existing bodies with modifications in procedure and power where necessary.
- The 3 bodies will work on a consensus basis but a proper arbitration procedure must be put in place for the resolution of disputes.
- The 3 level bodies should be permanent, independent and provided with adequate central funding.
- The Level 2 policy body may be based on the current EU SEPA Council but only if the structure and procedure are fully revised to allow:
 - regular, thorough, expert-level preparatory work on agendas, work-programmes and proposed resolutions
 - a proper communication/reporting to and from the technical level bodies
 - a power to consider and arbitrate on (with full expert input) disputes at Level 1.

Introduction

EuroCommerce warmly welcomes the European Commission Green paper on card, internet and mobile payment.

The Commission document comprehensively addresses the current state of play in the card market and properly encompasses the issues that may arise in the mobile and internet payments market in the coming years. The Paper is a necessary complement to the SEPA end date regulation and we hope, it will help solve the remaining issues in the payment systems market.

EuroCommerce strongly believes that the payments market in Europe must be examined as a whole and with a long term vision. We cannot properly understand this market if we attempt to segment it by the payment channel or indeed assume that a certain technology pertains to only one payment application. Technologies are developing so fast that in the not so distant future, consumers will be using a larger array of payment products using different technologies both at point-of-sale (POS) and at a distance. It is possible that plastic cards as we know them today will be completely outdated over the coming years.

These new payment channels and devices bring great opportunities for market growth and for quicker, innovative, more efficient payments. It is crucial that we do not simply import old business models with their existing problems into these new markets. Therefore EuroCommerce wishes to present solutions which will not replicate these issues in future payments.

In the broader context of European competitiveness, it is necessary – and urgent – that the authorities realise that, unless they take strong and decisive action, European payments will lag behind other regions.

A broader question, underlying the current Green paper, is what status European authorities give to payments. For most consumers, payments are simply the means by which they convert the money deposited on their bank accounts into the goods and services they need and desire. For most retailers, payments are the channel between what they sell and their customers. Most of us, therefore, view payments as an essential facility.

However, for most banks, payments are a source of profits. The course of action that will follow the Green Paper will certainly reflect whether, in our society, payments are seen as a service for the benefit of all, or a profit center for some to the detriment of the whole economy¹.

A large part of this EuroCommerce reply is devoted to the Multilateral Interchange Fee (MIF) because it is, by far, the biggest economic barrier to the development of the market. This does not mean that the other issues, such as standardisation and governance, are less important to the creation and success of the Single Euro Payments Area (SEPA), but the MIF is certainly the biggest point of disagreement between merchants and banks.

For ease of reading, we have kept the numbering used in the Commission document. EuroCommerce already has formal positions on some of the items, which have been previously shared with the authorities. In these cases, we will therefore simply refer to these public documents.

¹ This certainly does not mean that the provided service should be free.

4. The need to foster and accelerate market integration

4.1. Market fragmentation, market access and market entry across borders

4.1.1 Multilateral Interchange Fees (MIFs)

The Multilateral Interchange Fee (MIF) is, by far, the major economic issue of the current card market. It has fueled, over the past decade, a immense quantity of literature, attempting to justify its possible efficiencies. Various economists have (unsuccessfully) tried to justify it with a cost for service approach, the balancing approach and more recently the Merchant Indifference Test. Notwithstanding these economic arguments, the MIF, whatever its level, is still experienced by merchants worldwide as a very unfair mechanism: it covers services from which merchants do not benefit.

We must now acknowledge that the attempts to justify the existence of the MIF have not resolved the issues SEPA is facing today: lack of competition at bank and card scheme level and the increasing cost inefficiency of payment cards. Since SEPA for cards was launched in early 2008, efficient national debit card schemes have been replaced by Visa and MasterCard solutions, with significant cost increases for merchants and consumers, while bringing no additional efficiencies – only higher rewards for individual cardholders. At the same time, despite several initiatives, there has not been one single successful new player on the card market.

The purpose of SEPA cannot lie in its European nature per se but in increasing the reach of existing systems and increasing the market to the benefit of all those who pay. It is true that consumers now have the possibility to make payments all over Europe in a much easier way. However, this has been accompanied by dramatic increases in prices and a reduction in competition.

As the Commission rightly notes, there is a risk of spillover of the perverse effects of the MIF to innovative internet and mobile payment solutions. Unless a real solution to the MIF is found, the full implementation of SEPA will only worsen the situation.

