

EUROSYSTEM RESPONSE TO THE COMMISSION'S GREEN PAPER ON RETAIL FINANCIAL SERVICES: BETTER PRODUCTS, MORE CHOICE, AND GREATER OPPORTUNITIES FOR CONSUMERS AND BUSINESSES

1. Introduction

The Eurosystem welcomes the Commission's initiative to launch a public dialogue on retail financial services, as this is an important factor for financial integration in Europe.

The Commission's green paper provides a unique opportunity to identify current obstacles and issues that stand in the way of the creation of a true single market for retail financial products and services in Europe. It is essential that structural barriers between European Union Member States continue to be removed so that consumers, businesses and service providers can reap the benefits.

In its role as catalyst, the Eurosystem has provided guidance and support to market participants in the area of retail payments through a wide range of activities. The Eurosystem has played a key role in the creation of the Single Euro Payments Area (SEPA) from its inception in 2002 and the ECB now chairs the Euro Retail Payments Board (ERPB), which continues to pursue the aim of retail payment integration in an open, inclusive and transparent manner.

The Eurosystem notes that substantial progress has been made to date on European financial integration in the area of payments. August 1 2014 marked a major milestone for retail payment integration for credit transfers and direct debits in the euro area.¹ The Interchange Fee Regulation² and the transposition of the revised Directive on Payment Services (PSD2)³ into national law by January 2018, as well as the Payment Account Directive (PAD)⁴, to be transposed by September 2016, will also continue to promote and increase cross-border payment flows and thus pave the way for truly pan-European financial products. The full benefits of that legislation will be felt when transposition has taken place. Consumers and businesses are now benefiting from a wider choice, more competition and reduced costs as a result of action taken by European authorities to promote financial integration.

¹ Regulation 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro.

² Regulation 2015/751 on interchange fees for card-based payment transactions.

³ Directive 2015/2366 on payment services in the internal market.

⁴ Directive 2014/92 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

Without losing sight of this achievement, structural barriers still remain and consumers and businesses are still not able to harness the full potential of a functioning Single Market. Major differences still exist between European Member States concerning the provision of and access to payments, lending and insurance products. Diverging traditions and practices in Member States are influencing their interpretation, application and transposition of EU legislation, hereby contributing to fragmentation and bespoke differences in retail financial products which limit pan-European use.

The Eurosystem also notes that future trends need to be acknowledged and planned for. Europe has witnessed active innovation in recent years in financial technology (“FinTech”) and this activity is expected to further accelerate in the coming years, not only because of the technological, societal and economic changes digitalisation brings but also as a result of a legislative environment which progressively allows non-traditional (non-bank) providers to enter the market. These innovative changes tend to originate in domestic markets and should be able to expand smoothly across the Union without undue barriers.

2. Comments

The Eurosystem’s response to the green paper focuses on the major themes in the paper that reflect the ECB’s mandate as per the Treaty on European Union and the Treaty on the Functioning of the European Union.

2.1 A Single Market for retail financial services

The European Single Market needs to directly benefit consumers and businesses.

The Commission should continue to support legislative measures that support a real Single Market for retail financial services.

A true Single Market for retail financial services offers several advantages: greater choice and opportunities for consumers and businesses; a fair, level playing field; more competition and lower prices as well as more diversification of retail financial products. It also boosts the confidence of consumers and businesses in cross-border retail financial services, as they can be sure that the same standards and rules are applied.

The noted progress made to date in the area of retail payments provides the foundation to expand the vision of a true Single Market to other retail financial services. The Capital Markets Union (CMU) project should, if implemented in a consistent and structured way, dismantle market barriers for retail investors and increase investor protection. It should also help increase competition and consumer choice in the mortgage market.

However, further legislative action may still be needed to boost confidence in the supply of cross-border loans to consumers and retail SMEs. Convergence in the areas of personal insolvency, property valuation, collateral enforcement and credit risk is needed to achieve this goal.

2.2 Geo-blocking

Geo-blocking of retail financial products based on the location of the user is contrary to the goals of the Single Market and of continued financial integration.

The Eurosystem would like to encourage the EU legislator and national competent authorities to take appropriate measures against geo-blocking.

The aim of SEPA is to allow consumers to make cashless euro payments to payees located anywhere in the EU and EEA, using a single payment account and a single set of payment instruments. Retail payment integration has been progressing, especially since the coming into force of the regulation setting the SEPA migration end-date as 1 August 2014. However, a lot remains to be done to ensure full retail financial integration.

