

Oversight Framework for Card Payment Schemes - Requirements: Comments on the Draft Paper of the Eurosystem from 27th April 2007

Status: 2nd August 2007

In reference to the above mentioned draft paper, we would like to state the following comments:

- **General remarks:**

We support in general the five requirements in order to create a fair and transparent oversight which will be balanced towards all market participants and which will provide for reliable, trustworthy, but also cost-efficient payment schemes in a competitive market environment.

It should be noted that the Eurosystem definition of a „payment scheme“ is highly unusual in the sense that it includes also the various subsystems as issuers, acquirers. Up to now, the „overall card management subsystem“ (in the Eurosystem definition) is worldwide typically called a „card payment scheme“ (e.g. organisations like MasterCard, Visa or Cartes Bancaires).

For a clear and non-misleading language, we urge therefore strongly to use the existing terminology. In consequence of the graphics in Annex 1, we suggest to speak of „card payment systems“ with their various „subsystems“ instead of „card payment schemes“.

- **Definition of the covered systems:**

It should be clarified in a transparent process which systems shall be included in the oversight and which not: e.g. three party systems (American Express?), one-leg-systems with only acquiring in Europe (JCB?, China Union Pay?), or pre-paid systems (like PrePaid “Credit Cards”?).

Also, a definition of „payment cards“ may be useful: Shall payment systems based mainly on „non-traditional payment devices“, e.g. mobile phones (Vodafone M-pay), E-Mail-addresses (PayPal) or biometrics (fingerprint payments) also included in the oversight? If not, it should be clearly stated.

Also it should be clarified, if two brands with one organisation constitute one or two systems (MasterCard and Maestro, Visa and VPAY?).

For a reader who is not an expert in European law, it should be made clear, if the oversight regime shall apply only to the Euro area or to all the EU (or possibly also to the EEA and other markets).

- **To requirements 1 to 5:**

Currently a new issuing or acquiring member or a merchant must typically agree to oblige to „all technical and commercial rules of the payment scheme“. The member has typically also no choice but to oblige also to all new rules of the payment scheme. Yet, the rule making process may be highly intransparent.

In collaboration with the competition authorities, the rule making processes of the card payment schemes should be made more transparent and should include all market participants of a payment scheme.

While the requirements 1 to 5 make sense, it should be made clear, that the entity that will be primarily responsible for implementing these requirements and also for reporting should be the „overall card management subsystem“ (in the new Eurosystem definition), which is worldwide typically called the „payment scheme“ (e.g. organisations like MasterCard or Visa).

It seems counterproductive to address for the requirements 1 to 5, e.g. to any individual issuers or acquirers, as long as they have to oblige to any rules that were mandated by third parties (the „overall card management subsystems“).

- **To Annex 1:**

In order to be aligned more with the longstanding wording in the markets and to use „clear and plain language“, we suggest to rename in the figure the functions slightly:

- „overall card scheme management subsystem“
to „card system management“ or „card system management subsystem“
or just „Card Payment Scheme“
- „card issuing subsystem“
to „card issuing“ or „card issuing subsystems“
or just „Issuers“
- „transaction acquiring subsystem“
to „card acceptance“ or „card acceptance subsystems“
or just „Acquirers“
- „acceptance and transaction communication services“
to „acceptance and transaction communication subservices“
or just „authorisation services“
- „logical flows“
to „authorisation information“
- „financial flows“
to „funds“
- „clearing and settlement subsystem“
to „clearing and settlement subsystems“
or just „clearing and settlement services“
- „card use subsystem“
to „payment card subsystems“
or just „card users“

and in the subline:

- „figure: card payment scheme“
to „figure: legal structure of a typical card payment system“

An additional figure might make sense for the technical structure of a typical card payment system (e.g. with issuing processors, acquiring processors, the global „payment scheme authorization networks“, the physical „payment cards“ and so on). The technical picture might be valuable in helping to analyse a systemic operational risk (e.g. what would happen if the „VisaNet“ or the equivalent MasterCard network breaks down for several hours).

- **To Annex 2:**

Here, we want to suggest a critical comparison with the definitions of the recent „payment service directive“ and also with the existing definitions in the Visa- and MasterCard-world.

Some details for further discussion

- „acceptance“:
In many discussions, the word „acceptance“ refers only to „positively accepted transactions“ not to rejected transactions. In many other discussions, „acceptance“ is used as the willingness of a merchant to accept cards of a specific payment scheme or payment card brand (e.g. „Maestro acceptance“), but without referring to any individual transaction.

Furthermore, this definition refers to a „transaction“ which is not defined itself.
We recommend a renaming to „accepting process“.

- „card payment scheme“:

As mentioned before, we recommend a renaming to „card payment system“. This will help to keep a „plain and simple language“.

(15) „customers of CPS“:

As the definition targets the „using of a CPS“, we suggest a renaming as „Users of a CPS“.

In the legal sense, a card holder is typically customer of an issuer and a merchant is typically customer of an acquirer.

The following items should also be defined, as they are mentioned in the text:

ATM, POS, transaction

- **Final Remarks**

We suggest that in the further process, all actors and users of card payment schemes (including merchants, consumers, service providers, network operators, terminal and card manufacturers) shall be regularly consulted and informed by the schemes. While in some markets this process has already worked well, in many other markets it worked not well, so that many decisions were not „market-oriented“.

As the competition authorities will play a very important role in the future European card payment market, we suggest a continuous and detailed information exchange between the Eurosystem, the European and the national competition authorities.

Also, we want to highlight the importance of technical operational and security standards which are highly fragment today and which shall be implemented by various activities within the next years. We suggest, that the Eurosystem monitors the current standard setting activities (like EPAS, IFSF, PCI,...) actively in order to ensure transparency and fairness to all actors and users.

For the terminal hardware, we want to highlight, that POS terminals have a typical depreciation lifetime of 4-5 years, a typical operation lifetime of 5-10 years with some „long lasting terminals“ of up to 15 years working life. In addition, the software design after the publication of a new standard may typically take 1 – 3 years. This gives from a „market side“ an indication, that the implementation of new European technical standards might take a lot of time, even after the standards will be eventually fixed.

As EPSM, we support any new, market driven and open European standard and we support also a reasonable oversight of payment schemes. This shall ensure the safe, efficient and market oriented handling of future European card payments to the benefit of both banks, non-bank enterprises and consumers.