However, EuroCommerce is convinced that, if we modify the current underlying economics of card payments, a modern and competitive market can arise.

1) Solving the MIF, not simply the other rules

The anticompetitive effects of the MIF are reinforced by other rules imposed by card schemes: namely the Honour All Cards Rule (HACR), the Non Discrimination Rule (NDR), the restrictions on cross-border acquiring and the lack of fee transparency.

It might be tempting for European institutions to propose a solution to these rules, and leave the core of the issue – the MIF – intact. However, this would be no solution at all, if the goal of SEPA is to bring more competition and more innovation into the market.

Indeed, if we imagine a world where merchants – who already engage in fierce competition – would be allowed to discriminate between payment means, refuse some expensive cards and buy acquiring services abroad, the likely outcome would be a convergence in MIF levels between European countries, at a higher average than in the current situation. There are 4 reasons for this:

- (i) Because competition in retail is fierce, most merchants are reluctant to impose a surcharge on their customers. It is a very unpopular amongst consumers and merchants will not want to lose sales. Rebates are an equally bad option.
- (ii) It is widely acknowledged that merchants are 'locked-in' to the card market, which makes it very difficult for them to refuse some cards: they would lose more than a simple transaction - the customer would most likely not return.

(iii) The MIF is an indirect tax: the vast majority of customers are not aware that merchants pass it on in all retail prices. Even if they were informed of its real costs, many customers would continue to use the most expensive cards, as they bring the most benefits. Equally, full fee transparency would not help retailers to better negotiate: the MIF is not negotiable!

(iv) The MIF is very lucrative for banks: if the possibility of real cross-border acquiring were imposed, it is most likely that banks, instead of decreasing fee rates, would – in a concerted way or otherwise – increase rates in member states where they are currently cheapest so as not to lose revenues.

Such a situation would be unacceptable for merchants. After all these years of various attempts to make SEPA for cards a success, European institutions must now realise that a 'free' market will not lead to better conditions as long as some price mechanisms pervert competition.

So let us, rather, imagine a better world where the MIF issue is resolved. Then we would find that the other rules no longer had such anticompetitive effects. As more players entered the market (not only for cards) and consumers were faced with the real cost of the payment means they use, cards would be used in a much more efficient way, and there would be no need to apply surcharges. As banks would then have to compete for their own clients (issuing banks for cardholders; acquiring banks for merchants) by offering them lower prices and/ or better services, all stakeholders would gain.

2) Legislation is – unfortunately – the only way

Resolution of the MIF problem through competition enforcement has shown its limitations. Following the EuroCommerce complaints against Visa and MasterCard in 1997, the situation has certainly improved: fees have to some extent reduced. It should be noted that the card schemes have not suffered from this decrease: card usage (and banking revenues) have increased greatly.

However, SEPA for cards is becoming a duopoly where there is little incentive to combat fraud (as it is financed through the MIF); innovation is under threat and innovative payments technologies may fall victim to the shortcomings of the existing card market.

Competition cases can only tackle one case at a time, allowing card schemes and banks to find quick workarounds, in response to a Statement of Objections. Cases also take decades (the MasterCard case is still in the appeal procedure) and companies can find ways to circumvent the terms of any specific decision (by increasing the scheme fees for example).

Merchants can only negotiate on the acquiring processing fee, which is excluded from the MIF and only accounts for a small portion of the total merchant fee. The fiendish beauty of the system is indeed that the ones who pay – the merchants – cannot negotiate with the ones who benefit – the issuing banks. And, in the end, all consumers pay, even those who pay by cash.

The current settlements with Visa and MasterCard have had very little effect on the situation. The MIF levels accepted by the European Commission raise the following issues:

- 1) They act as a floor and a ceiling to other initiatives: there will be no new entrants below that level of MIF as it would be less lucrative for banks.
- 2) They do not include commercial cards.
- 3) There is no settlement on Visa credit cards.
- 4) They are based on a highly controversial methodology and debatable assumptions.
- 5) The levels have no sound basis.
- 6) They bring little benefit to merchants as they mainly apply only cross-border. No national competition authorities, except France, have followed the European rates.

7) They fix average rates and for fallback MIFs only: some countries, such as Poland and Portugal still pay extremely high rates, with no justification. Average rates add to the lack of transparency for merchants as they do not know on what basis they could negotiate their rates.

8) Most Fees are still ad valorem, which is totally unjustified.