The Eurosystem has been made aware by complaints it has received from consumers that some businesses/public authorities still do not allow consumers to use a non-domestic IBAN for payment, especially in the case of direct debits. Such restrictions are against Article 3 (reachability) and Article 9 (payment accessibility) of the SEPA Regulation and form a real barrier to the smooth functioning of the Single Market. These kinds of barriers have the potential to restrict competition, i.e. by limiting a consumer's choice of payment services and service providers, as well as the benefit for payment service providers to access a wider market.

The Eurosystem believes that it is critical that the European Commission follow up with EU Member States where complaints have been received and take appropriate action to enforce a consistent approach to EU law. The Eurosystem would also recommend taking a proactive approach and informing businesses/authorities of their duties in this area, as it may be the case that they are simply unaware.

The Eurosystem also notes that consumers, merchants, banks and other payment service providers still encounter obstacles or experience geographical differences when making and accepting card payments. The Eurosystem believes that a harmonised European card payments area needs to be established, thus removing domestic acceptance barriers without compromising security. Card schemes and card processors that want to become pan-European should face no legal, business or operational barriers to doing so.

The Commission's Digital Single Market (DSM) strategy and the Payment Accounts Directive should provide a framework for removing unjustified geo-blocking and the Eurosystem stands ready to assist the Commission, especially with regard to payments.

2.3 Digitalisation

Digitalisation should allow payment service users to reap the benefits of technological developments when making retail payments.

The Eurosystem would like to see an integrated and harmonised Single Market for digital payment services and solutions.

Digitalisation is the basis for payment services expansion and cross-border reach. Without the internet and other new technologies, the provision of distance payment services would not have been possible. Digitalisation has furthermore emphasised the importance of harmonised technical standards. These developments, along with the social diffusion of real-time information and transaction services in various economic sectors, have increased user expectations when it comes to financial services, in particular with regard to user convenience and speed of execution. In addition, the global reach of the internet makes it difficult to differentiate between services provided by payment service providers with an EU license and services provided by providers located outside the EU. It could be useful to discuss to what extent such services are provided within the Union and if they would fall under the EU's legal framework.

User demand and the nature of the available technologies seem to encourage non-traditional service providers to enter the market. The two most salient groups of new entrants are financial technology ("FinTech") companies, often "start-ups", and the large internet platform companies (e.g. Google, Facebook, Microsoft, Amazon, Apple). These and other new entrants tend to focus on the customer relationship and enabling payment initiation (e.g. via a digital wallet accessible via a mobile phone), while relying on traditional payment schemes and bank accounts held with traditional providers.

The Eurosystem believes that new entrants challenge traditional providers, as they often move much faster in providing truly digital services across the Union, especially in the field of retail financial products and payments. Leveraging the benefits of digitalisation of business processes enables service providers to make the established payment instruments more efficient, e.g. by introducing solutions that are combined with e-invoicing, e-mandates, and e-identity for customer authentication and transaction or direct debit mandate authorisation. However, in many cases these new digital payment solutions are being rolled out at national level with non-interoperable business and/or technical standards. This has the potential to cause fragmentation at the level of digital payment solutions. A common European market should not, however, mean that every financial product necessarily has to be offered and used on a European-wide scale, although such offers should be possible.

The instant payments scheme proposed by the Euro Retail Payments Board (ERPB) could serve as a roadmap for future major pan-European payment projects. The ERPB is a group consisting of a wide range of representatives for both the supply and demand side of retail payments and this allowed for a full buy-in by all involved at the initial stages of the instant payments project, leading to a marked reduction in probable time to market and in the complexity of the proposed solution.

This instant payment initiative shows that it is possible to develop a real-time pan-European payment scheme with implementation on a timeline that reflects the importance of making progress. While the ERPB initiative is focused on euro instant payments, interoperability of providers and a wide transposition of the scheme rules could make instant payment solutions accessible to all citizens throughout the entire EU.

The Eurosystem expects current and new service providers to allow for European expansion of their solutions by initial design. The Commission could promote this by fostering a) reachability, b) neutral governance c) usage of European/global standards and d) interoperability. The Commission could in addition consider clarifying what it means to “provide payment services within the Community”, specifically addressing the issue of where a payment service is considered to be provided.

The Eurosystem supports the Commission’s initiatives, for example on digital identity (Regulation 910/2014) and also e-invoicing (Directive 2014/55/EU), calling for the interoperability of solutions within the public sector. To better facilitate the launch of digital payment solutions at pan-European level, the Commission could consider focusing more directly on the private sector. For example, as more solution providers (including banks) are entering the market with different digital identity solutions, users find themselves needing multiple digital identities to use services across Europe.