Therefore, EuroCommerce takes the view that only a regulation on the MIF principles can solve the short and long term issues of the card, internet and mobile payments market.

3) Legislative proposal: the Basic Payment Service

For all the above reasons, EuroCommerce is convinced that the only way to rebalance the card market and allow for new players is to restore real competition and suppress the distortive effects of the MIF: issuing banks should compete for customers; acquiring banks should compete for merchants.

It is often argued that a certain 'balancing' mechanism is necessary to incentivise cardholders to use their cards. This may have been true in the past, but is certainly not true in the card-saturated market which exists across most of the EU. We also strongly believe that cards, with their 4-party business model, are (or will soon be) an outmoded method of payment. We also cannot accept the premise that the extension of card payments, as they exist today, is a goal to reach per se.

In any event, if we take a broader perspective, it is obvious that cards should only be one type of payment, next to credit transfer and direct debit, coupled with technological innovations (mobile, internet...). It is also clear that card applications are certainly not the most secure channel for internet payments.

Our aim in SEPA must be to promote, through free competition and harmonized standards, all payment types so that the most efficient and secure can thrive through the optimum use of new technologies

Therefore EuroCommerce makes the following proposal. No business model should be banned; banks should retain the freedom to build business models as they wish. But, *because merchants are locked in the card market, and because MIFs leads to perverse competition, there should exist at least, on each card, the facility for customers and merchants to make non-MIF payments.* In short, we advocate the unbundling of the basic payment operation from all other additional services which may be offered by a payment scheme.

In practice, this would mean that all SEPA cards would contain a basic, guaranteed payment option which allows a simple transfer of funds from the consumer's bank account to the merchant's account. This would be similar to a debit card application, which already exists in most European member states. Any additional services (e.g. gifts, additional insurance, free credit, deferred debit) would be optional, negotiated between the cardholder and his bank. These additional services would be charged at a cost set by the banks (competing with other banks) directly to the beneficiary of the service. The Basic Payment Service would have a cost to the customer, which would not be subsidized by the merchant.

Issuing banks would have the freedom to issue any card they wish, provided the Basic Payment Service is also available on each card. However the 'user pays principle' would apply, i.e. each service would be charged to its beneficiary.

The great benefit of this is that acquiring banks would have to compete for merchants by offering the best rates for the different applications provided on the cards.

Merchants would also have the freedom to choose which applications to accept in a card. They would know that refusing a card/application might mean losing a customer, but they would also have incentives to promote the most efficient payment means.

In such a system also, the costs of fraud would not be disguised through being charged to the merchant in hidden MIFs. The industry would therefore be forced to properly address the different aspects of fraud.

Practically, a regulation could look like this:

Acquiring banks and payment service providers must offer a basic SEPA payment service application on the market. There should be at least one such application available face-to-face at the point of sale.

Issuing banks and payment service providers must offer a stand alone basic payment service which operates at point of sale, to all account holders.

4) Link to consumers and financial inclusion

The European authorities are working on the topic of financial inclusion (i.e. providing every European citizen, even the poorest, with access to a basic bank account). Our proposal links in to this aspiration. Providing a basic payment application linked to each bank account would not only promote competition, it also carries a very political meaning.

EuroCommerce replies to Green Paper questions

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?

The MIF is certainly the main barrier to SEPA:

- it distorts competition between payment means;
- it leads to perverse competition where higher competition between banks leads to higher prices;
- it prevents entry of newcomers;
- it leads to the gradual replacement of national debit schemes by MIF based cards;

the risk of spillover of these effects in the mobile and Internet payments is real

- if no solution is found to the MIF issue, SEPA will not deliver its promises

It is not so much the differences of fee levels between countries that is problematic but rather the very existence of the MIF mechanism on card payments.

It is obvious that there is no reason for such differences in MIF levels between countries and for cross-border payments. The differences illustrate that the MIF is not based on a fair price for service but exploits the maximum willingness to pay of the market. Banks and schemes have never provided sufficient justification either for the existence of the MIF, or for its level.

EuroCommerce does not accept the Merchant Indifference Test (MIT) as a valid method for fixing a benchmark for MIF levels. Arguments for this have been shared for the last year with the European Commission.

The Basic Payment Service detailed above should be priced, to both consumers and merchants, at a fair price, i.e. it should cover the real costs incurred by the banks in performing the transaction. Possible divergences in fees should 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?

Yes. Regulation of the principle is the only way. Banks on the issuing and acquiring side of the market should be forced, by regulation, to provide at least the possibility to make a Basic Payment (with no MIF).

As explained above, regulating on prices (i.e. fixing a cap to the MIF) will not solve the problem, as issuing banks will have no incentive to promote cards which bring them less revenues. This would then kill all competition and innovation.

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?

MIF and related rules and fees (e.g. scheme fees) should be regulated. Fee transparency alone is not a solution in itself. Facilitating market access is crucial and must be done through regulating the MIF principle and providing access to the information on the consumer's account.

Merchants are agnostic as regards to payment means. There should be no distinction, as far as the MIF is concerned, between consumer and commercial cards since there is little difference in benefit to merchants.

Although their cards are typically much more expensive for merchants, three-party schemes do not currently represent a major issue for merchants (except in some specific sectors where they are widely used) as they only represent a small percentage of the transactions. Most merchants therefore do not have commercial issues in refusing them: they are not 'locked in'. However, in order to provide a level playing field between card schemes, the Basic payment application should be imposed on three-party schemes as well.

4.1.2 Cross-border acquiring

4) Are there currently any obstacles to cross-border or central acquiring? If so, what are the reasons? Would substantial benefits arise from facilitating cross-border or central acquiring?

The Visa and MasterCard rules prevent real cross-border acquiring.

5) How could cross-border acquiring be facilitated? If you think that action is necessary, which form should it take and what aspects should it cover? For instance, is mandatory prior authorisation by the payment card scheme for cross-border acquiring justifiable? Should MIFs be calculated on the basis of the retailer's country (at point of sale)? Or, should a cross-border MIF be applicable to cross-border acquiring?

The scheme rules of Visa and MasterCard which prevent cross-border acquiring should be removed. In a Single Market, the fee that applies should be that of the acquiring bank, chosen by the merchant. Allowing for a cross-border MIF is absurd.

A detailed answer to questions 4) and 5) is annexed².

² Annex 1: position paper 'Real cross-border acquiring: a business case', April 2010

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?

In our view, the current lack of co-badging on cards is a side issue which should not distract the authorities from the main underlying distortion of competition provoked by the MIF.

It is clear, whether we want it or not, that all national debit card schemes will disappear within a few years. If the MIF system is allowed to stay as it is today, it is also clear that there will be no new entrant on the card market.

Imposing co-badging of applications/brands on each card would certainly not resolve the competition issue. We can easily imagine that all cards would soon become V Pay/Maestro or Visa/MasterCard with the same MIF! Issuing banks would have no incentive to accept lower-fee brands on their cards, so the issue of upward pressure on prices would remain.

Co-badging would only be beneficial if it served to mandate the inclusion of a stand-alone Basic Payment application as described above on all SEPA card products.

However, we can also imagine that some citizens would decide to only have the Basic Payment, rendering co-badging an ineffective solution.

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 final choice of the payment instrument has to be the decision of the consumer. However, the retailer must have the ability to offer as first choice to the consumer the payment application he (the retailer) prefers. This could be done by enabling the retailer to configure the terminal accordingly. The proposal that prioritization should be done through 'agreement' between the consumer and the bank on issuance of the card in practice would remove the choice from the cardholder and give it to the issuing bank.

EuroCommerce has detailed this question in a briefing entitled 'Retail view on Application selection at POI' in March 2010 (in annex 2).

4.1.4 Separating card schemes and card payment processing

8) Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?

9) Should any action be taken on this? Are you in favour of legal separation (i.e. operational separation, although ownership would remain with the same holding company) or 'full ownership unbundling'?

The imposition of the use of any particular processing entity is contrary to both the principles of contractual freedom and of free market competition. EuroCommerce would support the separation of these operations, as we have advocated unbundling of services in relation to the MIF. The resulting promotion of competition and entry of new players should bring down prices and promote efficiencies: in the end this will benefit all payment service users. We have no particular view on the type of separation.

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?

We do not reply to the detail of this question but make the following comments:

- It is our view that a growth in the number and market share of PSPs and so promotion of competition in the provision of retail payments is essential to the success of SEPA. To allow this, PSPs must be given direct access to clearing and settlement services: relevant legislation should be amended accordingly.
- A common cards processing framework which stipulates transparency and non-discrimination for access and fees is in the spirit and best interests of SEPA: we would support this.