Apart from the above-mentioned reachability and interoperability issues, the emergence of innovative payment solutions may also give rise to security concerns. As some new innovative market entrants may in some cases tend to prioritise convenience and competitive prices over security and consumer protection, the need for adequate regulations and harmonised supervisory/oversight practices becomes even more important.

The Eurosystem notes that the continued proliferation of innovative products in the retail payments space may increase the scope of cyberattacks, their routes for exploitation and thus associated disruption. The increasing digitalisation of payment services may also lead to new challenges in the field of data protection. Within this context, there will be a need for regulators to have a deep understanding of the threat landscape and the potential impact of innovative developments on the financial system as a whole. Regulators need to focus on ensuring that adequate security, consumer and data protection measures are in place so that consumers retain confidence in the payment system – which is crucial for an integrated European market. However, it will be equally important to improve threat intelligence and information sharing platforms, so that regulators will be well equipped to reinforce the cyber resilience capabilities of the EU, and be able to develop a holistic and integrated approach to mitigating cyber risks. Such information sharing will need to be cross-border, cross-industry and cross-authority.

2.4 Uniform regulatory requirements and level playing field

Increased harmonisation in Member States application of EU legislation

National differences should as far as possible be eradicated, aiming for a level playing field for both domestic and non-domestic businesses and consumers.

The Eurosystem notes that to promote financial integration, the relevant EU directives and regulations need to be applied in a consistent way across Member States. Indeed, the use of EU regulations rather than directives is a way to ensure this approach. A business should face no barriers or diverging requirements when selling products within the EU. EU-wide provision and/or access should be the norm, without any national distinctions.

In the area of retail payments the Eurosystem has noticed some national inconsistencies in granting non-banks indirect access to retail payment systems designated under the Settlement Finality Directive. While the revised Payment Services Directive provides additional guidance, it does not sufficiently clarify this issue either, and the matter would benefit from being addressed.

In order to promote a level playing field, the Eurosystem encourages the Commission and Member States to actively work towards increased harmonisation in the implementation and application of EU, as well as national, legislation. Mandates provided to the European Banking Authority to draft Regulatory Technical Standards and Guidelines in the context of the PSD2 and Interchange fee regulation represent a promising way forward in this context.

From the perspective of the oversight of financial market infrastructures, the Eurosystem shares the Commission's objectives of ensuring security and consumer protection in the field of innovation and digitalisation. The recent EU legislative changes with regard to regulating new types of payment service providers are to be welcomed. In this respect, however, the Commission needs to ensure that no further legislative loopholes emerge in the supervision or oversight of payment services and that the competent European and national authorities have comparable and adequate enforcement tools to ensure compliance. Close co-operation between the competent authorities should also be encouraged.

The Eurosystem would also like to encourage the Commission to analyse gaps causing fragmentation in current legislation and to propose solutions to address these gaps either through new or amended legislation, guidelines or recommendations. For example, the Eurosystem is aware that after the implementation of the SEPA end-date regulation, questions appeared with regard to direct debit return reason codes and domestic privacy legislation. Another issue is the inconsistent practices of European payment service providers in terms of how they deal with electronic direct debit mandates. This issue

could be addressed, for example, by harmonising the use of different legally binding signatures and other authorisation methods for concluding electronic mandates.⁵

2.5 Standardisation

Standardisation is fundamental for European integration

The Eurosystem would like to see uniform European, or even globally recognised, standards for retail financial services and payments, applied in a consistent and harmonised way in the EU.

Since the inception of the single currency and its entry into physical circulation in 2002, euro area citizens have had a standardised way to pay for goods and services in cash. As from 1 August 2014 a pan-European standard for credit transfers and direct debits was made mandatory at the euro area level.

The Eurosystem is aware that in the area of digitalisation it tends to take time and resources to create and/or implement standards for retail financial services and payments in Europe. However, standardisation is of critical importance for European integration and should not be ignored because of the complexity of the issues involved. Without the widespread use of harmonised standards, it would not be possible to take full advantage of European trade. The Eurosystem has seen this clearly in the time it took to implement the SEPA standards – with Europe having missed out on increased competition and decreased costs in the area of retail payments for a considerable amount of time.

The Eurosystem would furthermore urge the Commission to continue to support private and public sector initiatives that foster technical standardisation and harmonisation in retail financial products and services (for example, in the areas of e-invoicing and e-identity).

⁵ Based on a survey of payment service providers conducted by the European Payments Council in the second quarter of 2015, it was found that, in the context of different national legislation, there are a range of legally binding signature methods, which, in turn, lead to differing practices for concluding electronic mandates or evaluating their validity in the event of a dispute.