4.1.6 Compliance with the SEPA Cards Framework (SCF)

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?

Status of the SCF: EuroCommerce has a preliminary objection to the current status of the SCF. The SCF is a set of rules designed and owned by the European Payment Council only. Payment system users have never been consulted on its content and despite long-standing objections, the EPC will not accept that stakeholders should have any input on its content: this is an unacceptable situation. Elements within the SCF are disputed by the stakeholders and its 'untouchable' status is detrimental to the progress of SEPA (e.g. application selection – an issue for the CSG).

The Framework must be removed from the ownership of the EPC, made open to full stakeholder consultation and brought within the responsibilities of a properly revised governance structure.

The disappearance of non-SEPA compliant schemes: We are surprised that this question is being raised at this point – at least in relation to national debit schemes: it is surely too late. Most of the national debit card schemes have already shifted to V-Pay/Maestro. As far as we know, the only proposals to link national schemes into a SEPA-compliant scheme have failed to find a business case, given the entry barriers. We are therefore in a position where the disappearance of national debit schemes is inevitable, even though it will be highly damaging, given that the emerging Visa/MasterCard duopoly is leading to price rises.

We argue that the only solution to this is the basic card payment (see section 3 above). We therefore suggest that, if the SCF is to remain, the mandatory basic payment service should be incorporated. The only currently existing viable legacy scheme is the ELV, currently used in Germany and Austria. It has potential to extend its geographical use and offer real competition to the card model. However, it is not clear to us whether technical solutions have been found to make it SEPA-compliant. More work is needed to ensure its survival.

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?

Yes. As long as banks keep the total control of that information, there will be no entry on the market. Therefore, providing proper security systems are in place, non-banks should be given access to account-holder information. Practical modalities (e.g. remuneration for that service) should be agreed upon between the stakeholders. We understand the security issues.

4.1.8 Dependence on payment card transactions

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

It is proven that most retailers are 'locked in' the payment card market i.e. they have to accept the most popular cards presented by their customers or they risk losing sales and customers. This is why most retailers will accept any type of cards (and be very reluctant to applying a surcharge). This is even more true for companies active on the internet.

The solution is to break this 'lock in' effect by fostering competition among payment types and among banks and card schemes. This necessarily entails creating the market conditions for new entrants on the market. SEPA cards should be in real competition terms with SEPA credit transfer and SEPA direct debit (and cash...).

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

4.2.1 Consumer – merchant relationship: transparency

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

Merchants should not be forced to inform consumers but should have the ability to do so. It should certainly not be suggested that it is the *responsibility* of merchants to inform customers of the prices of the different payments means. Transparency cannot be seen as THE solution to all problems, and does not provide a solution to the MIF issue.

It would be very naïve to believe that transparency would influence payment choice: if a customer receives some services for free (e.g. air miles and free credit), he will keep using his card, even if he knows it is more expensive to merchants.

Additionally the negotiation of the MSC is a competitive issue between merchants who would not want their MSC to be made public anyway.

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

16) Is there a need to further harmonise rebates, surcharges and other steering practices across the European Union for card, internet and m-payments? If so, in what direction should such harmonisation go? Should, for instance:

- certain methods (rebates, surcharging, etc.) be encouraged, and if so how?
- surcharging be generally authorised, provided that it is limited to the real cost of the payment instrument borne by the merchant?
- merchants be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge?
- specific rules apply to micro-payments and, if applicable, to alternative digital currencies?

Because they are locked in the payment card market, merchants should be able to impose a surcharge or offer a rebate on the most expansive payment means. However again, this is not THE solution to the MIF problem. Surcharging is very unpopular with consumers and is unlikely to be adopted in practice, given the level of competition among retailers. In addition, it gives the wrong signal to consumers as to the efficiencies of payment means.

4.3 Standardisation

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?

Common standards for card payments are essential for the success of SEPA.

Certification: Commerce requires a certification system which is efficient, simple and one-stop shop. A large operator must be able to purchase payment terminals which function in any member state for any scheme. There should be a SEPA label system which guarantees the acceptability (re certification) and security of any product put on the market.

The CSG has been working for 2 years to achieve this and the results have been meagre. The major hurdle is the insistence by some players on the preservation of the European Common Criteria methodology in tandem with the international PCI security standards. It appears to EuroCommerce that action at a regulatory level is absolutely required to remove this hurdle. PCI standards are the international standard: it can make no sense for Europe to maintain its own duplicate system, so creating unnecessary cost, complication and endangering the interoperability of European payments vis-à-vis international requirements.

A further point is that the CC bodies refuse to accept certificates from non-EU organizations, which would create a further technical barrier to trade for card security products and delay the adoption of newer solutions.

National standards: On top of this, some member states have additional governmentally imposed standards, the specifics of which appear unclear. Further information and transparency is required to ascertain even what these are. We hope that the work of the SecurePay Forum will throw more light on this issue and welcome its forthcoming report. Member states must take the necessary steps, either to eliminate these requirements or to harmonise them with the Volume.

Type Approval: A further issue is the so-called 'type-approval': These are scheme specific rules which allow a national scheme or regional approval body to reject a product for use in its territory even if it has the requisite certification. If SEPA is to work, however, the requirements for such approval should be publicly disclosed, compliant with the Volume and justified in term of risk assessment.

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?

Governance re CSG. The current CSG is fairly representative, with two exceptions: consumers and emerging players in the e-commerce and m-payments field. The CSG also requires substantial improvements in governance: there is no adequate dispute resolution process, nor any top-down guidance mechanism - it is therefore extremely slow and prone to dead-lock. The CSG must be brought within an organized, connected SEPA governance structure (see section 5). It is further handicapped by a habit of protectionism: the intervention of high-level political and regulatory leadership is needed to foster willingness to compromise.

PCI/CC: The choice of PCI as the only security standard for the Volume or the only compliance methodology would raise a significant governance issue. However it must also be noted that the European CC bodies are by no means operated to the inclusion of stakeholders. PCI is designed and operated by a privately owned company, linked to the card schemes and predominantly US. The PCI DSS standard which must be implemented by all retailers is highly costly and is enforced by way of fines by the schemes. We also question its value for EMV SEPA schemes.

If therefore PCI is to be chosen as the SEPA card security standards this problem must also be addressed. We accept that the PCI Security Council is taking steps to be more inclusive, however there is still significant cost involved and more needs to be done. A new European standards body could take this role (see Q20).

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

Standardisation body. There is insufficient recognition that work on standards for SEPA payments is a long-term project. The Volume will require revision and maintenance on a permanent basis: current stakeholder members cannot be expected to do this on a voluntary basis. A permanent centrally-financed standards body is needed. We have no view whether CEN or ETSI could provide such a role, but it seems unlikely that they could do so without significant expansion of personnel and resources.

In our view a separate EU-financed body is required, which would work with international bodies such as ISO. In addition specific supervision should be maintained at European level, this could be done by the European Banking Authority.

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

Standardisation is crucial in these areas, where a growing number of new products are vying for market share. Commerce is very concerned that the proliferation of new initiatives in these markets (especially m-payments) may lead to market fragmentation and confusion.

The acceptance of new payment technologies by retailers requires significant investment: retailers cannot undertake this without assurances of interoperability. It appears that standardization on such payments is lagging behind: the Volume is still focused on POS and it is unclear to us where work on standardisation of such payments is being undertaken, or how it is being directed at EU level.

Work in these fields is still not sufficiently open to stakeholder involvement from the outset. The EPC has recently published a white paper on mobile payments for consultation, but we would point out that there are other views on the optimum path to take in building a mobile payments ecosystem. We urge, therefore, that stakeholders should be involved at a far earlier stage in this work.

4.4. Interoperability between service providers

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?

Re m-payments: The green paper refers to a stalemate on interoperability of m-payments. This, to us, is not the major issue. The real issue is that the choice of which payment mechanism is to predominate in the mobile phone payments area will have a long-term effect on the cost of payments in Europe. If we go for the most expensive option now, we will be stuck with it. The real danger is that NFC payments will be simply 'cards in a mobile' and will replicate the stranglehold of Visa/MasterCard and the MIF in the mobile payment market.

To avoid this, regulation is required to remove the dominance of the MIF business model and to facilitate the emergence of competing SCT-based mobile payment applications. We were concerned to see that the recent EPC white paper on mobile payments does not discuss the use of SCT-based applications at point of sale, but concentrates on NFC. The assumption should not be made that the only solution at point-of-sale is to be a card-in-mobile solution and we should not be promulgating any restrictive view at this stage.

Governance: A first point: governance on m-payments cannot be viewed separately from the governance of all retail payments under SEPA – one coherent structure is required. EuroCommerce has consistently argued that SEPA as a whole needs a new governance process with an established conflict resolution mechanism – see below replies to Qs 29-30.

4.5 Payments security

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

EMV has markedly improved the security of POS transactions; EuroCommerce supports all SEPA cards being chip and PIN: this should provide sufficient security. The ECB has suggested the removal of sensitive information from the mag-stripe but we think this is still premature. More work is needed to gauge the impact of this on using SEPA Cards abroad, on the acceptance of non-SEPA cards and on the survival of the ELV system.

We would also very much support the use of end-to-end encryption which would avoid the need for retailers to hold sensitive data and should remove the excessive burden of PCI requirements from POS systems.

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?

Payment cards were not designed for use on e- and m-channels. Their use involves the transfer of sensitive information and therefore the scope for fraud is great. More work is clearly needed on e-payment security. We refer to our paper on online payments, September 2011 (see annex 3).

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?

Here again, we need clarity. The Green Paper itself seeks to make a distinction between the governance of SEPA (Q29) and the governance of standardisation and interoperability (Q30). We are not convinced this is the best way to view the issue, since one of the main existing problems is the very disconnected nature of current structures. The respective bodies do not know what the others are doing and there is no co-coordinating mechanism. EuroCommerce, with its partners in the End-Users Committee has already extensively commented on SEPA governance.

Regulation/self-regulation: In such a swiftly moving field, specific legislation can only set a framework: it cannot deal with detail. We advocate a single governance structure for SEPA retail payments, with subsidiary technical bodies working on specialized fields. Such a structure will most likely have to be permanent and so should be centrally funded and could be quasi-regulatory in status (see Q 20).

What is required is a three-fold structure:

- Level 1: a number of working bodies which focus on specific areas, made up of a representative set of providers and end-users with technical expertise which work by consensus. We would also advocate the involvement of a wider group of stakeholders in this work – i.e. web-merchants, e-payment providers, telcos, and consumers.
- Level 2: Above this, the lead body (this could be the EU SEPA Council) will establish policy and if appropriate set timetables. It would also act as arbitrator and be a referee of last resort where disputes arise at level 2. Also, importantly, it will enforce the representative decision-making process of the technical bodies. The lead body therefore may require legal status conferred by regulation. To function well, this body must operate with thorough regular, detailed preparatory meetings of experts. Such expert meetings would also be able to keep in touch with developments in the technical committees at level 3. The current EU SEPA Council, which has no real preparation, is not able to take any considered stance on complex issues.
- Level 3. Supervision. There is clearly a role for overall supervision. We suggest this would best be done by the European Banking Authority in coordination with the ECB and Commission.

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?

Again, it does not help to split discussion on governance arrangements into payment types. This causes confusion. The Green Paper itself uses the categories 'cards, m-payment and e-payment.' Cards are a payment *type*, which carries a specific business model whereas 'e' and 'm' refer only to the technology used to communicate the payment. We need greater clarity in this discussion.

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?

We are disappointed at this question, which assumes the continued predominating role of the EPC. The EPC is currently in an impossible situation: it is both a closed sector organization representing banks and PSPs and the rule-making body for SEPA. The banking sector needs a sectoral body which can legitimately speak for its own interests in the same way that any other stakeholder body does. SEPA needs a representative rule-making body. These two functions cannot be carried out by the same entity. The EPC cannot therefore continue to function as it has been. The review of the SEPA governance structure must resolve the contradictory position of the EPC by creating new independent technical bodies. .

Public authorities clearly must have a role but within a new overall governance structure for SEPA as set out at Q29 above.

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?

Cash is missing. Retailers are not against cash. However, if we want to introduce real competition between payment means, the cost of cash must be made clear too.

EuroCommerce and the commerce sector

EuroCommerce represents the retail, wholesale and international trade sectors in Europe. Its membership includes commerce federations and companies in 31 European countries.

Commerce plays a unique role in the European economy, acting as the link between manufacturers and the nearly 500 million consumers across Europe over a billion times a day. It is a dynamic and labour-intensive sector, generating 11% of the EU's GDP. One company out of three in Europe is active in the commerce sector. Over 95% of the 6 million companies in commerce are small and medium-sized enterprises. It also includes some of Europe's most successful companies. The sector is a major source of employment creation: 31 million Europeans work in commerce, which is one of the few remaining job-creating activities in Europe. It also supports millions of dependent jobs throughout the supply chain from small local suppliers to international businesses.